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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–9 of December 8, 1994

Resumption of U.S. Drug Interdiction Assistance to the Government of Peru

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337, I hereby determine with respect to Peru that: (a) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (b) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, December 8, 1994.

[FR Doc. 94–31246
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Rules and Regulations

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its organization and functions statement to reflect the reorganization of the Board's headquarters offices in accordance with the recommendations of the National Performance Review (NPR) and the President's Memorandum of September 11, 1993, titled "Streamlining the Bureaucracy." In addition, the Board is amending the titles of sections 1200.1, 1200.2, and 1200.10 of this part.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: On March 30, 1994 (59 FR 14739), the Board published a revision to its organization and functions statement to reflect the realignment of its regional offices. Since that time, the Board completed its review of the organization and functions of its headquarters offices and effected a reorganization of those offices in accordance with the recommendations of the National Performance Review (NPR) and the President's Memorandum of September 11, 1993, titled "Streamlining the Bureaucracy." The reorganization eliminates excessive layers of management review and control, consolidates functions, and improves the ratio of supervisors and managers to other employees.

The following organizational changes have been made in the Board's headquarters offices: (1) The office of the Executive Director has been abolished; (2) the offices of Inspector General and Management Analysis have been abolished and their functions distributed to other offices; (3) the offices of Administrative Law Judge and Regional Operations have been combined; and (4) the office of Administration has been assigned additional functions and retitled the office of Planning and Resource Management Services.

The Board is amending the titles of §§ 1200.1, 1200.2, and 1200.10 of this part to conform them to the format of the new § 1200.3 of this part added effective August 5, 1994 (59 FR 39937) and the other parts of the Board's regulations (5 CFR parts 1201 through 1210).

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. § 1204(h).

List of Subjects in 5 CFR Part 1200

Organization and functions (Government agencies).

Accordingly, the Board amends 5 CFR part 1200 as follows:

PART 1200—[AMENDED]

1. The authority citation for part 1200, subpart A—General, continues to read as follows:

Authority: 5 U.S.C. 1201 et seq.

2. The authority citation for part 1200, subpart B—Offices of the Board, continues to read as follows:

Authority: 5 U.S.C. 1204(h) and (j).

3. The heading of § 1200.1 is revised to read "Statement of purpose."

4. The heading of § 1200.2 is revised to read "Board members and duties."

5. Section 1200.10 is revised to read as follows:

§ 1200.10 Staff organization and functions.

(a) The Board's headquarters staff is organized into the following offices:

(1) Office of the Administrative Law Judge and Regional Operations.
(2) Office of Appeals Counsel.
(3) Office of the Clerk of the Board.
(4) Office of the General Counsel.
(5) Office of Policy and Evaluation.
(6) Office of Equal Employment Opportunity.
(7) Office of Planning and Resource Management Services.

(b) The principal functions of the Board's headquarters offices are as follows:

(1) *Office of the Administrative Law Judge and Regional Operations.* The Administrative Law Judge hears Hatch Act cases, disciplinary and corrective action complaints brought by the Special Counsel, actions against administrative law judges, appeals of actions taken against MSPB employees, and other cases that the Board assigns. The office also manages the appellate functions of the MSPB regional and field offices.

(2) *Office of Appeals Counsel.* The Director, Office of Appeals Counsel, prepares proposed decisions that recommend appropriate action by the Board in petition for review cases and other cases assigned by the Board.

(3) *Office of the Clerk of the Board.* The Clerk of the Board enters petitions for review and original jurisdiction cases onto the Board's docket and monitors their processing. The Clerk of the Board also does the following:

(i) Gives information on the status of cases;

(ii) Manages the Board's records, reports, and correspondence style and control programs; and

(iii) Answers requests under the Freedom of Information and Privacy Acts at the Board's headquarters.

(4) *Office of the General Counsel.* The General Counsel provides legal advice to the Board and its headquarters and regional offices, represents the Board in court proceedings, coordinates legislative policy and performs congressional liaison, coordinates the Board's public affairs function, and plans and directs audits and investigations.

(5) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, conducts special reviews and studies of Federal merit systems, including reviews of the significant actions of the Office of Personnel Management.

(6) *Office of Equal Employment Opportunity.* The Director, Office of Equal Employment Opportunity, manages the Board's equal employment programs.

(7) *Office of Planning and Resource Management Services.* The Director, Office of Planning and Resource Management Services, develops and coordinates internal management programs and projects, conducts agencywide management reviews, and manages the Board's three administrative divisions: Financial and Administrative Management; Information Resources Management; and Human Resources Management.

(c) *Regional and Field Offices.* The Board has six regional offices and five field offices located throughout the country (See Appendix II to 5 CFR part 1201 for a list of the regional and field offices). The regional and field offices enter initial appeals onto their dockets and decide these cases as provided for in the Board's regulations.

Dated: December 12, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–30892 Filed 12–16–94; 8:45 am]

BILLING CODE 7400–01–P

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Board is amending its rules to update and clarify various provisions and to ensure that the rules in this part, as a whole, are effective, consistent, sensible, and understandable, in accordance with Executive Order 12866 of September 30, 1993. By making this amendment, the Board is providing current and consistent information to its customers regarding its adjudicatory practices and procedures.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, 202–653–7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is amending its rules at 5 CFR part 1201 to add a new appealable action and to correct the citations for two others in § 1201.3(a); to delete § 1201.3(d); to clarify the place of filing requirements in §§ 1201.4(d), 1201.22(a), and 1201.182 following the realignment of the Board's regional and field offices; to correct a cross-reference in § 1201.37(a); to conform the method of filing requirements for original jurisdiction cases in § 1201.122(c) to those for appellate jurisdiction cases; to replace the July 1991 edition of the MSPB Appeal Form in Appendix I with the revised October 1994 edition; to add information regarding the TDD (Telecommunications Device for the Deaf) capability of facsimile numbers in the regional and field offices, add the suite number of the Atlanta Regional Office, and change the address and facsimile number of the Denver Field Office in Appendix II; and to add and delete approved hearing locations in Appendix III.

(a) Section 1201.3(a)(6) is amended by adding 5 CFR part 844 to the citation so that the citation refers to the part of the regulations of the Office of Personnel Management governing disability retirement determinations under the Federal Employees' Retirement System, as well as to 5 CFR parts 831 and 842.

(b) Section 1201.3(a)(7) is amended by correcting the citation to read "5 CFR 731.103(d) and 731.508." The corrected citation refers to the regulations of the Office of Personnel Management providing for appeals to the Board of suitability determinations made by an agency acting under authority delegated by OPM (5 CFR 731.103(d)) and such determinations made by OPM (5 CFR 731.508).

(c) Section 1201.3(a) is amended by adding a new subparagraph (21) to include as an action appealable to the Board a reduction-in-force action affecting a career or career candidate appointee in the Foreign Service. Public Law 103–326, effective April 30, 1994, amended the Foreign Service Act of 1980 (22 U.S.C. 4001 et seq.) by, *inter alia*, providing authority to the Secretary of State to conduct reductions in force affecting career or career candidate appointees in the Foreign Service and by granting those appointees the right to appeal such reduction-in-force actions to the Board.

(d) Section 1201.3 is amended by deleting paragraph (d). This paragraph was added to the Board's rules in this part to implement 5 U.S.C. 1221(j), as added by the Whistleblower Protection Act of 1989 (Pub. L. 101–12). Subsequently, the Board ruled in *McCann* v. *Navy*, 57 M.S.P.R. 288 (1993) that 5 U.S.C. 1221(j) and the Board's regulation at 5 CFR 1201.3(d) should be construed to apply only to individual right of action appeals and other actions established by 5 U.S.C. chapter 12. Because the provisions of part 1201 are applicable to appeals that arise from actions other than those established by 5 U.S.C. chapter 12, the Board has determined that the continued inclusion of § 1201.3(d) in this part is likely to prove confusing to parties and that it should, therefore, be deleted.

(e) Section 1201.4(d) is amended to clarify the definition of "appropriate" office for purposes of filings with the Board. On March 30, 1994 (59 FR 14739), the Board published a revision to its rules in appendix II and appendix III of this part to reflect the realignment of its regional office structure into six regional and five field offices. In the **SUPPLEMENTARY INFORMATION** explaining that revision, the Board stated in part: "Appeals and related matters will continue to be filed with either the regional or field office having geographic jurisdiction." The Board is now amending § 1201.4(d) to specifically include field offices, as well as regional offices, in the definition.

(f) Section 1201.22(a) is amended to clarify that appeals and responses to appeals are to be filed with the appropriate Board regional or field office. See explanation in paragraph (e) above.

(g) Section 1201.37(a) is amended by deleting the reference to "§ 1201.116" and replacing it with "§ 1201.117." On June 16, 1994 (59 FR 30863), the Board published an amendment to its rules in this part that revised § 1201.115, redesignated §§ 1201.116 through 1201.119 as §§ 1201.117 through 1201.120, respectively, and added a new § 1201.116. Because the former § 1201.116 was redesignated as § 1201.117, the Board is now making a conforming amendment to the cross-reference to that section in § 1201.37(a).

(h) Section 1201.122(c) is amended by adding "commercial overnight delivery" as a method of filing and service. On July 7, 1993 (58 FR 36345), the Board amended its rules in subparts B and C of this part to permit filing and service of appeals and petitions for review by commercial overnight delivery. The Board is now amending § 1201.122(c) to conform the method of filing and service requirements for Special Counsel complaints and proposed agency actions against administrative law judges in subpart D of this part to those for appeals and petitions for review.

(i) Section 1201.163(c)(1) is amended to clarify that mixed case appeals governed by Reorganization Plan No. 1 of 1978 are to be filed with the appropriate Board regional or field office. See explanation in paragraph (e) above.

(j) Section 1201.182(a) and § 1201.182(c) are amended to clarify that petitions for enforcement of orders issued under the Board's appellate jurisdiction are to be filed with the appropriate Board regional or field office. See explanation in paragraph (e) above.

(k) Appendix I is amended by substituting the revised October 1994 edition of the MSPB Appeal Form, Optional Form 283 (Rev. 10/94), for the July 1991 edition. The form has been revised as follows:

(1) On page 1, "WHERE TO FILE AN APPEAL" has been revised to state that the appeal is to be filed with the Board's regional or field office having geographic jurisdiction.

(2) On page 1, "WHEN TO FILE AN APPEAL" has been revised to reflect the

10-day extension of the time limit for filing appeals made by the Board's amendment to its rules in this part on June 17, 1994 (59 FR 31109).

(3) On page 1, both "WHEN TO FILE AN APPEAL" and "HOW TO FILE AN APPEAL" have been revised to include "commercial overnight delivery" as a method of filing an appeal, in accordance with the Board's amendment to its rules in this part on July 7, 1993 (58 FR 36345).

(4) On page 1, the final sentence under "Public Reporting Burden" has been revised to replace "Office of Management Analysis" with "Office of Planning and Resource Management Services" to reflect the reorganization of the Board's headquarters offices and, at the request of the Office of Management and Budget, to delete the requirement that comments and suggestions be sent to OMB's Paperwork Reduction Project.

(5) On page 2, a sentence has been added in block 7 to put the appellant on notice that designating a representative in the appeal specifically includes authority for the representative to settle the appeal on the appellant's behalf.

(6) On page 2, block 7 has been revised to clarify what documents should be attached to the appeal and to advise the appellant that filing should not be delayed if the relevant SF–50 or its equivalent is not available.

(7) On page 2, a check-off box for "Foreign Service" has been added in block 20 because career and career candidate appointees in the Foreign Service now have the right to appeal reduction-in-force actions to the Board. See explanation in paragraph (c) above.

(8) On page 3, in block 32.a, the phrase "handicapping condition" has been replaced with "disability" to reflect the new preferred terminology under The Americans with Disabilities Act.

(9) On page 4, in block 38, the phrase "full 30-day notice" has been replaced with "the required number of days notice" to reflect changes in statute and Office of Personnel Management regulations that now require at least 60 days advance notice for most reduction-in-force actions, with provision for a longer notice period—at least 120 days—for some Department of Defense actions, and shorter notice—less than 60 days but at least 30 days—under certain circumstances.

(10) On page 6, in block 41.a, the material after "Yes" has been revised to clarify that the attachment requested is a copy of the appellant's request to the Office of Special Counsel for corrective action.

(11) Throughout the form, additional text has been highlighted for emphasis.

The Office of Management and Budget has renewed its approval of the MSPB Appeal Form through July 31, 1997. The form is no longer stocked by the General Services Administration, but may be obtained from the Board's Financial and Administrative Management Division; see notice published September 15, 1994 (59 FR 47363), corrected October 18, 1994 (59 FR 52558).

(l) Appendix II is amended by adding information regarding the TDD (Telecommunications Device for the Deaf) capability of facsimile numbers in the regional and field offices, by substituting the suite number for "10th Floor" in the address of the Atlanta Regional Office, and by changing the address and facsimile number of the Denver Field Office to reflect the relocation of that office effective December 1, 1994.

(m) Appendix III is amended by adding two approved hearing locations and deleting one under the Atlanta Regional Office, by adding two under the Denver Field Office, by adding one under the New York Field Office, and by adding one under the San Francisco Regional Office.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, and 7701 unless otherwise noted.

§ 1201.3 [Amended]

2. Section 1201.3 is amended at paragraph (a)(6) by removing the phrase "5 CFR parts 831 and 842" in the citation and by adding in its place the phrase "5 CFR parts 831, 842, and 844 "

3. Section 1201.3 is amended at paragraph (a)(7) by removing the citation "(5 CFR 731 401)" and by adding in its place the citation "(5 CFR 731.103(d) and 731.508) "

4. Section 1201.3 is amended by adding a new paragraph (a)(21) as follows:

§ 1201.3 Appellate jurisdiction.

(a) * * *

(21) Reduction-in-force action affecting a career or career candidate appointee in the Foreign Service (Pub. L. 103–236, sec. 181(a)(2), to be codified at 22 U.S.C. 4011).

* * * * *

5. Section 1201.3 is amended by removing paragraph (d).

§ 1201.4 [Amended]

6. Section 1201.4 is amended at paragraph (d) by adding the phrase "or field" after "regional" in the title and the first, second, and fourth sentences, and by adding the phrase "and field" after "regional" in the third sentence.

§ 1201.22 [Amended]

7 Section 1201.22 is amended at paragraph (a) by adding the phrase "or field" after "regional" in the first sentence.

§ 1201.37 [Amended]

8. Section 1201.37 is amended at paragraph (a)(3) by removing "§ 1201.116" at the end of the second sentence and by adding in its place "§ 1201.117 "

§ 1201.122 [Amended]

9. Section 1201 122 is amended at paragraph (c) by adding the phrase "by commercial overnight delivery," after "by facsimile," in the second sentence.

§ 1201.163 [Amended]

10. Section 1201 163 is amended at paragraph (c)(1) by deleting the phrase "Regional Office" in the second sentence and by adding in its place the phrase "regional or field office."

§ 1201.182 [Amended]

11 Section 1201 182 is amended by adding the phrase "or field" after "regional" in the second sentence of paragraph (a) and in the fourth sentence of paragraph (c)

Appendix I [Amended]

12 Appendix I to part 1201 is amended by removing the July 1991 edition of the MSPB Appeal Form, Optional Form 283 (Rev 7–91), and by adding in its place the October 1994 edition of the MSPB Appeal Form, Optional Form 283 (Rev 10–94), as follows:

Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

BILLING CODE 7400–01–P

OMB NO. 3124-0009

U.S. MERIT SYSTEMS PROTECTION BOARD

APPEAL FORM

INSTRUCTIONS

GENERAL: You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. 5 C.F.R. Parts 1201 and 1209. Your agency's personnel office will give you access to the regulations, and the Board will expect you to be familiar with them. You also should become familiar with the Board's key case law and controlling court decisions as they may affect your case. **You must tell the Board if you are raising an affirmative defense** (see Part IV), and **you are responsible for proving each defense you raise.**

WHERE TO FILE AN APPEAL: You must file your appeal with the Board's regional or field office which has responsibility for the geographic area in which you are employed. See 5 C.F.R. Part 1201, Appendix II.

WHEN TO FILE AN APPEAL: Your appeal must be filed during the period beginning with the day after the effective date of the action you are appealing and ending on the 30th day after the effective date. You may not file your appeal before the effective date of the action you are appealing. If you are appealing from a decision which does not set an effective date, you must file within 35 days of the date of the decision you are appealing. If your appeal is late, it may be dismissed as untimely. The date of the filing is the date your appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, or the date of receipt if you personally deliver it to the regional or field office.

HOW TO FILE AN APPEAL: You may file your appeal by mail, by facsimile, by commercial overnight delivery, or by personal delivery. You must submit two copies of both your appeal and all attachments. You may supplement your response to any question on separate sheets of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on 8 1/2" x 11" paper **Your appeal must contain your or your representative's signature in block 6. If it does not, your appeal will be rejected and returned to you. If your representative signs block 6, you must sign block 11 or submit a separate written designation of representative.**

WHISTLEBLOWING APPEAL/STAY REQUEST: If you believe the action you are appealing was threatened, proposed, taken, or not taken because of whistleblowing activities, **you must complete Part VII of this form. If you are requesting a stay, you must complete Part VIII of this form.**

Privacy Act Statement: This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The U.S. Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number, but providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal Your Social Security number will only be used for identification purposes in the processing of your appeal

You should know that the decisions of the U.S. Merit Systems Protection Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

***Public Reporting Burden:** The public reporting burden for this collection of information is estimated to vary from 20 minutes to 1 hour, with an average of 30 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Office of Planning and Resource Management Services, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419*

Part I Appellant Identification

1 Name *(last, first, middle initial)*	2. Social Security Number
3 Present address *(number and street, city, state, and ZIP code)* **You must notify the Board of any change of address or telephone number while the appeal is pending with the MSPB.**	4 Home phone *(include area code)* 5 Office phone *(include area code)*
6. I certify that all of the statements made in this appeal are true, complete, and correct to the best of my knowledge and belief	**Signature of appellant or designated representative** Date signed

Part II Designation of Representative

7 You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney You may change your designation of a representative at a later date, if you so desire, but **you must notify the Board promptly of any change**. Where circumstances require, a separate designation of representative may be submitted after the original filing. Include the information requested in blocks 7 through 11.

"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. I understand that any limitation on this settlement authority must be filed in writing with the Board."

8 Representative's address *(number and street, city, state, and ZIP code)*	9. Representative's employer
	10.a) Representative's telephone number *(include area code)*
	10.b) Representative's facsimile number
	11 **Appellant's signature** Date

Part III Appealed Action

12 Briefly describe the **agency action** you wish to appeal and attach the proposal letter and decision letter. If you are appealing a decision relating to the denial of retirement benefits, attach a copy of OPM's **reconsideration decision**. If the relevant SF-50 or its equivalent is available, send it now; however, do NOT delay filing your appeal because of it. You may submit the SF-50 when it becomes available. Later in the proceeding, you will be afforded an opportunity to submit detailed evidence in support of your appeal.

13 Name and address of the agency that took the action you are appealing *(including bureau or other divisions, as well as street address, city, state and ZIP code)*		14. Your position title and duty station at the time of the action appealed
15 Grade at time of the action appealed	16 Salary at the time of the action appealed $ per	17 Are you a veteran and/or entitled to the employment rights of a veteran? ☐ *Yes* ☐ *No*
18. Employment status at the time of the action appealed ☐ *Temporary* ☐ *Applicant* ☐ *Retired* ☐ *Permanent* ☐ *Term* ☐ *Seasonal*	19 If retired, date of retirement *(month, day, year)*	20. Type of service ☐ *Competitive* ☐ *SES* ☐ *Excepted* ☐ *Postal Service* ☐ *Foreign Service*
21 Length of government service	22. Length of service with acting agency	23. Were you serving a probationary or trial period at the time of the action appealed? ☐ *Yes* ☐ *No*
24 Date you received written notice of the proposed action *(month, day, year) (attach a copy)*	25. Date you received the final decision notice *(month, day, year) (attach a copy)*	26. Effective date of the action appealed *(month, day, year)*

27 Explain briefly why you think the agency was wrong in taking this action.

28. Do you believe the penalty imposed by the agency was too harsh?
☐ *Yes* ☐ *No*

29. What action would you like the Board to take on this case (i.e., what remedy are you asking for)?

Part IV Appellant's Defenses

30.a) Do you believe the agency committed harmful procedural error(s)?
☐ *Yes* ☐ *No*

30.b) If so, what is (are) the error(s)?

30.c) Explain how you were harmed by the error(s).

31.a) Do you believe that the action you are appealing violated the law?
☐ *Yes* ☐ *No*

31.b) If so, what law?

31.c) How was it violated?

32.a) If you believe you were discriminated against by the agency, **in connection with the matter appealed,** because of your race, color, religion, sex, national origin, marital status, political affiliation, disability, or age, indicate so and explain why you believe it to be true.

32.b) Have you filed a **formal** discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal? ☐ *Yes (attach a copy)* ☐ *No*

32.c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*

32.d) Date filed *(month, day, year)*

32.e) Has a decision been issued?
☐ *Yes (attach a copy)* ☐ *No*

33.a) Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement? ☐ *Yes (attach a copy)* ☐ *No*	33.b) Date filed *(month, day, year)*
33.c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*	33.d) Has a decision been issued? ☐ *Yes (attach a copy)* ☐ *No*
	33.e) If yes, date issued *(month, day, year)*

Part V Hearing

34. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit, after providing you and the agency with an opportunity to submit additional documents.

Do you want a hearing? ☐ *Yes* ☐ *No*

If you choose to have a hearing, the Board will notify you where and when it is to be held.

Part VI Reduction In Force

INSTRUCTIONS

Fill out this part only if you are appealing from a Reduction in Force. Your agency's personnel office can furnish you with most of the information requested below

35. Retention group and sub-group	36. Service computation date	37.a) Has your agency offered you another position rather than separating you? ☐ *Yes* ☐ *No*
37.b) Title of position offered	37.c) Grade of position offered	37.d) Salary of position offered $ per
37.e) Location of position offered		37.f) Did you accept this position? ☐ *Yes* ☐ *No*

38. Explain why you think you should not have been affected by the Reduction In Force. *(Explanations could include: you were placed in the wrong retention group or sub-group, an error was made in the computation of your service computation date, competitive area was too narrow, improperly reached for separation from competitive level, an exception was made to the regular order of selection, the required number of days notice was not given; you believe you have assignment [bump or retreat] rights, or any other reasons. Please provide as much information as possible regarding each reason.)*

Part VII Whistleblowing Activity

INSTRUCTIONS

Complete Parts VII and VIII of this form only if you believe the action you are appealing is based on whistleblowing activities.

39.a) Have you disclosed information that evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety? ☐ *Yes (attach a copy or summary of disclosure)* ☐ *No*	39.b) If yes, provide the name, title, and office address of the person to whom the disclosure was made
39.c) Date the disclosure was made *(month, day, year)*	

40. If you believe the action you are appealing was... *(please check appropriate box)*

☐ *Threatened* ☐ *Proposed*

☐ *Taken* ☐ *Not Taken*

...because of a disclosure evidencing a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, provide:

a) a chronology of facts concerning the action appealed; and

b) explain why you believe the action was based on whistleblowing activity and attach a copy of any documentary evidence which supports your statement.

41.a) Have you sought corrective action from the Office of Special Counsel concerning the action which you are appealing? ☐ *Yes (attach a copy of your request to the Office of Special Counsel for corrective action)* ☐ *No*	41.b) If yes, date(s) filed *(month, day, year)*
41 c) Place filed *(location, number and street, city, state, and ZIP code)*	
42. Have you received a written notice of your right to file this appeal from the Office of Special Counsel? ☐ *Yes (attach a copy)* ☐ *No*	
43.a) Have you already requested a stay from the Board of the action you are seeking to appeal? ☐ *Yes (attach a copy)* ☐ *No*	43.b) If yes, date requested *(month, day, year)*
43.c) Place filed *(location, number and street, city, state, and ZIP code)*	43.d) Has there been a decision? ☐ *Yes (attach a copy)* ☐ *No*

Part VIII Stay Request

INSTRUCTIONS

You may request a stay of a personnel action allegedly based on whistleblowing at any time after you become eligible to file an appeal with the Board under 5 C.F.R. 1209.5, but no later than the time limit set for the close of discovery in the appeal. The stay request may be filed prior to, simultaneous with, or after the filing of an appeal. When you file a stay request with the Board, you must simultaneously serve it upon the agency's local servicing personnel office or the agency's designated representative. 5 C.F.R 1209.8

If your stay request is being filed prior to filing an appeal with the Board, you must complete Parts I and II and items 41 through 43 above.

44. On separate sheets of paper, please provide the following. Please put your name and address at the top of each page.

a. A chronology of facts, including a description of the disclosure and the action taken by the agency (unless you have already supplied this information in Part VII above).

b. Evidence and/or argument demonstrating that the:

(1) action threatened, proposed, taken, or not taken is a personnel action, as defined in 5 C.F.R. 1209.4(a), and

(2) action complained of was based on whistleblowing, as defined in 5 C.F.R. 1209.4(b) (unless you have already supplied this information in Part VII above).

c. Evidence and/or argument demonstrating that there is a substantial likelihood that you will prevail on the merits of your appeal of the personnel action.

d. Documentary evidence that supports your stay request.

e. Evidence and/or argument addressing how long the stay should remain in effect.

f. Certificate of service specifying how and when the stay request was served on the agency.

g You may provide evidence and/or argument concerning whether a stay would impose extreme hardship on the agency.

BILLING CODE 7400-01-C

Appendix II [Amended]

13. Appendix II to part 1201 is amended by adding the following new sentence after the first sentence of the first paragraph: "The facsimile numbers listed below are TDD-capable; however, calls will be answered by voice before being connected to the TDD."

14. Appendix II to part 1201 is amended at paragraph 1. by removing "10th Floor" and by adding in its place "Suite 1050."

15. Appendix II to part 1201 is amended at paragraph 5. by removing the phrase "730 Simms Street, suite 301, P.O. Box 25025, Denver, Colorado 80225–0025, Facsimile No.: (303) 231–5205" and by adding in its place "12567 W. Cedar Drive, Suite 100, Lakewood, Colorado 80228, Facsimile No.: (303) 969–5109."

16. Appendix II to part 1201 is amended by adding "V/TDD" before "Facsimile No." in each of the paragraphs 1. through 11

Appendix III [Amended]

17 Appendix III to part 1201 is amended under the heading "Atlanta Regional Office" by removing "Jacksonville, North Carolina" and by adding in its place "Charlotte, North Carolina" and by adding "Wilmington, North Carolina" after "Raleigh, North Carolina."

18. Appendix III to part 1201 is amended under the heading "Denver Field Office" by adding "Grand Junction, Colorado" after "Denver, Colorado" and by adding "Fargo, North Dakota" after "Bismarck, North Dakota."

19 Appendix III to part 1201 is amended under the heading "New York Field Office" by adding "San Juan, Puerto Rico" after "Newark, New Jersey "

20. Appendix III to part 1201 is amended under the heading "San Francisco Regional Office" by adding "Santa Barbara, California" after "San Diego, California."

Dated December 12, 1994

Robert E. Taylor,

Clerk of the Board

[FR Doc 94–30889 Filed 12–16–94, 8:45 am]

BILLING CODE 7400–01–P

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5 CFR Part 1203

Procedures for Review of Rules and Regulations of the Office of Personnel Management

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules by adding "facsimile" and "commercial overnight delivery" as methods of filing and service in order to conform the requirements in this part to the method of filing and service requirements contained in the Board's rules at 5 CFR part 1201.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, 202–653–7200.

SUPPLEMENTARY INFORMATION: The Board has previously amended its rules at 5 CFR part 1201 (Practices and procedures) to permit filing and service of appeals and other pleadings by facsimile (54 FR 53500) and by commercial overnight delivery (58 FR 36345). The Board is now amending its rules at 5 CFR part 1203 to specifically permit the same methods of filing and service for requests to review rules and regulations of the Office of Personnel Management under this part.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1203

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1203 as follows:

PART 1203—[AMENDED]

1. The authority citation for part 1203 continues to read as follows:

Authority: 5 U S C. 1204(a), 1204(f), and 1204(h)

§ 1203.13 [Amended]

2. Section 1203.13 is amended at paragraph (d) by revising the first sentence to read as follows: "Documents may be filed with the Office of the Clerk either by mail, by personal delivery, by facsimile, or by commercial overnight delivery." 2(a). Section 1203 13 is further amended at paragraph (d) by adding the following two new sentences at the end of the paragraph reading as follows:

If it was submitted by facsimile, the date of the facsimile is considered to be the filing date If it was submitted by commercial overnight delivery, the date of filing is the date it was delivered to the commercial overnight delivery service.

§ 1203.13 Filing pleadings.

* * * * *

(d) * * *

* * * * *

§ 1203.14 [Amended]

3. Section 1203.14 is amended by revising paragraph (b) to read as follows:

§ 1203.14 Serving documents.

* * * * *

(b) *Method of serving documents.* Pleadings may be served on parties by mail, by personal delivery, by facsimile, or by commercial overnight delivery Service by mail is accomplished by mailing the pleading to each party or representative, at the party's or representative's last known address. Service by facsimile is accomplished by transmitting the pleading by facsimile to each party or representative. Service by personal delivery or by commercial overnight delivery is accomplished by delivering the pleading to the business office or home of each party or representative and leaving it with the party or representative, or with a responsible person at that address. Regardless of the method of service, the party serving the document must submit to the Board, along with the pleading, a certificate of service as proof that the document was served on the other parties or their representatives. The certificate of service must list the names and addresses of the persons on whom the pleading was served, must state the date on which the pleading was served, must state the method (i.e., mail, personal delivery, facsimile, or commercial overnight delivery) by which service was accomplished, and must be signed by the person responsible for accomplishing service

Dated December 12, 1994

Robert E. Taylor,

Clerk of the Board

[FR Doc. 94–30890 Filed 12–16–94; 8:45 am]

BILLING CODE 7400–01–P

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5 CFR Part 1204

Availability of Official Information

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules to change the designation of the official with whom appeals of denials of Freedom of Information Act requests are to be filed.

EFFECTIVE DATE: December 19, 1994

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, 202–653–7200.

SUPPLEMENTARY INFORMATION: In the recent reorganization of its headquarters offices, the Board abolished the position of Executive Director. Under the Board's rules at 5 CFR part 1204, the Executive

Director was the official designated to decide appeals of denials of Freedom of Information Act requests. Under the new Board headquarters organization, the Chairman decides such appeals. Accordingly, the Board is amending its rules at 5 CFR part 1204 to designate the Chairman as the official with whom appeals of denials of Freedom of Information Act requests are to be filed.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1204

Freedom of Information, Administrative practice and procedure, Privacy.

Accordingly, the Board amends 5 CFR part 1204 as follows:

PART 1204—[AMENDED]

1. The authority citation for part 1204 continues to read as follows:

Authority: 5 U.S.C. 552 and 1204, Pub. L. 99–570 and EO 12600.

§ 1204.21 [Amended]

2. Section 1204.21 is amended by deleting "Executive Director" in the second sentence and by adding in its place "Chairman."

Dated: December 12, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–30893 Filed 12–16–94; 8:45 am]

BILLING CODE 7400–01–P

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5 CFR Part 1205

Privacy Act Regulations

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules to change the designation of the official with whom appeals of denials of requests for amendment of records under the Privacy Act are to be filed.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, 202–653–7200.

SUPPLEMENTARY INFORMATION: In the recent reorganization of its headquarters offices, the Board abolished the position of Executive Director. Under the Board's rules at 5 CFR part 1205, the Executive Director was the official designated to decide appeals of denials of requests for amendment of records under the Privacy Act. Under the new Board headquarters organization, the Chairman decides such appeals. Accordingly, the Board is amending its rules at 5 CFR part 1205 to designate the Chairman as the official with whom appeals of denials of requests for amendment of records under the Privacy Act are to be filed.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1205

Administrative practice and procedure, Government employees, Privacy.

Accordingly, the Board amends 5 CFR part 1205 as follows:

PART 1205—[AMENDED]

1. The authority citation for part 1205 continues to read as follows:

Authority: 5 U.S.C. 552a and 1204.

§ 1205.31 [Amended]

2. Section 1205.31 is amended by removing "Executive Director" in paragraph (a) and by adding in its place "Chairman."

§ 1205.32 [Amended]

2. Section 1205.32 is amended by removing "Executive Director" each place it appears in paragraphs (a), (b), and (c) and by adding in its place "Chairman."

Dated: December 12, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–30894 Filed 12–16–94; 8:45 am]

BILLING CODE 7400–01–P

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5 CFR Part 1209

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

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules to clarify the place of filing requirement for stay requests of personnel actions allegedly based on whistleblowing.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, 202–653–7200.

SUPPLEMENTARY INFORMATION: On March 30, 1994 (59 FR 14739), the Board published a revision to its rules at 5 CFR part 1201, appendix II and appendix III, to reflect the realignment of its regional office structure into six regional and five field offices. In the "SUPPLEMENTARY INFORMATION" explaining that revision, the Board stated in part: "Appeals and related matters will continue to be filed with either the regional or field office having geographic jurisdiction." The Board is now amending its rules at 5 CFR part 1209 by adding "or field" after "regional" in §§ 1209.8, 1209.9, and 1209.10 to clarify the place of filing requirement for stay requests of personnel actions allegedly based on whistleblowing.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1209 as follows:

PART 1209—[AMENDED]

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

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

2. Section 1209.8 is amended by adding "or field" after "regional" in paragraph (b), in the first sentence of paragraph (c), and in paragraph (d).

3. Section 1209.9 is amended by adding "or field" after "regional" in paragraph (c)(1).

4. Section 1209.10 is amended by adding "or field" after "regional" in paragraph (b)(1).

Dated: December 12, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–30891 Filed 12–16–94; 8:45 am]

BILLING CODE 7400–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, and 35

RIN: 3150–AD69

Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Correction.

SUMMARY: This document corrects a final rule, published in the **Federal Register** on December 2, 1994 (59 FR 61767), that amends the regulations for the medical use of byproduct material. This action is necessary to correct language in the preamble to reflect regulatory text, remove an obsolete cross-reference, and specify a date certain in document text.

EFFECTIVE DATE: January 1, 1995.

ADDRESSES: Copies of the public record, including the final regulatory analysis and any public comments received on the proposed rule, may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6233.

SUPPLEMENTARY INFORMATION:

1. On page 61777, the third column, in the third paragraph of the discussion under the heading *Section 35.981 Training for Experienced Nuclear Pharmacists*, the words "on or before (the date of publication in the **Federal Register**)" should read "before December 2, 1994,".

2. On page 61781, in § 32.72(b)(4), the words "(the date of publication in the **Federal Register**)" should read "December 2, 1994,".

3. On page 61785, § 35.415(a)(1) is corrected to read as follows:

§ 35.415 Safety precautions.

(a) * * *

(1) Not quarter the patient or the human research subject in the same room with an individual who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirements of § 20.1301(a) of this chapter at a distance of 1 meter from the implant;

* * * * *

4. On page 61787, in § 35.981, the words "(the date of publication in the **Federal Register**)" should read "December 2, 1994,".

Dated at Rockville, Maryland, this 13th day of December, 1994.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch.

[FR Doc. 94–31071 Filed 12–16–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–0855]

Uniform Rules of Practice and Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board of Governors) is amending a provision of the Uniform Rules of Practice and Procedure adopted by the Board. The final rule is intended to clarify that the rules' provisions relating to *ex parte* communications conform to the requirements of the Administrative Procedure Act (APA). In particular, the amendment would clarify that the *ex parte* provisions do not apply to intra-agency communications, which are governed by a separate provision of the Administrative Procedure Act.

EFFECTIVE DATE: January 18, 1995.

FOR FURTHER INFORMATION CONTACT: Katherine H. Wheatley, Assistant General Counsel, Legal Division (202/452–3779), or Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation (202/452–3528). For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

In August 1991, the Board of Governors adopted the Uniform Rules of Practice and Procedure (Rules) (56 FR 38048, Aug. 9, 1991). The Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS) and National Credit Union Administration (NCUA) have also adopted the Rules (OCC, 56 FR 38024, Aug. 9, 1991; FDIC, 56 FR 37968, Aug. 9, 1991; OTS, 56 FR 38302, Aug. 12, 1991; and NCUA, 56 FR 37762, Aug. 8, 1991). The Board of Governors is amending one aspect of the Rules relating to *ex parte* communications to clarify that the Rules parallel the requirements of the Administrative Procedure Act. The other agencies have proposed or are considering proposing a similar amendment (FDIC, 59 FR 60921, Nov. 29, 1994; OTS, 59 FR 62354, Dec. 5, 1994). The Board of Governors issued this amendment as a proposed rule on November 22, 1994 (59 FR 60094, Nov. 22, 1994). It is now adopting the rule in the form proposed.

Currently, § 263.9 of the Rules prohibits "a party, his or her counsel, or another interested person" from making an *ex parte* communication to the Board or other decisional official concerning the merits of an adjudicatory proceeding. When the Rules were proposed and adopted in 1991, the joint notice of proposed rulemaking (56 FR 27790, 27793, June 17, 1991) explained that the proposed rule regarding *ex parte* communications "adopts the rules and procedures set forth in the APA regarding *ex parte* communications." There was no intention at that time to impose a rule more restrictive than that imposed by the APA itself.

The APA contains two provisions relating to communications with agency decision-makers. The APA's *ex parte* communication provision restricts communications between "interested person[s] *outside the agency*" and the agency head, the administrative law judge (ALJ), or the agency decisional employees. 5 U.S.C. 557(d) (emphasis added). *Intra-agency* communications are governed by the APA's separation of functions provision, 5 U.S.C. 554(d). That section prohibits investigative or prosecutorial personnel at an agency from "participat[ing] or advis[ing] in the decision, recommended decision, or agency review" of an adjudicatory matter pursuant to section 557 of the APA except as witness or counsel. The same separation of function provision provides that the ALJ in an adjudicatory matter may not consult any party on a fact in issue unless the other parties have an opportunity to participate. 5 U.S.C. 554(d)(1). The separation of functions provision does not prohibit agency investigatory or prosecutorial staff from seeking the amendment of a notice or the settlement or termination of a proceeding.

The rule as proposed and adopted in 1991, however, did not mention the separation of functions concept explicitly, and appeared to apply the *ex parte* communication prohibition to all communications concerning the merits of an adjudicatory proceeding between the agency head, ALJ or decisional personnel on the one hand, and any "party, his or her counsel, or another person interested in the proceeding" on the other. The Board of Governors does not interpret this provision as limiting agency enforcement staff's ability to seek approval of amendments to or terminations of existing enforcement actions. As drafted, however, the provision could be misinterpreted to expand the *ex parte* communication prohibition beyond the scope of the APA. The Board of Governors did not intend this result.

The amendment clarifies that the regulation is intended to conform to the provisions of the APA by limiting the prohibition on *ex parte* communications to communications to or from "interested persons outside the agency," 5 U.S.C. 557(d), and by incorporating explicitly the APA's separation of functions provisions, 5 U.S.C. 554(d). This approach is also consistent with the most recent Model Adjudication Rules prepared by the Administrative Conference of the United States.

The Board of Governors received two comments on the proposed rule, both of which supported it. One of the commenters suggested that the Board explain the so-called "Chinese wall" that prevents those staff members involved in the prosecutorial function from communicating with those who advise the Board on a particular matter. The amended rule specifically sets out the APA's separation of function provision, which prohibits agency prosecutorial personnel in one case from participating in the Board's decision on that or a factually related case. This provision clearly prevents prosecutorial staff from communicating about the merits of a case with those staff members who advise the Board regarding a final decision in the case. It is unnecessary to set out internal procedures implementing this statutory prohibition in a formal rulemaking, and to do so could limit the Board's flexibility with respect to internal organization.

II. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board of Governors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final rule makes a minor amendment to a rule of practice already in place, and affects intra-agency procedure exclusively. Thus, it should not result in additional burden for regulated institutions. The purpose of the revised regulation is to conform the provisions of the regulation to those imposed by statute.

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set forth in the preamble, the Board of Governors amends 12 CFR Part 263 as set forth below:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, and 3909; 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2.

2. Section 263.9 is amended by revising paragraphs (a) and (b) and adding a new paragraph (e) to read as follows:

§ 263.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Board (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, a member of the Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Board until the date that the Board issues its final decision pursuant to § 263.40(c):

(1) No interested person outside the Federal Reserve System shall make or knowingly cause to be made an *ex parte* communication to a member of the Board, the administrative law judge, or a decisional employee; and

(2) A member of the Board, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the Federal Reserve System any *ex parte* communication.

* * * * *

(e) *Separation of functions.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 263.40, except as witness or counsel in public proceedings.

By order of the Board of Governors of the Federal Reserve System, December 14, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–31110 Filed 12–16–94; 8:45am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–43; Amendment 39–9093; AD 94–25–09]

Airworthiness Directives; Rolls-Royce, plc Spey Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce, plc Spey series turbofan engines, that requires a one-time inspection of stage 1 and stage 2 high pressure turbine (HPT) and low pressure turbine (LPT) disks for cracks and corrosion pitting. This amendment is prompted by a report of a stage 7 high pressure compressor disk found cracked due to corrosion. The actions specified by this AD are intended to prevent an HPT or LPT disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

DATES: Effective February 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Service Manager, Spey engines, Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce, plc (R-R) Spey series turbofan engines was published in the **Federal Register** on January 11, 1994 (59 FR 1500). That action proposed to require a one-time inspection of stage 1 and stage 2 high pressure turbine (HPT) and low pressure turbine (LPT) disks for cracks and

corrosion pitting once the disks have completed at least 40% of their published Group "A" cyclic life limits as specified in the applicable overhaul manual. These disks must be inspected in accordance with the applicable overhaul manual during the engine's next shop visit where either the HPT or LPT disks are removed after the effective date of this AD. Accomplishment of this inspection will allow stage 1 and stage 2 HPT and LPT disks to complete the remainder of their current published cyclic life limits. The actions would be required to be accomplished in accordance with R-R Service Bulletin No. Sp72–1044, dated September 1992.

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

The commenter concurs with the AD as proposed.

In addition, the definition of shop visit has been clarified to eliminate the reference to next scheduled disk inspection and include next disk removal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 173 engines installed on aircraft of U.S. registry will be affected by this AD and that the average labor rate is $55 per work hour The FAA estimates that it will take no additional work hours per engine to accomplish the required actions to the HPT's as the inspection is performed during regular turbine overhauls. Approximately 80% of the engines will require an additional 25 work hours of extra access, inspection, and rebuild time to perform the required LPT inspection. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $189,750.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S C. App. 1354(a), 1421 and 1423; 49 U.S C. 106(g); and 14 CFR 11 89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–25–09 Rolls-Royce, plc: Amendment 39–9093 Docket 93–ANE–43

Applicability Rolls-Royce, plc (R-R) Spey 506–14 series, 511–14 series, and 555–15 series turbofan engines, installed on but not limited to British Aerospace BAC 1–11 series and Fokker F28 series aircraft

Compliance Required as indicated, unless accomplished previously

To prevent a high pressure turbine (HPT) or low pressure turbine (LPT) disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure, accomplish the following.

(a) Perform a one-time inspection for cracks and corrosion pitting in stage 1 and stage 2 HPT disks that on the effective date of this airworthiness directive (AD) have completed 40% or more of their published Group "A" lives, in accordance with the procedures and schedule described in R-R Service Bulletin (SB) No. Sp72–1044, dated September 1992, at the next shop visit after the effective date of this AD

(b) Perform a one-time inspection for cracks and corrosion pitting in stage 1 and stage 2 HPT disks that on the effective date of this AD have completed less than 40% of their published Group "A" lives, in accordance with the procedures and schedule described in R-R SB No. Sp72–1044, dated September 1992, at the first shop visit after completing 40% of their published Group "A" lives.

(c) Perform a one-time inspection for cracks and corrosion pitting in stage 1 and stage 2 LPT disks that on the effective date of this AD have completed 40% or more of their published Group "A" lives, in accordance with the procedures and schedule described in R-R SB No. Sp72–1044, dated September 1992, at the next shop visit after the effective date of this AD.

(d) Perform a one-time inspection for cracks and corrosion pitting in stage 1 and stage 2 LPT disks that on the effective date of this AD have completed less than 40% of their published Group "A" lives, in accordance with the procedures and schedule described in R-R SB No. Sp72–1044, dated September 1992, at the first shop visit after completing 40% of their published Group "A" lives.

(e) Replace with a serviceable part, disks that do not meet the inspection requirements described in section 72–50 of the applicable R-R Spey Engine Overhaul Manual, prior to return to service.

(f) Mark disks that meet the inspection requirements described in section 72–50 of the applicable R-R Spey Engine Overhaul Manual in accordance with R-R SB No. Sp72–1044, dated September 1992, prior to return to service

(g) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails removal of either HPT or LPT disks.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector who may add comments and then send it to the Manager, Engine Certification Office

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive. if any, may be obtained from the Engine Certification Office

(i) 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 aircraft to a location where the requirements of this AD can be accomplished.

(j) The inspection, and replacement, if necessary, of the disks, shall be done in accordance with the following service bulletin·

Document No.	Pages	Date
R-R SB No. Sp72–1044. Total pages	1–2 2	September 1992

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U S C 552(a) and 1 CFR part 51 Copies may be obtained from Service Manager, Spey engines, Rolls-

Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(k) This amendment becomes effective on February 17, 1995.

Issued in Burlington, Massachusetts, on December 2, 1994

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–30537 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Defense Nuclear Agency

32 CFR Part 318

[DNA Instruction 5400.11A]

Privacy Program

AGENCY: Defense Nuclear Agency, DoD.

ACTION: Final rule.

SUMMARY: In accordance with the Privacy Act of 1974, Defense Nuclear Agency (DNA) is adopting a change to exempt a new system of records, HDNA 011, entitled Inspector General Investigation Files, from certain provisions of 5 U.S.C. 552a. The exemption is intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: *Executive Order 12866.* The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action.' Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the right and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense, certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The DNA Inspector General's Office performs as one of its principal functions under the Inspector General Act of 1978, as amended by the Inspector General Act Amendment of 1988 (Pub. L. 95–452, as amended, 5 U.S.C. App.3) (IG Act), investigations into and enforcement actions concerned with suspected violations. The DNA OIG is responsible for promoting economy, efficiency, and effectiveness in the administration of DNA programs and operations and to detect and prevent fraud, waste and abuse in such programs and operations.

The (k)(2) exemption reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The system would thus be exempt from sections 5 U.S.C. 552a(c)(3); (d)(1) through (d)(4); (e)(1); (e)(4)(G), (H), and (I); and (f). The proposed rule was published on August 15, 1994, at 59 FR 41739. No comments were received, therefore, the DNA is adopting the changes.

List of Subjects in 32 CFR Part 318

Privacy.

Accordingly, the Defense Nuclear Agency amends 32 CFR part 318 as follows:

1. The authority citation for 32 CFR part 318 continues to read as follows:

Authority: Pub. L. 93–597, 88 Stat. 1896 (5 U.S.C. 552a)

2. Section 318.5 is revised as follows:

§ 318.5 Exemptions.

(a) *Exemption for classified material.* All systems of records maintained by the Defense Nuclear Agency shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(b) *System identifier and name.* HDNA 007, Security Operations.

(1) *Exemption.* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(4)(G), (H), (I); and (f).

(2) *Authority.* 5 U.S.C. 552a(k)(5).

(3) *Reasons.* To protect the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that identity of the source would be held in confidence.

(c) *System identifier and name:* HDNA 011, entitled Inspector General Investigation Files.

(1) *Exemption.* Portions of this system of records maybe exempt from the provisions of 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(2) *Authority:* 5 U.S.C. 552a (k)(2).

(3) *Reasons.* From subsection (c)(3) because it will enable DNA to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of

witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding. From subsection (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

Dated: December 9, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–31034 Filed 12–16–94; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50612C; FRL–4774–8]

RIN 2070–AB27

Alkenyl Ether of Alkanetriol Polymer; Revocation of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an alkenyl ether of alkanetriol polymer, which was the subject of premanufacture notice (PMN) P–93–458. EPA initially published this SNUR using direct final rulemaking procedures. EPA received adverse comments on this rule. Therefore, the Agency is revoking this rule, as required under the Expedited SNUR rulemaking process (40 CFR part 721 subpart D). In a separate notice of proposed rulemaking published elsewhere in today's issue of the **Federal Register**, EPA is proposing a SNUR for this substance with a 30–day comment period.

EFFECTIVE DATE: This action is effective on December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 4, 1993 (58 FR 51672), EPA issued several direct final SNURs including a SNUR for the substance described generically as alkenyl ether of alkanetriol polymer, PMN P–93–458. As described in 40 CFR 721.160, EPA is revoking the rule issued for P–93–458 under direct final rulemaking procedures because the Agency received adverse comments. As required by § 721.160(a)(3)(iii), EPA is proposing the rule published elsewhere in today's issue of the **Federal Register**. For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721 subpart D. The record for the direct final SNUR for this substance which is being revoked by this rule was established at OPPTS–50612. That record includes information considered by the Agency in developing this rule, and includes the adverse comments to which the Agency has responded with this revocation. The docket control number for the revocation is OPPTS–50612C. For details, refer to the proposal published elsewhere in today's issue of the **Federal Register**. The relevant portions of the original docket for the direct final SNUR are being incorporated under OPPTS–50612D, which is established for the proposed rule.

A public version of the record without any confidential business information is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 1, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3367 [Removed]

2. By removing § 721.3367.

[FR Doc. 94–31148 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50608A; FRL–4758–2]

RIN 2070–AB27

Polyalkylene Polyamine; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as polyalkylene polyamine which was the subject of premanufacture notice (PMN) P–89–963. EPA initially published this SNUR using direct final rulemaking procedures. EPA received adverse comments on this rule. Therefore, the Agency is revoking this rule, as required under the Expedited SNUR rulemaking process (40 CFR part 721 subpart D). In a separate notice of proposed rulemaking published elsewhere in today's issue of the **Federal Register**, EPA is proposing a SNUR for this substance with a 30–day comment period.

EFFECTIVE DATE: This action is effective on December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 8, 1993 (58 FR 32227), EPA issued several direct final SNURs including a SNUR for the substance described generically as polyalkylene polyamine, PMN P–89–963. As described in 40 CFR 721.160, EPA is revoking the rule issued for P–89–963 under direct final rulemaking procedures because the Agency received adverse comments. As required by § 721.160(a)(3)(iii), EPA is proposing the

rule published elsewhere in today's issue of the **Federal Register**. For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721 subpart D. The record for the direct final SNUR for this substance which is being revoked by this rule was established at OPPTS–50608. That record includes information considered by the Agency in developing this rule, and includes the adverse comments to which the Agency has responded with this notice of revocation. The docket control number for the revocation is OPPTS–50608A. For details refer to the proposal published elsewhere in today's issue of the **Federal Register**. The relevant portions of the original docket for the direct final SNUR are being incorporated under OPPTS–50608B, which is established for the proposed rule.

A public version of the record without any confidential business information is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 1, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(a).

§ 721.6193 [Removed]

2. By removing § 721.6193.

[FR Doc. 94–31149 Filed 10–16–94; 8:45 am]

BILLING CODE 6560–50–F

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule amends part 1607 of the Legal Services Corporation's ("LSC" or "Corporation") regulations relating to governing bodies of recipients of LSC funds. Many of the revisions are simply intended to clarify current Corporation policy or to interrelate this part to other LSC regulations. However, a number of the revisions represent changes in Corporation policy or interpretations with respect to issues that arise under the regulation. The final rule also includes a number of technical revisions to make the rule easier to understand and apply.

EFFECTIVE DATE: January 18, 1995.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8810.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") held public hearings on April 15, 1994, in Washington, DC, and on May 13, 1994, in Atlanta, Georgia, to consider drafts of proposed revisions to 45 CFR part 1607, LSC's regulation on recipient governing bodies. At the meeting in Atlanta, the Committee approved a draft, which was published as a proposed rule for public comment at 59 FR 30885 (June 16, 1994).

Twenty-two written comments were received and reviewed by the Corporation. The comments generally applauded the proposed revisions, but there were some areas of disagreement and several suggestions for changes. On September 16 and 30, 1994, the Committee held public meetings to consider the written and oral comments on the proposed rule. Based on those comments, the Committee made several revisions. The Committee met again on October 27, 1994, and voted to recommend a final rule for adoption by the full Board. On November 5, 1994, the Board voted to adopt the rule as recommended by the Committee for publication as a final rule in the **Federal Register**.

The Corporation recognizes that legislation to amend the Legal Services Corporation Act and reauthorize appropriations for the Corporation may be considered by Congress. If such legislation does become law, the Corporation's regulations will be revisited and revised accordingly.

In addition to amending 45 CFR part 1607, this rule is also intended to supersede part 1607's interpretive guideline published at 48 FR 36820 (August 15, 1983).

The entire rule, as revised, is published for clarity and ease of use.

Section Analysis

Section 1607.2 Definitions

Most of the changes in this section are technical and clarifying in nature. The section has been reordered to put the definitions in alphabetical order. Also, definitions found in other parts of the regulations but applicable to this part are included here for easier reference. In addition, language found in other sections of this part that, in fact, constitute definitions of terms are included here both for easier reference and to treat similar terms similarly. A new definition was added and some of the language has been clarified to make it consistent with past and current LSC interpretations.

Section 1607.2(a)

Although the definition of "attorney member" applies to attorneys who serve on any recipient board subject to this part, it was added primarily to make it clear that board members of a national support center do not have to be admitted to practice in a state where the center actually provides legal assistance. Because the "service area" of national support centers is the entire nation, an attorney board member need be admitted to practice in only one of the 50 states.

One comment suggested that law professors who teach within a recipient's service area, but who are not members of the bar in the recipient's service area, should be allowed to serve as an "attorney member" on the recipient's board. Statutory requirements for recipient boards do not allow this option. However, such law professors may serve pursuant to § 1607.3(d).

Section 1607.2(c)

The definition of "eligible client member" has been revised from the current definition. First, the language has been changed to make it clear that client board members must be eligible at the time of their appointment to each term of office. Thus, a client member who is financially eligible for services when first appointed to a recipient's board may not be reappointed to a second or subsequent term if, at the time of reappointment, the client board member is no longer financially eligible for LSC-funded services. However, nothing in the rule would require a client board member to resign during the course of a term if the client became ineligible subsequent to appointment.

Some comments suggested a further change to the definition to clarify that eligibility is based on financial eligibility, so that individuals who

would be financially eligible to receive legal assistance, but who could not be served by the recipient because of some other restriction on types of legal assistance or program priorities, could serve on recipient boards. The Board agreed and revised the language to clarify that a member need only be financially eligible pursuant to the requirements of LSC's financial eligibility guidelines, set out in 45 CFR part 1611, to qualify for board membership.

Language has also been adopted for this definition to clarify, in response to concerns raised in comments, that it is the national rather than the local financial eligibility standard that is applicable. As long as a person would qualify for services under Part 1611, the person would qualify for board membership, regardless of whether the recipient has a lower financial eligibility threshold or regardless of whether the person would also qualify for other services provided by the recipient.

Some comments suggested that the definition should be expanded to include individuals who are eligible for non-LSC-funded but not LSC-funded services provided by the recipient. One such comment suggested the adoption of a proportionality requirement, so that clients who are eligible for non-LSC-funded services, but not LSC-funded services, could serve in proportion to the amount of overall funding from the non-LSC source. Several comments argued that it is more important that client representatives be effective advocates for clients than that they be financially eligible for LSC-funded services. Two comments suggested substantially different and more expansive definitions of eligibility for client board membership. After consideration of these proposals, the Board decided not to expand the definition because it wished to insure that the focus of the legal services program remains on the indigent population. The Board believes that eligible client members are supposed to bring to the recipient a perspective of the community's needs, and that can best be done by someone who is financially eligible for the recipient's LSC-funded services.

The last major change to the definition is intended to clarify that it is the recipient that should decide how client board member eligibility is determined, i.e., the recipient should decide whether it or a particular group should make the determination. Thus, the recipient could decide that, for some groups, the recipient will make the determination and for others it will leave the determination up to the appointing group. Two comments opposed the language that permits client eligibility determinations to be made by the appointing groups, rather than the recipient, arguing that the determination should not be delegated. No changes were made to the proposal, however, because it does not require that the recipient delegate the decision; it merely gives the recipient the choice.

Section 1607.2(d)

The proposed rule defined "governing body" so that it would have applied both to the governing bodies of recipients who have as a primary purpose the provision of legal assistance to eligible clients and to the policy boards or bodies established pursuant to the waiver provision in § 1607.6(d). However, in response to comments on the proposed definition, the Board narrowed the definition so that it does not apply to the policy boards or bodies referred to in § 1607.6(d).

There was a concern expressed in a comment as to whether a body that does not have full authority to make all "governing" policy and administrative decisions for the LSC-funded project would fall within the rule's definition of "governing body." For example, one LSC recipient that receives very little of its funding from LSC has set up a "policy board" to oversee the LSC grant separate from its Board of Directors, which oversees all of its other activities. However, the policy board does not have all the authority envisioned by this rule in the definition of "governing body" and in § 1607.4, which deals with the functions of governing bodies.

In response, the Board decided to define "governing body" so that it does not apply to the policy boards or bodies referred to in § 1607.6(d) and to make it clear that a governing body should have full authority over LSC grants as envisioned in this rule. However, in certain special circumstances that are discussed at length in this commentary on § 1607.6 on waivers, the President has the authority to grant waivers on board composition requirements. As a condition of granting such a waiver, a recipient would be required to establish a special policy board or body, rather than a governing board or body, to oversee the grant.

Section 1607.2(e)

A definition of "policy body" is added to this section to distinguish such a body from a governing body. As discussed above under the definition of "governing body," a policy body would be established pursuant to the waiver provision in § 1607.6(d) for grantees seeking a waiver of any of the requirements imposed upon governing bodies by § 1607.3. However, a policy body would be required to conform to the membership and appointment requirements of § 1607.3, as well as the meeting requirements and compensation restriction in §§ 1607.4 and 1607.5, respectively, and would be required to have full authority to set policy for the services and activities funded under the LSC grant.

Section 1607.2(f)

This definition of "recipient" appears in 45 CFR part 1600, but is repeated here as an aid in interpreting this part.

Section 1607.3 Composition

Section 1607.3(a)

This section is revised to require in paragraph (a) that all board members must be supportive of the purposes of the LSC Act, and must be interested in and knowledgeable about the delivery of quality legal services to the poor. The current regulation does not include any similar requirement for client board members, but does include similar, although not identical, requirements for attorney and other board members. The rule removes the reference to the board's reflecting "the characteristics" of the client community, in part because it is not clear what that language means and in part because it could be construed to be inconsistent with diversity requirements that are included in this section for each category of board membership.

Three diversity provisions are added to the regulation in §§ 1607.3(b)(3), (c) and (d) to require that board members reflect the diversity of the legal and client communities, including such factors as race, ethnicity, gender, and other similar factors. In so doing, the regulation relocates the current section of the rule that relates to diversity among attorney board members, revises the language to incorporate a more up-to-date statement of the concerns addressed by the current subsection, and applies the requirement to all categories of board members. While the language of this final rule specifically mentions race, ethnicity, and gender, it also includes a reference to "other similar factors" that may be relevant in a particular legal community and population of the area served by the recipient, which may include, for example, age, physical abilities, and religious belief.

The proposed rule did not have the word "similar" as a modifier in the phrase "other factors." Some comments stated that the diversity requirement was too broad and compliance would be

difficult if, at the same time, a recipient did not have the authority to select client board members. However, other comments suggested broader areas of diversity, such as experience or expertise in poverty areas, such as housing, education, benefits, homelessness, etc. The Board decided to revise the language to "other similar factors" instead of "other factors." This revision is intended to provide sufficient leeway for local programs to determine the appropriate types of diversity in their service areas and to insure that their local boards "reasonably" reflect those types of diversity that are relevant to the mission of legal services programs.

The provision does not require mathematical precision, but sets out goals that recipients should strive to achieve. In this regard, § 1607.3(h) will allow programs to consult with the appointing organizations to insure that the appointments are made consistent with LSC guidelines. This seems to be a reasonable compromise between allowing no recipient input and giving the recipient the authority to make all appointments. Finally, if necessary and appropriate, the waiver provision in § 1607.6 could be utilized.

Section 1607.3(b)

With respect to attorney board members, the rule revises the language of the current rule that is based on the requirements of the McCollum Amendment in the act appropriating funds for the Corporation. The McCollum Amendment requires a majority of the board members to be appointed by appropriate state, county and municipal bar associations. The revision clarifies that the appointments can be made by one or more such bar associations, as long as those bar associations collectively represent a majority of attorneys practicing law in the recipient's service area. If there are minority or gender-based bar associations that represent attorneys practicing in a particular locality, those bar associations may be included in the mix of bar associations that make appointments of attorneys to a recipient's board, especially if their inclusion would help to insure that there is appropriate diversity among the attorney members of the board. In addition, although the rule, consistent with the language of the McCollum Amendment, states that the appointments are to be made by the "governing bodies" of the bar associations, the Board recognizes that different bar associations should be free to exercise their appointment responsibility in a manner consistent with their own policies, procedures and practices. The McCollum Amendment does not direct LSC to impose any particular method of appointment on a bar association.

One comment objected to term limitations on attorney appointments imposed by a state bar and suggested that the rule state specifically that any decisions on term limitations should be made by the recipient as part of its bylaws, rather than by the appointing bar or other organization. The Board did not incorporate the suggested change, because it feels that recipients should be allowed to work out those differences on a local level with the appointing organizations.

The rule also adds language which is based on part of the McCollum Amendment to make it clear that national support centers are not required to use the American Bar Association ("ABA") or a collection of all state bars to appoint their attorney members, simply because they provide service nationally. The rule also recognizes that some recipients, especially Native American or migrant programs, may have offices in one state, but also provide services in one or more adjacent or nearby states. The language is intended to permit those programs, if they so decide, to have the bar associations of the other states in which they provide service make appointments as well as the bar of the state in which their principal office is located.

For the additional ten percent of the board members who must be attorneys, but who are not covered by the McCollum Amendment, the final rule now explicitly states what is implicit in the language of the current regulation, i.e., that they may be selected by the recipient's governing body, if it so chooses. The rule does change the current regulation with respect to the additional ten percent of attorney board members in one respect, however. Under the current regulation, the additional attorneys must be representatives of bar associations or other legal organizations, e.g., law schools. This requirement is not contained in the LSC Act. Under this revised regulation, the recipient may select attorneys who are not representatives of any particular bar or legal organization, or may select attorneys who are affiliated with non-legal organizations, as long as they are admitted to practice in a state within the recipient's service area, and as long as the organization has an interest in the delivery of legal services to the poor. Thus, the recipient may select lawyers who represent the business community or the United Way and who could be helpful in fundraising, or lawyers who provide substantial pro bono services to the client community and could be helpful in designing a recipient's private attorney involvement program.

Section 1607.3(c)

The rule includes a number of changes in the language that relates to client board members. The principal revision addresses the ambiguity of the language of the current regulation that has caused problems for some LSC recipients. This revision codifies the current LSC interpretation of the language to require that client board members be selected by client groups that have been designated by the recipient. The revision also adds language that more accurately reflects the kind of groups or organizations that would be appropriate client groups for purposes of selecting eligible client members.

Most comments applauded the language broadening the types of client organizations that may make appointments. Comments were not uniform, however, on whether recipients or client groups should have authority to appoint client board members. Numerous comments supported the clarification and the policy choice that it represented, while other comments stated that it is very difficult, and sometimes impossible, to comply with the requirement that client members be appointed by client organizations. According to these comments, often there are no organized client groups within the service area and, even when there are, it is not necessarily true that client groups speak for the client community. Other comments noted that recipients often come into contact with program clients or other financially eligible individuals who would make good client board members but who, for one reason or another, are not involved with any client group.

No change was made by the Board in response to comments on the proposed language. With the addition of § 1607.3(h), permitting consultation with the appointing organizations, and the waiver provisions in § 1607.6, the rule attempts to strike a reasonable balance among these concerns by (1) giving local programs as much input as possible into the selection of board members and (2) providing for waivers for special conditions.

Section 1607.3(d)

With respect to the other board members, i.e., those that are neither attorney members nor eligible client members, the rule makes it clear that

recipient boards are permitted to fill these slots. This gives recipients flexibility to include board members who can help them with fundraising, community relations, coordination with other social service providers, or any other locally identified need. Law school professors who cannot count as "attorney members" because they are not admitted to practice in a state within the recipient's service area, could be selected for this category of membership. Although there is no comparable language in the current regulation, this provision is consistent with longstanding LSC interpretations.

Section 1607.3(e)

This provision is revised by adding language to the "domination" provision in the current regulation to make it clear that the provision is not intended to prevent recipients from designating a single regional or statewide client council as the appointing organization for client board members, as long as that client council represents numerous smaller client groups. One comment suggested that coalitions may not always be broad-based and that there might be competing coalitions of client groups within a service area. The regulation, however, does not require that recipients use coalitions as the appointing organizations; it merely gives recipients the choice.

Section 1607.3(f)

This paragraph and paragraph (h) have been amended from the proposed rule. This section now deals only with the method of selection and is intended to revise the current rule by deleting language which could be incorrectly interpreted to give LSC authority to veto particular methods of selecting local board members. The rest of the proposed paragraph (f) has been amended and merged with paragraph (h).

Section 1607.3(g)

This section establishes a standard for dealing with recipient board vacancies by requiring recipients to make reasonable and good faith efforts to insure that governing body vacancies are filled promptly. Implicit in this standard is a recognition that recipients often have no control over the appointment process other than to change the groups that they have designated to make the appointments if a particular group fails to make an appointment in a timely manner.

Comments generally favored this provision. One comment noted that the existence of a few vacancies on a large board would have no influence on the ability of a recipient to conduct its business. Several cautioned, however, that recipients "should be expected to exercise due diligence in the filling of board vacancies" and others proposed specific timeframes for compliance.

The Corporation retained the proposed language as a reasonable and realistic approach to problems with vacancies; but the Corporation also recognizes that there are alternative approaches to deal with vacancies. For example, through their own bylaws or board policies, recipients could take a number of actions when appointing organizations are slow in making appointments, refuse to make them, or are unable to make them for whatever reason. Thus, a recipient board could adopt bylaws that would permit its members to hold over until replacements are appointed, or could allow for short-term interim appointments, if necessary, until regular appointments could be made.

Section 1607.3(h)

This section has been revised from the proposed rule. It incorporates and amends the consultation provisions in the proposed § 1607.3(f) and the provisions in the proposed § 1607.3(h) that would have explicitly permitted a recipient to veto an appointee to its board. As adopted by the Board, this paragraph now states affirmatively that recipients may recommend names to bar associations and other appointing groups and should consult with those groups to insure that appropriate appointments are made. The Board adopted this consultation provision because it recognizes that bar associations or other groups may wish to request information from recipients on who would make a good legal services program board member and that appointing groups would benefit from recipient input in making their appointments. Most comments, including those from several bar associations, approved of this proposal, as long as it is clear that appointing bodies are to make independent judgments about whom to appoint to recipient boards. It is the intent of the Board that appointing organizations are to make independent judgments and retain their status as the decision makers for recipient board members. The consultation provision is meant to be an aid, not an impediment, to the appointing organization's decision making process.

In light of comments from the Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") of the American Bar Association, the Board chose not to adopt the provision authorizing a recipient to veto an appointee. SCLAID opposed the provision because it could cause unnecessary controversy and has the potential to be misread or misunderstood. SCLAID suggested that the consultation provision would obviate most problems at the outset and that local recipient bylaw provisions or state laws would adequately resolve any problems that might arise. Although other bar associations approved the concept of the veto provision, they advised building more specific checks and balances into the provision, for safeguards. The Board agreed that there were problems with the veto provision and decided to incorporate the consideration of individual or institutional conflict into the consultation provision. In addition, the Board noted that applicable state law that deals with conflict issues of nonprofit boards and recipient bylaws should be consulted to determine what mechanisms are available to deal with situations that cannot be resolved through the consultation process. Accordingly, recipients could amend their bylaws to add provisions that deal with board membership conflicts as long as the bylaws do not conflict with any requirements of the LSC Act or regulations. Then, when making recommendations to appointing organizations, recipients may refer to their bylaws as part of the standards by which board members should be appointed. It is recommended that such bylaws deal with situations where conflict issues are not resolved by the consultation process and also make it clear that it should be the governing body rather than the recipient's staff that determines whether there is a conflict.

Section 1607.4 Functions of a Governing Body

Section 1607.4(a)

This rule deletes the requirement for "effective" prior public notice, which has proven to be a difficult concept to enforce and may be very fact-specific. The Board felt that truly effective public notice is virtually impossible to achieve even if a recipient spent huge amounts of money on advertising. The Corporation does not wish to promote such wasteful expenditures or assume that the efforts were not "effective" simply because few members of the public showed up at a board meeting. Instead, the standard should be that of "reasonable" prior public notice, so that recipients would be required to do only what is reasonable under the specific local circumstances.

The Board also considered whether it should include within the regulation specific guidance as to what kinds of matters were properly discussed in executive session. In response to comments that some boards do not give appropriate notice of meetings, the Board revised the proposed language of § 1607.4(a) to require recipients to have written policies that are adopted by their governing bodies, so that arbitrary or ad hoc decisions would not be made regarding these matters. It also decided to recommend that recipients look to the kinds of matters described in the LSC bylaws and Sunshine Act regulation (45 CFR part 1622), state Sunshine Act provisions, or other provisions in state nonprofit corporation law for guidance as to the kinds of matters that might appropriately be discussed out of the public eye.

Section 1607.4(b)

New language is added to the rule to clarify that recipient governing bodies have, in addition to the specific functions described in the regulation, the authority and responsibility inherent in their status as boards of nonprofit corporations. The Board felt that the current regulatory language does not recognize that general authority, and the Board determined that it should do so.

In addition, the Board added language to make the section consistent with ABA opinions on the role of governing bodies of legal assistance programs under the American Bar Association's Model Rules of Professional Conduct, especially with respect to the governing bodies' interference with an attorney's representation of a client or with the conduct of any ongoing representation. The Board wished to make clear that while recipient board members were prohibited from such interference, the board as a whole should be encouraged to adopt policies to guide the executive director's actions when he or she discovers that the recipient has undertaken representation in a case that is inappropriate under the restrictions of the LSC Act or regulations.

Section 1607.4(c)

This new provision is intended to make it clear that it is up to recipients to design their own bylaws and that LSC approval is no longer required. The Corporation would, of course, have authority to review a program's bylaws, as well as any revisions that are made to them, to insure that they comply with the LSC Act and regulations. Several comments suggested that the proposed language did not make it clear whether a recipient must submit its bylaws to the Corporation for approval. Thus, paragraph (c) of the proposed rule was revised to clarify that LSC approval of original or amended bylaws is no longer required. Recipients need only send the Corporation a copy of any changes to their bylaws within a reasonable time after the bylaws are revised. Although the Board did not adopt a specific deadline, it noted that a reasonable time would be approximately 30 days.

Section 1607.5 Compensation

Section 1607.5(a)

The revisions to this section clarify an interpretation of the current rule and make two significant changes dealing with recipient board member compensation. First, this section has been revised so that the compensation restriction applies only to attorney board members. Since the provision of the LSC Act that prohibits compensation applies only to attorney board members, it is consistent with the Act to permit a recipient to pay compensation to a client or other non-attorney board member for board service or other service to the recipient. Comments were mixed on this provision. Some wanted to preserve the current rule because it relieves individual programs of the necessity to engage in debate on the subject. Several comments, on the other hand, suggested that client board members should always be compensated, and another stated that small stipends for client board members should be made in recognition of the effort that they make in fulfilling their board responsibilities. The Board adopted the proposed revision, since the statutory language is limited to the compensation of attorneys. The decision of whether to apply it to client members is purely a local policy decision to be made by recipients.

The second change made in this provision reverses the decision made by the LSC Board in 1988, which interpreted the language of the LSC Act to prohibit a recipient board member from receiving compensation from any recipient, not just the one on whose board the member sat. The effect of the 1988 revision was to prohibit field program staff from sitting on state and national support center boards, and vice versa, and thus prevented support centers from being accountable through their boards to the programs that they were intended to serve. This revision restores and clarifies the prior LSC policy that was in existence from 1975 to 1988 and which reflects the intent of Congress. Both the Legal Services Corporation reauthorization bill that passed the House in 1992 (H.R. 2039) and the bill that was approved by the Senate Committee on Labor and Human Resources the same year (S. 2870) would have amended the LSC Act in a manner consistent with this revision. All but one comment favored this revision.

Finally, this section clarifies that all board members may receive a per diem payment for expenses in lieu of actual expense reimbursements, so long as such a payment is reasonable in light of actual average costs. Recipients are required to have written procedures for such payments. Per diem payments may be easier for programs to administer and may encourage board members to save money on items such as meals and lodging by setting the per diem at a relatively low rate. Language in the current rule was deleted to make it clear that reimbursement could be made for expenses incurred by recipient board members on the same terms and conditions that are applicable to non-board members, when such board members are involved in other program activities not directly related to their board membership or service; e.g., attorney board members who volunteered to drive a program client to a meeting or a hearing could receive reimbursement for automobile expenses, or attorney board members who did pro bono work on behalf of the program could receive reimbursement for travel expenses for attending an out-of-town settlement conference.

Sections 1607.5 (b) and (c)

This section includes two new provisions that clarify how the compensation prohibition relates to a recipient's private attorney involvement program. Paragraph (b) makes it clear that, for those rural programs that operate in areas where there are so few attorneys that it is difficult or impossible to find attorneys willing to serve on program boards, the Corporation could partially waive the compensation prohibition to allow partners and associates of board members to participate in judicare or other compensated PAI activities. Comments generally favored this provision. However, one comment cautioned that the waiver should be limited to those rural situations in which, essentially, it would be otherwise impossible to recruit attorney board members. According to the comment, "[t]here is a danger that the delivery system could be skewed to direct resources towards associates or partners of board members and away from the employees of the program." Most comments spoke of the problems

of finding sufficient attorneys in rural areas to participate in PAI programs. No changes were made to the proposed language in response to comments. However, it is the intent of the Corporation that the waivers be used sparingly.

Paragraph (c) was added to clarify that attorney board members can receive referrals of fee-generating cases and participate freely in the recipient's pro bono PAI programs on the same terms as any other attorney. This is particularly important for rural areas where there are few private attorneys.

Section 1607.6 Waiver

Section 1607.6(a)

There is no change in this waiver provision which was designed to cover those programs, primarily reservation-based Native-American programs, that existed prior to the creation of the Corporation and had nonattorney majorities on their boards. In lieu of attorneys, most of those programs include tribal advocates who practice in tribal courts.

Section 1607.6(b)

This provision is added to permit the Corporation president to waive any of the provisions of this rule that are not mandated by law, if the recipient demonstrates that it cannot comply with them because of the nature of the population, legal community or area served or because of special circumstances, such as conflicting requirements of the recipient's other major funding sources.

The proposed rule had a separate waiver provision for client board membership, but the LSC Board rejected the language. The proposed waiver for client board membership was intended for recipients that are not statutorily required to have clients on their boards to seek a waiver from the requirements of this rule. The rule applies to any recipient that receives financial assistance from the Corporation pursuant to § 1006(a)(1)(A) of the LSC Act. The statutory requirement for client membership, however, applies only to recipients organized solely for the provision of legal assistance. Comments from client representatives persuaded the Board to continue the client board membership requirement for any recipients that are subject to this rule. The Board agreed with the comments that any recipient funded by LSC funds would benefit from the client input and that clients would be better served as a result of their ability to have input into board policy decisions.

The language of (b)(1) has been amended to include a reference to "legal community" to make it clear that the nature of the legal community, as well as requirements of state law, could be considered as a basis for a waiver. The Board recognized that there may be programs, especially in rural areas, where there are peculiar problems or situations within the legal community that may make it necessary or desirable to permit the recipient to have a governing board that varies from the normal. An example would be for those programs that serve Native American populations and practice in tribal courts. The president, through the waiver authority, could permit the recipient to substitute one or more tribal advocates for attorney board members. In addition, this provision could be used as authority for partial waiver of the compensation prohibition, to permit a recipient to adopt policies that would allow partners or associates of a board member to participate in compensated PAI activities supported by the recipient.

Section 1607.6(c)

The only change made in this subsection was a reference to the previous subsection. It provides that a recipient seeking a waiver under § 1607.6(b)(1) must demonstrate that it has made diligent efforts to comply with the client board membership requirements.

Section 1607.6(d)

This new provision was added to require that as a condition of granting a waiver under paragraph (b)(2) of this section from the requirements of § 1607.3, the president shall require that the recipient receiving the waiver have a policy body to establish and enforce policy with respect to the LSC grant. This waiver provision might apply, for example, to an organization that is not principally a legal assistance organization but gets an LSC grant for legal assistance activities. The organization would be able to set up a policy board similar to those established for several of the Delivery Systems Study programs during the late 1970's, to govern the activities covered by the LSC grant. The Board intends that such a waiver would be given only in very unusual circumstances. Such a policy body would need to comply with the appointment and membership requirements of § 1607.3 and the meeting requirements of § 1607.4(a), and its members would be subject to the compensation prohibitions of § 1607.5. The Corporation wanted to make clear that a policy board is not merely an advisory committee with limited authority to recommend policy to the recipient's governing body. By definition, such a policy board would be required to have full authority to formulate and enforce policy with respect to the services provided under the recipient's LSC grant or contract, although it may not necessarily have any policy-making authority with respect to the recipient's non-LSC funded activities. This provision requires the president to determine the powers and responsibilities of the policy body that are necessary to carry out its responsibilities with respect to setting policy for the LSC-funded activities. Because the scope of the powers and responsibilities of such policy bodies might be different than those of grantees not covered by the waiver, the reference in the proposed rule to § 1607.4 has not been retained in this final rule.

Deletion of Section 1607.7 Compliance

The compliance section of the current regulation is no longer applicable, because it refers to the changes that were made in the regulation in 1983. None of the revisions would require programs to change anything about their board structures in order to come into compliance, although they would permit programs to make numerous changes and still remain in compliance with the regulation. Therefore, the Corporation deletes the provisions on compliance. The Corporation will insure compliance with the new regulation in the same manner that it insures compliance with the other regulations.

List of Subjects in 45 CFR Part 1607

Legal services.

For the reasons set forth in the preamble, LSC revises 45 CFR part 1607 to read as follows:

PART 1607—GOVERNING BODIES

Sec.

1607 1 Purpose.
1607.2 Definitions.
1607.3 Composition.
1607.4 Functions of a governing body.
1607.5 Compensation.
1607.6 Waiver.

Authority: 42 U.S.C. 2996f(c); Pub. L. 103–317

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate

legal counsel and to insure that the recipient is accountable to its clients.

§ 1607.2 Definitions.

As used in this part,

(a) *Attorney member* means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* means a member of a recipient's governing body or policy body.

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.

(d) *Governing body* means the board of directors or other body with authority to govern the activities of a recipient receiving funds under § 1006(a)(1)(A) of the Act.

(e) *Policy body* means a policy board or other body established by a recipient to formulate and enforce policy with respect to the services provided under a grant or contract made under the Act.

(f) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under § 1006(a)(1)(A) of the Act.

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing body which reasonably reflects the interests of the eligible clients in the area served and which consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other similar factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means consistent with this part and with the recipient's bylaws and applicable State law.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) Recipients may recommend candidates for governing body membership to the appropriate bar associations and other appointing groups and should consult with the appointing organizations to insure that:

(1) Appointees meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible clients, bar admittance requirements for attorney board members, and the general requirements that all members be supportive of the purposes of the Act and have an interest in and knowledge of the delivery of legal services to the poor;

(2) The particular categories of board membership and the board as a whole meet the diversity requirements described in §§ 1607.3(b)(3), 1607.3(c) and 1607.3(d);

(3) Appointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

§ 1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. A recipient shall give timely and reasonable prior public notice of all meetings, and all meetings shall be public except for those concerned with matters properly discussed in executive session in accordance with written policies adopted by the recipient's governing body.

(b) In addition to other powers and responsibilities that may be provided for by State law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation notice of any changes in such bylaws within a reasonable time after the change is made.

§ 1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other reasonable out-of-pocket expenses in accordance with written policies adopted by the recipient.

(b) Pursuant to a waiver granted under § 1607.6(c)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area:

(1) To accept referrals of fee-generating cases under part 1609 of these regulations;

(2) To participate in any uncompensated private attorney involvement activities supported by the recipient;

(3) To seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to §§ 1607.5 (c) (1) and (2); and

(4) To receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to § 1607.5(c)(2).

§ 1607.6 Waiver.

(a) Upon application, the president shall waive the requirements of this part to permit a recipient that was funded under § 222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) Upon application, the president may waive any of the requirements of this part which are not mandated by applicable law if a recipient demonstrates that it cannot comply with them because of: (1) The nature of the population, legal community or area served; or (2) Special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

(c) A recipient seeking a waiver under § 1607.6(b)(1) shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

(d) As a condition of granting a waiver under § 1607.6(b)(2) of any of the requirements imposed upon governing bodies by § 1607.3, the president shall require that a recipient have a policy body with a membership composed and appointed in the manner prescribed by § 1607.3. Such policy body shall be subject to the meeting requirements of § 1607.4(a) and its attorney members shall be subject to the restrictions on compensation contained in § 1607.5. The policy body shall have such specific powers and responsibilities as the President determines are necessary to enable it to formulate and enforce policy with respect to the services provided under the recipient's LSC grant or contract.

Dated: December 13, 1994.

Victor M. Fortuno,

General Counsel.

[FR Doc. 94–31043 Filed 12–16–94; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Critical Habitat Determination for the Delta Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the threatened delta smelt (*Hypomesus transpacificus*) pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). This final rule designates critical habitat for the delta smelt in the following geographic areas—areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained in Suisun Bay (including the contiguous Grizzly and Honker Bays); the length of Goodyear, Suisun, Cutoff, First Mallard (Spring Branch), and Montezuma sloughs; and the existing contiguous waters contained within the Delta, as defined in section 12220 of the California Water Code. Critical habitat designation for the delta smelt will provide additional protection under section 7 of the Act with regard to activities that require Federal agency action.

EFFECTIVE DATE: January 18, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Joel A. Medlin, Sacramento Field Office (see **ADDRESSES** section) at (916) 978–4613.

SUPPLEMENTARY INFORMATION:

Background

Historically, the delta smelt is thought to have occurred from Suisun Bay upstream to the City of Sacramento on the Sacramento River and the City of Mossdale on the San Joaquin River (Moyle *et al.* 1992). The delta smelt is a euryhaline species (tolerant of a wide salinity range) that spawns in fresh water and has been collected from estuarine waters up to 14 grams per liter (equivalent to ppt) salinity (Moyle *et al.* 1992). For a large part of its annual life span, this species is associated with the freshwater edge of the mixing zone (zone of mixing or entrapment at the saltwater-freshwater interface), where the salinity is approximately 2 ppt (Ganssle 1966, Moyle *et al.* 1992, Sweetnam and Stevens 1993).

Shortly before spawning, adult delta smelt migrate upstream from the highly productive brackish-water habitat associated with the mixing zone to disperse widely into river channels and tidally-influenced backwater sloughs (Radtke 1966, Moyle 1976, Wang 1991).

Delta smelt spawn in shallow, fresh or slightly brackish water upstream of the mixing zone (Wang 1991), mostly in tidally-influenced backwater sloughs and channel edgewaters (Moyle 1976; Wang 1986, 1991; Moyle *et al.* 1992). Although delta smelt spawning behavior has not been observed in the wild (Moyle *et al.* 1992), the adhesive eggs are thought to attach to substrates such as cattails and tules, tree roots, and submerged branches (Moyle 1976, Wang 1991). In the Delta, spawning is known to occur in the Sacramento River and in Barker, Lindsey, Cache, Georgiana, Prospect, Beaver, Hog, and Sycamore sloughs (Wang 1991; Dale Sweetnam, pers. comm., 1993). Delta smelt also spawn north of Suisun Bay in Montezuma and Suisun sloughs and their tributaries (Lesa Meng, pers. comm., 1993; Dale Sweetnam, pers. comm., 1993).

The spawning season varies from year to year and may occur from late winter (December) to early summer (July and August). Moyle (1976) collected gravid adults from December to April, although ripe delta smelt were most common in February and March. In 1989 and 1990, Wang (1991) estimated that spawning had taken place from mid-February to late June or early July, with the peak spawning period occurring in late April

and early May. In 1993, a wet year, spawning may have occurred as early as January and extended into June (Dale Sweetnam, pers. comm., 1994). Peak spawning occurred in April of that year. In 1994, a critically dry year, peak spawning occurred at the end of April, and may have begun as early as late February or early March (Dale Sweetnam, pers. comm., 1994).

In the laboratory, delta smelt eggs hatch in 10 to 14 days (Randy Mager, University of California, pers. comm., 1993). Laboratory observations indicate that delta smelt are broadcast spawners that spawn in a current, usually at night, distributing their eggs over a local area (Lindberg 1992, Mager 1993). Eggs attach singly to the substrate, and few eggs were found on vertical plants (Lindberg 1993). Lindberg (1993) found that yolk-sac fry were positively phototactic and negatively buoyant. After hatching, larvae are transported downstream toward the mixing zone where they are retained by the vertical circulation of fresh and salt waters (Stevens *et al.* 1990). The pelagic larvae feed on phytoplankton until day 4, begin to feed on rotifers on day 6 and *Artemis nauplii* on day 14 (Mager 1992). Juveniles feed exclusively on zooplankton. When the mixing zone is located in a broad geographic area with extensive shallow-water habitat within the euphotic zone (depths less than 4 meters), high densities of phytoplankton and zooplankton are produced (Arthur and Ball 1978, 1979, 1980), and larval and juvenile fish, including delta smelt, grow rapidly (Moyle *et al.* 1992, Sweetnam and Stevens 1993). When given the opportunity, delta smelt remain in Suisun Bay even after the 2 ppt isohaline has retreated upstream (Herbold 1994). In general, estuaries are among the most productive ecosystems in the world (Goldman and Horne 1983). Estuarine environments produce an abundance of fish as a result of plentiful food and shallow, protective habitat for young.

When the mixing zone is contained within Suisun Bay, young delta smelt are dispersed widely throughout a large expanse of shallow-water and marsh habitat. Dispersal in areas downstream from the State and Federal water pumps and in-Delta agricultural diversions protects young delta smelt from entrainment and distributes them among the extensive, protective, and highly productive shoal regions of Suisun Bay. In contrast, when located upstream, the mixing zone becomes confined in the deep river channels, which are smaller in total surface area, contain fewer shoal areas, have swifter, more turbulent water currents, and lack high zooplankton productivity. Vulnerability to entrainment in the State and Federal pumping facilities and in-Delta diversions increases.

Erkkila *et al.* (1950) collected young delta smelt near Sherman Island, at the confluence of the Sacramento and San Joaquin Rivers, in July and August of 1948. In studies by the California Department of Fish and Game, California Department of Water Resources (DWR), and the Bureau, larval and juvenile delta smelt were collected from Roe Island in Suisun Bay north to the confluence of the Sacramento and Feather Rivers and east to Medford Island on the San Joaquin River (Wang 1991). These studies were conducted during the months of April through mid-July in 1989 and 1990. Through these distribution surveys, Wang (1991) was able to document the movement of juvenile delta smelt from the Delta to Suisun Bay in late June and early July. In 1990, young delta smelt were taken at the Tracy Pumping Plant at the end of February (Wang 1991).

The delta smelt is adapted to living in the highly productive Sacramento-San Joaquin River Estuary (Estuary) where salinity varies spatially and temporally according to tidal cycles and the amount of freshwater inflow. Despite this tremendously variable environment, the historical Estuary probably offered relatively constant suitable habitat conditions to delta smelt, which could move upstream or downstream with the mixing zone (Peter Moyle, University of California, pers. comm., 1993). Since the 1850's, however, the amount and extent of suitable habitat for the delta smelt has declined dramatically. The advent in 1853 of hydraulic mining in the Sacramento and San Joaquin Rivers led to increased siltation and alteration of the circulation patterns of the Estuary (Nichols *et al.* 1986, Monroe and Kelly 1992). The reclamation of Merritt Island for agricultural purposes in the same year marked the beginning of the present-day cumulative loss of 94 percent of the Estuary's tidal marshes (Nichols *et al.* 1986, Monroe and Kelly 1992).

In addition to this degradation and loss of estuarine habitat, the delta smelt has been increasingly subject to entrainment, upstream or reverse flows of waters in the Delta and San Joaquin River, and constriction of habitat in the less productive, deep-water river channels of the Delta (Moyle *et al.* 1992). These adverse conditions are primarily a result of the steadily increasing proportion of water diverted from the Delta by the Federal and State water projects (Monroe and Kelly 1992). Water delivery through the Federal Central Valley Project (CVP) began in water year 1940. The State Water Project (SWP) began delivering water in 1968. However, the proportion of fresh water being diverted has increased since 1983 and has remained at high levels (Moyle *et al.* 1992). A relationship has been found between the number of juvenile delta smelt salvaged at the State and Federal pumps and both the percent of inflow diverted and total Delta outflow (California Department of Water Resources and Bureau of Reclamation 1994). The high proportion of fresh water exported has exacerbated the already harsh environmental conditions experienced by the delta smelt during the recent 6-year drought (1987–1992). The March 5, 1993 (58 FR 12854), final rule listing the delta smelt as a threatened species describes in detail the factors that have led to this species' decline.

Previous Service Action

In the January 6, 1989 (54 FR 554), Animal Notice of Review, the Service included the delta smelt as a category 1 candidate species. Category 1 includes species for which data in the Service's possession are sufficient to support proposals for listing. On June 29, 1990, the Service received a petition dated June 26, 1990, from Dr. Don C. Erman, President-Elect of the California-Nevada Chapter of the American Fisheries Society, to list the delta smelt as an endangered species and designate its critical habitat. The Service made a 90-day finding that substantial information had been presented indicating that the petitioned action may be warranted and announced this decision in the **Federal Register** on December 24, 1990 (55 FR 52852). On October 3, 1991 (56 FR 50075), the Service published a proposal to list the delta smelt as a threatened species and to designate critical habitat. This proposed rule constituted the 12-month petition finding in accordance with section 4(b)(3)(B) of the Act.

Critical habitat was proposed for areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained within Suisun Bay (including the contiguous Grizzly and Honker Bays), the length of Montezuma Slough, portions of the Sacramento River, portions of the Sacramento-San Joaquin Delta, portions of the San Joaquin River, and the contiguous water bodies in between (a complex of bays, dead-end sloughs, channels typically less than four meters deep, marshlands, etc.), contained in the State of California. The public comment period opened on the date of publication of the proposed rule

(October 3, 1991) and closed on January 31, 1992.

On December 19, 1991 (56 FR 65877), the Service published a notice of public hearing on the proposed rule to be held in three locations in California. Public hearings were conducted on January 9, 1992, in Sacramento; on January 14, 1992, in Santa Monica; and on January 16, 1992, in Visalia.

The final rule listing the delta smelt as a threatened species was published on March 5, 1993 (58 FR 12854). In the final rule, the Service postponed the decision on critical habitat designation. At that time, the economic analysis necessary to determine critical habitat was still in progress. On March 16, 1993 (58 FR 14199), the Service reopened the public comment period until April 30, 1993, to allow the Service to consider any economic or biological information that previously had not been submitted.

Revisions to the October 3, 1991, Critical Habitat Proposal

The Service published a revision to the October 3, 1991, proposed rule to designate critical habitat for the delta smelt on January 6, 1994 (59 FR 852). The revision was based primarily on information gathered by the California Department of Fish and Game (Dale Sweetnam, California Department of Fish and Game, pers. comm., 1993) and the University of California, Davis (Lesa Meng, U.S. Fish and Wildlife Service pers. comm., 1993). This information showed that in 1993, delta smelt spawned in the Sacramento River, at least as far upstream as the City of Sacramento and in tidally-influenced shallow freshwater sloughs (Dale Sweetnam, pers. comm., 1993). In 1991, when delta smelt had all but disappeared from Suisun Marsh, relatively large numbers of delta smelt were caught in Suisun Slough, as far upstream as Suisun City (Lesa Meng, pers. comm., 1993). The revised rule proposed to expand the geographic extent of critical habitat to include additional areas now known to constitute important spawning habitat.

In addition, in an April 23, 1993, letter received during the public comment period, the Environmental Protection Agency (EPA) requested that new scientific information presented in its draft proposed Bay/Delta water quality standards be considered in the Service's designation of critical habitat. The water quality standards were to apply to the surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California (Bay/Delta) pursuant to section 303 of the Clean Water Act (CWA). As a result of EPA's analysis respecting the number of days that low-salinity water was historically located at three locations in the Estuary, the Service refined the description of the constituent elements for the delta smelt The proposed critical habitat was revised therefore to encompass upstream spawning habitats and to better define constituent elements necessary to protect those areas essential to the recovery of the species Comment on the revised proposal and its draft economic analysis was solicited.

On the same date that the Service published its revised critical habitat rule, the Service proposed the Sacramento splittail (*Pogonichthys macrolepidotus*) as a threatened species and EPA published its proposed rule to establish water quality standards for surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta pursuant to section 303 of the CWA. Those water quality standards are meant to protect the estuary as a whole, and therefore contain more than the salinity criterion EPA's water quality proposal also includes salmon smolt survival criteria to protect fish migration and cold freshwater habitat designated uses in the estuary in its January 6, 1994, rule, along with proposed striped bass spawning criteria.

Designation of critical habitat at this time is part of a coordinated effort between the Service, EPA, National Marine Fisheries Service (NMFS), and the Bureau of Reclamation (Bureau) (collectively, "Club Fed") to protect and recover the delta smelt and the Estuary ecosystem.

Relationship Between Fish and Wildlife Service and EPA Actions

The Service and EPA recognized that their proposed regulatory actions (e.g., delta smelt critical habitat and EPA's water quality standards) overlapped biologically and economically. As such, both agencies worked closely to provide a comprehensive, ecosystem-based approach for the protection of the fish and wildlife resources of the Estuary. This coordination has resulted in regulatory actions that are integrated in both substance and timing.

Biologically, the critical habitat designation for the delta smelt and the salinity criteria within EPA's water quality standards are directly related. Specifically, salinities of 2 ppt in Suisun Bay were identified as a primary constituent element in the October 3, 1991, critical habitat proposal. Subsequent scientific publications indicate that salinities associated with the distribution of delta smelt may provide the best basis for setting standards for many species that are affected by freshwater discharge from the Estuary (Moyle *et al* 1992, San Francisco Estuary Project 1993) Favorable conditions from February through June are important to the abundance and reproductive success of almost all species that live in or migrate through the upper Estuary Because EPA's water quality standards address the location of 2 ppt salinities from February to June, its standards will address certain critical habitat (water quality) requirements for delta smelt

In the text of the January, 6, 1994, proposed rule to designate critical habitat for the delta smelt, the Service identified specific salinity criteria required to maintain habitat for delta smelt through its entire life cycle These criteria had been determined in coordination with EPA in preparation of its proposed water quality standards Subsequent to publication of the critical habitat proposed rule, the Service received many comments objecting to the specificity of the salinity criteria During numerous discussions with interested parties (and in the following response to comments), Service staff have explained that the detailed discussion within the text of the proposed rule was meant to clearly describe the need for including a water quality criterion specific to salinity as one primary constituent element The actual regulation that was proposed for publication in the Code of Federal Regulations, however, was much less specific as to allow broad flexibility in implementation of the provisions of the Act Therefore, to clarify the Service's intent to preserve the flexibility inherent in implementation of the section 7 regulations, the following discussion of the primary constituent elements necessary to define delta smelt critical habitat, is general in scope However, the Service has coordinated carefully and extensively with EPA to ensure that EPA's final rule promulgating Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California affords sufficient protection to further the recovery of the delta smelt. EPA's final rule is published in this same **Federal Register**, in a separate part. In its proposed rule, EPA requested that specific comments be submitted on several issues, including the possibility of modifying the Sacramento River Index for the purposes of developing the salinity criteria, alternative approaches to the averaging period used in its proposed salinity criteria, and

evaluation of the merits of the use of different forms of confidence intervals with the proposed criteria. In developing this final rule, the Service has considered all such comments. These issues also were discussed with EPA in regard to the development of its water quality standards and the Service's section 7 consultation with EPA on promulgation of these standards.

Section 7 of the Act requires that all Federal agencies ensure that their actions do not jeopardize the continued existence of listed species or adversely modify designated critical habitat. EPA's action in promulgating water quality standards must comply with the section 7 consultation requirement.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as "(i) the specific areas within the geographical area occupied by the species at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination * * * that such areas are essential for the conservation of the species." The term "conservation", as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary " With recovery, no protection from the Act is necessary Therefore, areas designated as critical habitat must contain those physical or biological features essential to recover a species to the point that it no longer requires protection under the Act and can be removed from the list of endangered and threatened species. Section 3(c) further states that in most cases the entire range of a species should not be encompassed within critical habitat. Areas outside the present geographic range may be included as critical habitat if a species' present range would be inadequate to ensure conservation of the species.

Role in Species Conservation

Use of the term "conservation" in the definition of critical habitat indicates that its designation should identify areas that may be needed for a species' recovery and delisting.

The designation of critical habitat will not, in itself, lead to recovery, but is one of several measures available to contribute to a species' recovery Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not they are currently occupied by the listed species, thus alerting the public to the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection under section 7 of the Act with regard to actions carried out, funded, or authorized by Federal agencies. Section 7 requires that Federal agencies consult on actions that may affect critical habitat to ensure that their actions are not likely to destroy or adversely modify critical habitat. This additional protection to a species' habitat may actually shorten the time needed to achieve recovery Aside from this added protection provided by section 7, the Act does not provide other direct forms of protection to lands designated as critical habitat.

Designating critical habitat does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or out of critical habitat), nor does it have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans, management plans, and section 7 consultations.

Critical habitat identifies specific areas essential to the conservation of a species. Areas with one or more essential features but not currently containing all of the features and areas having the capability to provide essential features in the future, may be required for the long-term recovery of the species. This may be so particularly in certain portions of its range. However, not all areas containing all features of a listed species' habitat are necessarily essential to the species' recovery. Areas not included in critical habitat that contain one or more of the essential elements are still important to a species' conservation and may be addressed under other facets of the Act and other conservation laws and regulations. All designated areas also may be of considerable value in maintaining ecosystem integrity and supporting other species.

Designation of critical habitat may be reevaluated and revised, at any time, when new information indicates that changes are warranted. The Service may revise critical habitat if management plans, recovery plans, or other conservation strategies are developed and fully implemented, reducing the need for the additional protection provided by critical habitat designation. For example, after the draft Delta Native Fishes Recovery Plan (Recovery Plan) is finalized or the State promulgates more protective water quality standards for the Estuary than are currently in place, land and water management agencies may provide increased protection for the delta smelt. If these protection measures are implemented, the Service may revise its critical habitat designation.

Primary Constituent Elements

In determining which areas to designate as critical habitat, the Service considers those physical and biological features that are essential to a species' conservation (50 CFR 424.12(b)). The Service is required to list the known primary constituent elements together with a description of any critical habitat that is proposed. Such physical and biological features (i.e., primary constituent elements) include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and

(5) Generally, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements essential to the conservation of the delta smelt are physical habitat, water, river flow, and salinity concentrations required to maintain delta smelt habitat for spawning, larval and juvenile transport, rearing, and adult migration.

The primary constituent elements are organized by habitat conditions required for each life stage. The specific geographic areas and seasons identified for each habitat condition represent the maximum possible range of each of these conditions. Depending on the water-year type (i.e., wet, above normal, normal, below normal, dry, critically dry), each of the habitat conditions specified below requires fluctuation (within-year and between-year) in the placement of the 2 ppt isohaline (a line drawn to connect all points of equal salinity) around three historical reference points. These three historical reference points are the Sacramento-San Joaquin River confluence, the upstream

limit of Suisun Bay at Chipps Island, and in the middle of Suisun Bay at Roe Island. The actual number of days that the 2 ppt isohaline is maintained at the three points varies according to water-year type.

In addition, to maintain habitat conditions necessary to achieve recovery of the delta smelt, the number of days at each reference point must simulate a level of water project development equivalent to that which historically existed in 1968. A 1968 level of development represents a period of time before Delta outflow was affected by the SWP and the delta smelt was abundant. This year (1968) falls within the time period identified by the Delta Native Fishes Recovery Team as having had appropriate hydrologic conditions that would allow recovery of the delta smelt. Additionally, on June 15, 1994, the Regional Director signed an Interagency Statement of Principles among the Service, NMFS, and EPA (Plenert, Fullerton, and Seraydarian, *in litt.* 1994) stating, in part, despite the effects of the water projects that were operating at that time, the Estuary ecosystem and its anadromous and resident fisheries were relatively healthy during the years between 1960 and 1970.

Further, to maintain suitable habitat conditions for recovery of the delta smelt, the naturally-occurring variability found in healthy estuarine ecosystems must be preserved for the following reasons—(1) temporal and spatial variability of the 2 ppt isohaline will be the most effective deterrent to further invasion of newly introduced species and continued competition by those that are already established, (2) placement of the 2 ppt isohaline in Suisun Bay will produce the high phytoplankton and zooplankton densities that characterize most healthy estuarine ecosystems, and (3) variability is needed to simulate natural processes and historical conditions.

The primary constituent elements for the delta smelt are:

Spawning Habitat—Delta smelt adults seek shallow, fresh or slightly brackish backwater sloughs and edgewaters for spawning. To ensure egg hatching and larval viability, spawning areas also must provide suitable water quality (i.e., low concentrations of pollutants) and substrates for egg attachment (e.g., submerged tree roots and branches and emergent vegetation). Specific areas that have been identified as important delta smelt spawning habitat include Barker, Lindsey, Cache, Prospect, Georgiana, Beaver, Hog, and Sycamore sloughs and the Sacramento River in the Delta, and tributaries of northern Suisun Bay. The spawning season varies from year to year and may start as early as December and extend until July.

Larval and Juvenile Transport—To ensure that delta smelt larvae are transported from the area where they are hatched to shallow, productive rearing or nursery habitat, the Sacramento and San Joaquin Rivers and their tributary channels must be protected from physical disturbance (e.g., sand and gravel mining, diking, dredging, and levee or bank protection and maintenance) and flow disruption (e.g., water diversions that result in entrainment and in-channel barriers or tidal gates). Adequate river flow is necessary to transport larvae from upstream spawning areas to rearing habitat in Suisun Bay. Additionally, river flow must be adequate to prevent interception of larval transport by the State and Federal water projects and smaller agricultural diversions in the Delta. To ensure that suitable rearing habitat is available in Suisun Bay, the 2 ppt isohaline must be located westward of the Sacramento-San Joaquin River confluence during the period when larvae or juveniles are being transported, according to the historical salinity conditions which vary according to water-year type. Reverse flows that maintain larvae upstream in deep-channel regions of low productivity and expose them to entrainment interfere with these transport requirements. Suitable water quality must be provided so that maturation is not impaired by pollutant concentrations. The specific geographic area important for larval transport is confined to waters contained within the legal boundary of the Delta, Suisun Bay, and Montezuma Slough and its tributaries. The specific season when habitat conditions identified above are important for successful larval transport varies from year to year, depending on when peak spawning occurs and on the water-year type. The Service identified situations in the biological opinion for the delta smelt (1994) where additional flows might be required in the July–August period to protect delta smelt that were present in the south and central Delta from being entrained in the State and Federal project pumps, and to avoid jeopardy to the species. The long-term biological opinion on CVP–SWP operations will identify situations where additional flows may be required after the February through June period identified by EPA for its water quality standards to protect delta smelt in the south and central Delta.

Rearing Habitat—Maintenance of the 2 ppt isohaline according to the historical salinity conditions described above and suitable water quality (low concentrations of pollutants) within the Estuary is necessary to provide delta smelt larvae and juveniles a shallow, protective, food-rich environment in which to mature to adulthood. This placement of the 2 ppt isohaline also serves to protect larval, juvenile, and adult delta smelt from entrainment in the State and Federal water projects. An area extending eastward from Carquinez Strait, including Suisun Bay, Grizzly Bay, Honker Bay, Montezuma Slough and its tributary sloughs, up the Sacramento River to its confluence with Three Mile Slough, and south along the San Joaquin River including Big Break, defines the specific geographic area critical to the maintenance of suitable rearing habitat. Three Mile Slough represents the approximate location of the most upstream extent of tidal excursion when the historical salinity conditions described above are implemented. Protection of rearing habitat conditions may be required from the beginning of February through the summer.

Adult Migration—Adult delta smelt must be provided unrestricted access to suitable spawning habitat in a period that may extend from December to July. Adequate flow and suitable water quality may need to be maintained to attract migrating adults in the Sacramento and San Joaquin River channels and their associated tributaries, including Cache and Montezuma sloughs and their tributaries. These areas also should be protected from physical disturbance and flow disruption during migratory periods.

To conserve the delta smelt, this final rule designates critical habitat in an area encompassing the specific habitat conditions required by each life stage identified above. Accordingly, critical habitat is designated in the following geographic area—areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained in Suisun Bay (including the contiguous Grizzly and Honker Bays); the length of Goodyear, Suisun, Cutoff, First Mallard (Spring Branch), and Montezuma sloughs; and the existing contiguous waters contained within the Delta. Thus, critical habitat for the delta smelt is contained within Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties, California. The "Regulation Promulgation" section provides a precise metes and bounds description of critical habitat designated for the delta smelt.

Effects of Critical Habitat Designation

Section 4(b)(8) of the Act requires for any proposed or final regulation that designates critical habitat a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. At the time of preparation of the revised proposed rule, the Service identified the following list of proposed or ongoing actions whose effects likely would jeopardize the delta smelt and adversely modify or destroy its critical habitat—Central Valley Project operations, State Water Project operations, deep water navigation channel dredging, reoperation of Folsom Dam, Oroville Dam, and Auburn Dam, Central Valley and State Water Project Wheeling Purchase Agreement, San Joaquin Valley Drainage Program, Central Valley Project water contract renewals, petition by the Bureau for a change in diversion point, South Delta Water Management, South Delta Temporary Barriers Project, Stanislaus-Calaveras River Basin Water Use Program, Phases 3 and 4 of the Suisun Marsh Project, North Delta Water Management Project, West Delta Water Management Project, Delta Wetlands Water Storage Project, Los Banos Grandes Reservoir, Los Vaqueros Reservoir, Kern Water Bank, full operation of four State Water Project pumps, entrainment of fish and thermal pollution by industry (e.g., power generation facilities), urban or agricultural nonpoint contaminant discharges, in-Delta and Suisun Marsh water diversion, Phase 2 of the Coastal Aqueduct, and the Delta Levee Subvention Program. Since publication of the revised proposed rule, the Service has determined through section 7 consultations that the South Delta Temporary Barriers Project, deep water navigation channel dredging, Los Vaqueros Reservoir Project, and Phase 2 of the Coastal Aqueduct Project will not jeopardize the delta smelt.

The proposed rule to revise the critical habitat designation did not identify any proposed actions that might jeopardize the delta smelt without adversely affecting critical habitat. In the revised proposed rule, the Service did identify (based on section 7 consultation experiences) five activities that, depending on the season of construction and scale of the project, might result in the destruction or adverse modification of critical habitat without necessarily jeopardizing the continued existence of the delta smelt. These activities were:

(1) Sand and gravel extraction in river channels or marshes;

(2) Diking wetlands for conversion to farmland and dredging to maintain these dikes;

(3) Levee maintenance and bank-protection activities, such as riprapping, removal of vegetation, and placement of dredged materials on levees of banks;

(4) Operation of the Montezuma Slough Control Structure; and

(5) Bridge and marina construction.

Construction and implementation of each of these five actions requires authorization by the Army Corps of Engineers (Corps) pursuant to section 10 of the Rivers and Harbors Act of 1899 and section 404 of the CWA and therefore are considered Federal actions. In a section 7 consultation with the Bureau and the California Department of Fish and Game, California Department of Water Resources (DWR), the Service reviewed the operation of the Montezuma Slough Control Structure for effects on delta smelt. As a result, DWR and the Bureau sponsored an investigation of the effects of the operation of the Structure on delta smelt, and DWR committed to operate the gates only as required to meet existing Suisun Marsh salinity standards. When not operating, the gates on the Structure will remain in the raised position. The effect of gate operation on delta smelt is currently being studied, and the Service will make a determination on the Structure's operations in the near future. As to the other actions, the Service will consult with the Corps as these actions arise.

On February 4, 1994, subsequent to the publication of the January 6, 1994, revised proposed rule to designate critical habitat, the Service transmitted to the Bureau a jeopardy biological opinion on the combined operation of the Federal and State Water Projects on the delta smelt through February 1995. In the 1994 biological opinion, the Service determined that the proposed operation of the Federal and State Water Projects likely would jeopardize the continued existence of the delta smelt and would destroy or adversely modify proposed critical habitat. This one-year opinion did not recommend a reasonable and prudent alternative that distinguished between the number of days of compliance with the 2 ppt criteria to avoid jeopardy and the number of days of compliance that would have been required to avoid destruction or adverse modification of proposed critical habitat. The Service acknowledges that such a distinction may be appropriate in future biological opinions.

Any possible revisions to the biological opinion will recognize three major initiatives that will shape the dynamics of future estuarine conditions for delta smelt. First, in accordance with a Framework Agreement (1994) between the Governor's Water Policy Council of the State of California (Council) and Club Fed, the State Board will seek agreement with DWR and the U.S. Department of the Interior to operate the SWP and CVP to make an equitable contribution to meeting the revised water quality standards beginning calendar year 1995. The Board will seek this agreement while they are working on a water rights decision to allocate responsibility among water rights holders in the Bay-Delta watershed. Second, section 7(a)(1) of the Act imposes an affirmative obligation on Federal agencies to carry out programs for the conservation (recovery) of listed species. With the forthcoming issuance of a Delta Native Fishes Recovery Plan, currently in preparation, the Service expects that local, State, and Federal agencies will fulfill their responsibilities by assisting in the completion of tasks and objectives in the plan. Third, and related to number two, the scheduled renewal of water contracts (i.e., reopened or expired Federal Energy Regulatory Commission (FERC) licenses, expired CVP water contracts) will provide an additional opportunity under sections 7(a)(1) and 7(a)(2) of the Act to implement Recovery Plan objectives and meet EPA's water quality standards. Collectively, these initiatives likely will result in a phased improvement to water quality based habitat requirements for the delta smelt. Accordingly, the Service anticipates that adverse modification or destruction of critical habitat will be avoided by operation of the CVP, SWP, and other water management facilities with implementation of the above described initiatives.

Consideration of Economic and Other Factors

Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of specifying any particular area to be included within the critical habitat boundary. EPA, in coordination with the Service, included an analysis of the effects of designation of critical habitat for the delta smelt in its draft Regulatory Impact Assessment (RIA) for its proposed water quality standards. A summary of that analysis was provided in the revised proposed rule designating critical habitat for the delta smelt (59 FR 852).

The Service stated in the revised proposed rule that if the final economic analysis substantially differed from the draft analysis summarized in the revised proposed rule, a revised analysis would

be made available for public comment. No opportunity for public comment was afforded because the results of the final economic analysis do not substantially differ from the results of the draft analysis.

EPA's economic analysis assumes that the economic impact of restricting activities associated with construction and implementation of major water projects would be attributable to the jeopardy standard imposed by listing the delta smelt as a threatened species, as opposed to designation of critical habitat. Specifically, the impacts of designating critical habitat are in addition to the economic and other impacts attributable to (1) listing of the species, (2) economic effects resulting from conservation actions taken by other Federal agencies under section 7(a)(1) of the Act, and (3) regulatory actions required by other laws.

Section 9 of the Act and Service regulations prohibit the taking of delta smelt without express authorization from the Service. Under Service regulations, "take" may include significant habitat modification or degradation that actually kills or injures protected species. In addition, Federal agencies must consult with the Service to ensure that their actions are not likely to jeopardize the continued existence of the listed species. An action could jeopardize the existence of a listed species if it destroys or modifies its habitat. This is so regardless of whether that habitat has been designated as critical habitat. Therefore, the direct economic and other impacts resulting from designation of critical habitat are relatively small because the Act provides substantial protection to habitat through listing of the species itself. In general, designation of critical habitat supplements the protection afforded a listed species.

The RIA concluded that economic costs attributable to the designation of critical habitat for the delta smelt would be relatively small. In the revised proposed rule, the Service determined that economic costs would be attributable to five actions (i.e., sand and gravel extraction, diking wetlands, levee maintenance and bank protection activities, operation of the Montezuma Slough Control Structure, and bridge and marine construction). In the final RIA prepared by EPA (EPA 1994), the economic costs attributable to designation were from the same five actions.

Economic Impacts Attributable Directly to Critical Habitat Designation

A synopsis of the economic impacts associated with the five activities identified by the Service includes:

Sand and Gravel Operations—Four aggregate operators in the delta may be affected by the designation of critical habitat. Two of the aggregate operations in the Delta are located in San Joaquin County, which has a total of eleven aggregate sites. The estimated value of aggregate production for San Joaquin County in 1986 was $13 million. The four aggregate operations in the Delta that could be affected by the regulation produced a small percentage of California's aggregate in 1992, which had a total value of $473 million. The economic impacts on the aggregate production industry resulting from the designation of critical habitat likely will be minor, given the relatively small amount of sand and gravel production occurring in the Delta.

In many cases, minor changes to the timing of extraction to avoid sensitive biological periods will minimize the economic effects on mining activities. Mitigation in the form of habitat replacement might be required for operations that may result in the destruction or adverse modification of critical habitat. Costs to restore 1 acre of wetlands range between $10,000 to $50,000. Mitigation costs could be reduced if low-cost lands were acquired, and levees were breached to flood areas. For some tracts of land, the costs associated with restoring wetlands may exceed the value derived from the agricultural activity, in which case the cost attributable to critical habitat would be the loss in agricultural income.

Diking and Dredging for Agricultural Operations—Though designation of critical habitat for the delta smelt may require implementation of best management practices and a 3:1 ratio of permanently destroyed habitat in proposed project areas, the economic impacts of restricting diking and dredging operations are expected to be minimal. For example, the regulatory costs (i.e., with critical habitat designated) associated with converting the Little Holland Tract in the Delta to agricultural uses with critical habitat designated would be the cost to replace 440 acres of habitat at a 3:1 ratio (EPA 1994). The expense of replacing habitat would likely exceed the economic returns from agricultural production on this tract, which was historically planted for corn. Foregone income from future agricultural production on the 1,300 arable acre tract would amount to $65,000 per year.

Levee Maintenance—Between 1981–1991, local agencies maintained 536.6 miles of levee in the Delta, spending an average of $1.24 million per mile (EPA 1994). Approximately 41% of the costs were financed through State subventions. The costs of levee maintenance are not expected to increase significantly due to this critical habitat designation because Federal regulatory agencies currently have timing and construction restrictions that generally avoid adverse effects to the delta smelt.

Montezuma Slough Control Structure Operations—The economic impacts associated with the operation of the Montezuma Slough Control Structure could not be estimated by the time this final rule was published. In response to a biological opinion issued by the USFWS to DWR and the Bureau on the Structure's operation, an investigation of the effects of the Structure on delta smelt is being conducted, and will be completed in the near future. The Structure's operations may be modified once the study is completed. The gates at this structure are currently operated from November to March in accordance with current State salinity standards to maintain low-salinity water in Suisun Marsh, but remain open the remainder of the year.

Bridge and Marina Construction—The use of best management practices, time restrictions, and other construction restrictions similar to those for levee maintenance and sand and gravel operations should preclude any substantial impact from designation of delta smelt critical habitat on bridge and marina construction.

Water Costs Attributed to EPA's Salinity Standards

EPA's economic analysis evaluated the costs associated with implementing its water quality standards for the Bay/Delta. Since the Service identifies water quality (salinity) as a primary constituent element essential to conserve the delta smelt, an analysis of the water costs associated with implementing the salinity standards is included in this final rule. Though the water costs associated with the water quality standards are attributable to EPA, the Service includes this discussion to make clear the approximate cost of implementing the salinity standards alone.

The water costs associated with the salinity standards and fish migration standards are reported in EPA's final RIA (EPA 1994). EPA reports the water costs as the sum of costs associated with

the salinity standards and fish migration standards. However, depending on hydrologic conditions, approximately 35% to 73% of the water costs in the EPA economic analysis can be attributed to the salinity criteria alone, apart from the fish migration criteria (EPA 1994).

The overall estimated water supply impacts of both the salinity and fish migration water quality standards (change in total exports) over those associated with existing D–1485 State salinity standards and water quality requirements for winter-run chinook salmon under a NMFS biological opinion are 376 thousand acre-feet (taf) per year on average, and 577 taf during critically dry periods. However, the State's implementation plan for EPA's water quality standards will substantially affect the magnitude and distribution of the costs associated with implementing the water quality standards. A more detailed discussion of the water costs associated with different implementation scenarios appears in the final RIA (EPA 1994).

National Economic Costs

Actions taken to preserve and recover threatened and endangered species may result in the re-allocation of resources within the regional and national economy. National economic costs, best described as efficiency costs, include changes in the consumer and producer surplus, and related employment impacts. These measures capture the net social gains and losses resulting from the resource allocation.

The national economic cost of the five activities evaluated above (sand and gravel extraction, diking wetlands, levee maintenance and bank protection activities, operation of the Montezuma Slough Control Structure, and bridge and marina construction) is minimal since the overall economic cost of those activities in the region is minimal.

EPA's economic analysis used the above described measures to estimate the costs and benefits of the water quality standards. Therefore, the results of EPA's economic analysis is identical to an analysis done for national economic costs.

Benefits of Critical Habitat Designation

Conservation of the delta smelt with designation of its critical habitat will result in a wide range of benefits. Section 2(a)(3) of the Act recognizes that fish, wildlife, and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. EPA (1994) categorizes the benefits of promulgating water quality standards and designating critical habitat as use, nonuse, and other benefits. A more detailed description of these uses are contained in the final RIA (EPA 1994).

Several use and nonuse benefits can be attributed to designating critical habitat for the delta smelt, apart from benefits attributable to EPA's water quality standards. Generally, the designation of critical habitat will prevent the further decline of estuarine health. Benefits include:

(1) Reduced need in the future to list fish and wildlife species currently in decline;

(2) Increased biological production of commercially important species, such as waterfowl and salmon;

(3) Increased protection to a wide variety of estuarine species, several of which are unique to the Estuary (e.g., winter-run chinook salmon, Estuary population of longfin smelt, and Sacramento splittail);

(4) Curtailed establishment of newly introduced exotic species and deterred explosion of the current population of already established exotic species;

(5) Increased recreational fishing and hunting opportunities;

(6) Increased opportunities for wildlife observation resulting from restoration of riparian and tidal marsh habitat and ecosystem health; and

(7) Improved commercial fishery harvest as a result of increased populations of fish.

EPA (1994) assigned a monetary value to several of the use benefits. The economic benefits of EPA's standards are broader than protection of the delta smelt, since EPA's standards are expected to positively affect all components of the food web. The total economic benefit of EPA's water quality standards and the designation of critical habitat for the delta smelt are reported as follows. The ecological benefits of improved estuarine conditions are expected to generate at least $2.1 million or more in net economic benefits to commercial and recreational fisheries (particular salmon fisheries), and will have an associated employment gain of approximately 145 full-time equivalent jobs (EPA 1994). Benefits to the ocean sport fishery for salmon is estimated at about $708,000 annually (EPA 1994). This increase would result in positive employment effects on sport fishing-related industry, adding approximately 70 jobs in this area. Annual benefits to the striped bass sport fishing industry is estimated to be $57,500 annually (EPA 1994).

An important avoided cost is associated with further declines in the recreational and commercial fisheries industry of the Bay/Delta, which is valued at $200 million annually (EPA 1994). Other avoided costs include government costs associated with crop deficiency payments, agricultural drainage costs, and costs associated with the potential reduction in property value.

Summary of the Exclusion Process

In order to determine the specific extent of designation of critical habitat pursuant to section 4(b)(2) of the Act, the Service must analyze:

(1) The benefits of excluding an area as critical habitat,

(2) The benefits of including an area, and

(3) The effects of exclusions on the probability of species extinction.

This process consists of (1) estimating the benefits of retaining or excluding land and water areas contained within Suisun Bay or river reaches within the Delta and Montezuma, Goodyear, Suisun, Cutoff, and First Mallard (Spring Branch) sloughs; (2) weighing those benefits; and (3) determining if exclusion of an area or areas from critical habitat will lead to the extinction of the species. If the exclusion of an area or areas from critical habitat will result in eventual species extinction, then the exclusion would be prohibited under the Act.

Extinction

Critical habitat consists of areas with habitat characteristics that are essential to the conservation of a listed species. However, the exclusion process focuses upon a threshold for species extinction. Conservation (recovery) and extinction are separate standards. Recovery and extinction are at opposite ends of a continuum, with the likelihood of a species' continued survival increasing the closer the species is to the recovery end of the continuum. It may be more difficult to predict the point at which extinction would be inevitable than to determine where recovery may occur.

The analysis to determine whether extinction will occur will be different for each species, depending on many variables, including a species' geographic range. The exclusion analysis also may be related to a number of factors, such as the number of individuals, amount of habitat, condition of the habitat, and reproductive success. Extinction of an annual species, like the delta smelt, most likely would occur when rearing habitat conditions are poor enough for two consecutive years that some minimum number of fish fail to survive to reproduce. Habitat conditions could become poor enough if pumping at Federal and State water project facilities

and private diversions significantly reduce outflow from the Delta. If a sufficient number of delta smelt were entrained in Federal and State water project facilities and private diversions so that a minimal number survived to reproduce, the population could decline. Extinction could result. The focus of the exclusionary analysis was on those factors that pertain to these issues and included consideration of habitat condition, functioning of the Estuary ecosystem, and proximity of the delta smelt population to the Federal and State pumps during various life stages.

Criteria and Decision

In evaluating the designation of critical habitat to determine whether or not to exclude areas because of concerns over economic effects, the Service used the following process:

(1) Based upon the criteria described in this document, the geographical area essential to the conservation of the species was identified; and

(2) An economic analysis was conducted to ascertain the anticipated economic consequences of designating areas as critical habitat, using agricultural and urban sectors as the primary level of economic analysis.

(3) The Service balanced the costs and other impacts of designation with the benefits of designation.

Exclusion

Using the above described process, the Service has determined that no exclusions to critical habitat are appropriate. The entire geographic area designated as critical habitat is essential to conserve the delta smelt. Delta smelt are restricted to a limited geographic area, and retaining land and water areas contained within Suisun Bay and river reaches within the Delta and Montezuma, Goodyear, Suisun, Cutoff, and First Mallard (Spring Branch) sloughs is necessary to recover this annual species. These areas provide habitat necessary for each life stage of the species.

The economic consequences of designating the entire area as critical habitat are relatively small. Most economic costs can be avoided by project proponents by using timing and construction restrictions, and by using best management practices. Designation of critical habitat will reduce the need in the future to list fish and wildlife species currently in decline, and will improve the overall health of the Estuary. The benefits of designating the entire area outweigh the benefits of excluding any of the area from the designation.

Available Conservation Measures

The purpose of the Act, as stated in section 2(b), is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. Section 2(c)(1) of the Act declares that "* * * all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat); section 9 (wildlife research permits and habitat conservation planning on non-Federal lands); section 6 (cooperative State and Federal grants), land acquisition, and research. Other Federal laws also require conservation of endangered and threatened species, such as the National Forest Management Act and the National Environmental Policy Act, and various other State and Federal laws and regulations.

Critical habitat is not intended as a management or conservation plan. Critical habitat is primarily intended to identify the habitat that meets the criteria for the primary constituent elements. However, there are benefits that result from the designation. Designation will help retain recovery options and reduce the near-term risk until a long-term conservation plan is implemented.

Designation of critical habitat does not offer specific direction for managing delta smelt habitat. That type of direction, as well as any change in direction, will come through the administration of other facets of the Act (e.g., section 7, section 10 HCP process, and recovery planning).

Recovery Planning

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all the Act's activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The delta smelt and six other fish species that depend on the Estuary for a significant segment of their life history are included in the Sacramento-San Joaquin Delta Native Fishes Recovery Plan. The recovery plan is currently in draft form. The recovery plan will include recovery criteria based on population abundance and geographic distribution. Designation of critical habitat, along with the biological opinion evaluating the effects of the Federal and State water projects on the delta smelt, is consistent with the plan's objective to recover these fish species.

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure that their actions do not jeopardize the continued existence of any listed species.

Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to appreciably reduce the likelihood of both the survival and recovery of a species. Destruction or adverse modification of critical habitat defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also clearly state that such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Survival and recovery, mentioned in both the definition of adverse modification and jeopardy, are directly related. Survival may be viewed as a linear continuum between recovery and extinction of the species. The closer one is to recovery, the greater the certainty in the species continued survival. The terms "survival and recovery" are, thus, related by the degree of certainty that the species will persist over a given period of time. Survival relates to viability. Factors that influence a species' viability include population numbers, distribution throughout the range, stochasticity, expected duration, and reproductive success. A species may be considered recovered when there is a high degree of certainty for the species' continued viability.

The Act's definition of critical habitat indicates that the purpose of critical habitat is to contribute to a species' conservation, which by definition equates to recovery. Section 7

prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of a listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute to a species' recovery.

Federal actions that may affect the delta smelt or its critical habitat include those authorized, carried out, or funded by the Corps, Department of the Navy, the Bureau, NMFS, FERC, the Service, and EPA. The Corps funds projects and issues permits for water pumping and diversion facilities, levee construction or repair, bank protection activities, deep-water navigation channel dredging and dredge spoil disposal projects, sand and gravel extraction, marina and bridge construction, diking of wetlands for conversion to farmland, and tidal gate or barrier installation. The Corps also develops permits pursuant to section 404 of the CWA to the Department of the Navy so the Navy may dredge deep-water ship channels and dispose of dredge materials in Suisun Bay, San Pablo Bay, and San Francisco Bay. The Corps also conducts such activities for the Navy.

The Bureau and DWR construct, operate, and manage water export facilities. EPA reviews State water quality standards and promulgates replacement standards, pursuant to the CWA, if the State standards are found to be inadequate. FERC licenses water storage facilities on tributaries to the Sacramento-San Joaquin Delta. In 1991, EPA disapproved portions of the State Board's Water Quality Control Plan for Salinity for the Estuary. Accordingly, EPA has prepared proposed and finalized replacement standards for those portions of the State's salinity standards that were disapproved. Measures to protect the federally listed winter-run chinook salmon, for which NMFS has jurisdiction under the Act, also may affect the delta smelt and may require consultation with the Service.

The Service and the Bureau are jointly responsible for implementing the Central Valley Project Improvement Act (CVPIA). Activities under the CVPIA include, but are not limited to, management of a portion of the CVP water supply dedicated for fish and wildlife protection, restoration, and enhancement, acquisition of additional water supplies for the same purposes, and screening unscreened diversions in the Sacramento-San Joaquin watershed. Both the Bureau and Service activities under the CVPIA may affect delta smelt or its critical habitat, requiring consultation with the Service.

Under section 4 of the Act, listing of the delta smelt provided a requirement for the development of a recovery plan. The Service convened the Delta Native Fishes Recovery Team to prepare a Recovery Plan for declining native fishes in the Estuary. The Recovery Plan, currently in draft form, will develop a framework for Federal, State, and private entities to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities and estimate the costs of various tasks necessary to accomplish recovery goals. Site-specific management actions necessary to achieve survival and recovery of the delta smelt and other fishes native to the Estuary ecosystem also will be described in this plan.

Summary of Comments and Recommendations

Designation of critical habitat for the delta smelt was first proposed on October 3, 1991 (56 FR 50075), as part of the proposed rule to list the species. During the 4-month comment period following publication of the proposal, the Service received 360 written and oral comments from 348 individuals. Of the forty-four people who commented specifically on critical habitat, thirty-four opposed and ten supported the designation.

On March 16, 1993 (58 FR 14199), the Service published a notice that the public comment period on the original proposed critical habitat designation for the delta smelt was reopened until April 30, 1993, to allow the Service to consider any information that previously had not been submitted. In response, the Service received seven letters—two in support of critical habitat designation as proposed, four in opposition, and a letter from EPA requesting that the Service consider the biological and hydrological information described in EPA's draft proposed rule to promulgate Bay/Delta water quality standards.

On January 6, 1994 (59 FR 852), the Service revised the geographical area and refined the primary constituent elements described in the original critical habitat proposal. The public comment period for the revised proposed critical habitat designation was open from January 6, 1994, to March 7, 1994, and later extended to March 11, 1994 (59 FR 3829). During the 65-day comment period, the Service received written comments from forty-three parties on both the critical habitat designation and EPA's proposed water quality standards for the Bay/Delta. Thirty-two commenters were opposed to critical habitat designation, nine supported the decision, and two expressed no preference. Several commenters either referenced or supported the comments of the California Urban Water Agencies (CUWA).

Four joint public hearings were held to solicit comments on the revised proposed critical habitat designation, the proposed threatened status for the Sacramento splittail, and the proposed water quality standards developed by EPA. A total of 125 people presented oral testimony and submitted written comments at the hearings, primarily on delta smelt critical habitat and Bay/Delta water quality standard issues. The Service received comments from elected officials, interested persons, municipal and agricultural water districts and associations, environmental organizations, business and industry owners and managers, fishing enthusiasts, farmers, agricultural commissions and dairy interests, biologists, county and municipal officials, power agency representatives, hospital and school district representatives, and building industry spokespeople.

At the February 23, 1994, hearing in Fresno, thirty-eight people presented oral testimony—thirty-six people opposed and two supported critical habitat designation. Nineteen people testified at the February 24, 1994, Sacramento meeting—fifteen people were opposed to the designation, three were in support, and one person was neutral.

Twelve people testified at the February 25, 1994, hearing in San Francisco—nine people supported and three opposed the critical habitat designation. At the February 28, 1994, hearing in Irvine, fifty-six people presented oral and written comments (fifty-one people testified and five submitted only written comments)—fifty of the fifty-six commenters opposed critical habitat, five were neutral, and one supported the designation.

Comments addressing the issue of available scientific information used to revise the proposed rule were addressed in the revised proposed rule of January 6, 1994 (59 FR 852). The Service addressed EPA's comments, as well as comments provided by the State. All other comments are addressed below in this final rule. Because EPA can better respond to comments regarding the

economic analysis and the assumptions used to develop its Bay/Delta water quality standards, the Service refers to EPA's "Response to Comments" document for responses to comments specific to those issues. However, the Service will respond to any comments regarding the relationship between EPA's water quality standards and the biological requirements of the delta smelt in this section, and to comments regarding the economic analysis as it is associated with the critical habitat designation.

Comments are part of the administrative record and are available for public review. Written comments and oral statements presented at the public hearings and received during the comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below.

Estuarine Standard Issues

Comment 1: One commenter thought the Service should not adopt EPA's Bay/Delta water quality standards as part of the designation of critical habitat for the delta smelt. The commenter asserted that because the Service had not described the biological relevance of the standards, adopting the standards would be "throwing water at the problem". Another commenter thought EPA's criteria were developed to serve non-habitat purposes, reasoning that their purpose was to remove organisms from risk of mortality at the pumps. Another commenter thought flow, rather than salinity or the location of the entrapment zone, was a more appropriate parameter to protect the western Delta and Suisun Marsh. A commenter at the public hearings believed the Service should not have selected such a strict standard of salinity (2 ppt) for the delta smelt's critical habitat.

Service Response: The Service does not adopt EPA's water quality standards in the designation of critical habitat for the delta smelt. The Service identifies water quality (salinity) as a primary constituent element to protect and recover the delta smelt. This point is described in detail in comment 27, below, and is clarified in the section entitled "Primary Constituent Elements" in this final rule.

The Service has considered and discussed the biological relevance of EPA's water quality standards. The biological relevance of providing ample estuarine habitat for the delta smelt was first discussed in the original proposed designation of critical habitat for the delta smelt in 1991. The biological significance of salinity in the Estuary was again discussed in the sections entitled "Revisions to the October 3, 1991, Critical Habitat Proposal", "Habitat Requirements", and "Primary Constituent Elements" in the January 6, 1994, revised proposed designation of critical habitat. These sections discuss the habitat requirements of the delta smelt, the need for temporal and spatial variability of low-salinity waters in the Estuary, and the identification of primary constituent elements essential for the recovery of the smelt.

As the above cited discussions illustrate, EPA's water quality standards were developed to mimic historical habitat conditions and were not developed to simply serve non-habitat purposes. The standards may incidentally serve "non-habitat" purposes by removing organisms from risk of mortality at the pumps. This topic is discussed in this final rule in the "Primary Constituent Element" section for larval and juvenile transport.

Requiring flows to maintain salinity at critical locations in the Delta will not be "throwing water at the problem." The Service has used the best scientific data available to prescribe conditions that will facilitate the recovery of the delta smelt, relying on scientific evidence and testimony presented during the State Board's 1992 hearing process, as well as information from the Service and the panel of scientists who participated in the San Francisco Estuary Project (SFEP).

In accordance with the Act and its regulations, the Service may refer to either flow or salinity as water quality criteria when critical habitat is designated for the delta smelt. Because the Act is flexible, the Service may accomplish recovery in a variety of ways, so long as listed species are recovered. With critical habitat defined, the Service must identify the physical and biological features essential to the conservation of the species, and which may require special management considerations or protection. A primary constituent element may include either water quality or water quantity. Special management considerations include "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of a listed species." (50 CFR 424.12(b); 424.02(j)).

Based on the best available information, the Service concludes that the criteria are necessary to protect and recover the delta smelt. Delta smelt are associated with the freshwater edge of the mixing zone, where the salinity is approximately 2 ppt (Ganssle 1966, Moyle *et al.* 1992, Sweetnam and Stevens 1993). In most years, the majority of the delta smelt population lives at salinities of less than 2 ppt for most of the year (Moyle 1976, Ganssle 1966).

Comment 2: Although several water purveyors agreed with EPA that there is a relationship between the average position of the 2 ppt isohaline and the health of the Estuary, they believed that the Roe Island criterion was too protective and should be abolished. However, another commenter thought the water quality standards as proposed by EPA were not protective enough of the delta smelt (addressed in comment 7). Several commenters thought that requiring compliance at Roe Island may (1) reduce the within-year variability in hydrology in Suisun Bay, thus having an adverse impact on the biology of the Estuary; (2) place the entrapment zone too far downstream of Suisun Bay, thereby pushing phytoplankton and delta smelt out past Carquinez Strait into San Pablo Bay; and (3) either greatly benefit or adversely affect native and introduced estuarine species by enhancing or adversely affecting habitat quantity and quality

Service Response: To the extent feasible, maintenance of near-historical water quality conditions at Roe Island is essential to recovery of the delta smelt. Not only is it important to maintain low-salinity conditions at critical locations in the Estuary depending on the life-stage of the delta smelt, but also to simulate year-to-year natural spring storm cycles so that natural processes and historical conditions can be mimicked in the Estuary The water quality standards developed by EPA, including criteria at Roe Island, Chipps Island, and the Sacramento-San Joaquin River confluence, were developed to provide both within-year and between-year variability in salinity levels, characteristic of the Estuary in the late 1960's and early 1970's. This variability does not currently occur frequently enough in the Estuary to maintain estuarine processes, because the construction of water conveyance facilities in the Central Valley and Delta as well as the operation of diversions and upstream dams, have reduced and dampened annual fluctuations in Delta outflow.

A low-salinity reference point at Roe Island will provide within-year and year-to-year variability essential to maintenance of a healthy Estuary Requiring salinity be maintained intermittently at Roe Island also will provide flows to carry juvenile fish from the Delta downstream to Suisun Bay, and will maximize nutrient inputs from

Suisun Marsh and the shallows of Suisun Bay into the mixing zone. Providing periodic low-salinity water at Roe Island will significantly increase the total area of medium to low-salinity nursery habitat available for delta smelt. Spring storm events are also beneficial to aquatic resources of the Estuary, providing areas of flooded vegetation for the spawning of some estuarine species.

Moreover, the 2 ppt isohaline is needed sporadically at Roe Island to mimic seasonal variability of Delta flow to deter the invasion of introduced species. The lack of seasonal and yearly variability of Delta outflows has contributed to the invasions of introduced species. Because variable salinity is one of the dominant features of an estuary, ensuring natural variability in the Estuary can only benefit native estuarine species.

Providing low-salinity water at the Roe Island historical reference point will not put the mixing zone too far downstream into the Carquinez Strait. Conversely, completely abolishing the Roe Island reference point and relying exclusively on the Chipps Island and Sacramento-San Joaquin River confluence locations may leave an important area in the western-most portion of Suisun Bay (which is included in critical habitat) outside the mixing zone (CCCWA/EDF 1987). The western portion of Suisun Bay is important habitat for the delta smelt. Delta smelt were most abundant at the Western Suisun Bay and Carquinez Strait sampling sites in the San Francisco Bay-Outflow Study in the years 1980–1988 (Stevens *et al.* 1990). Apart from the ship channel, the southwestern portion of Suisun Bay contains expansive shoal areas that are less than 2 meters deep (Mortensen 1987). The best survival and growth of delta smelt larvae occur when optimum conditions in the mixing zone occupy a large area that includes extensive shoal regions containing suitable rearing substrates within the euphotic zone (depths less than 4 meters).

Moreover, because the Roe Island historic reference point was developed to mimic historical conditions in the Estuary, requiring periodic low-saline waters at that location will not be an abnormal occurrence. Historically, delta smelt have been flushed out into the Carquinez Strait and into Suisun Bay in high flow years, similar to what occurred in 1983 and 1993. The delta smelt is adapted to living in the Estuary, where salinity varies spatially and temporally according to tidal cycles and the amount of freshwater inflow. Nonetheless, the historical Estuary probably offered relatively constant suitable habitat conditions to delta smelt, which could move upstream or downstream with the entrapment zone (Peter Moyle, University of California, pers. comm., 1993).

The Service does not believe EPA's Roe Island salinity criteria would be detrimental to native estuarine species. A qualitative and graphic analysis of habitat preferences for Estuary species (including eggs and larvae, juveniles, adults and spawning adults life stages) presented by a commenter which predicted that EPA's salinity criteria at Roe Island would put some species at risk or greatly benefit others was overly broad and too simplistic. The commenter included introduced species (e.g., inland silverside *Menidia beryllina*, threadfin shad *Dorosoma petenese*) and marine species (e.g., several surfperches, English sole *Parophrys vetulis*) in the analysis. Its analysis did not give any preference to species having protected status, or to species that rely solely on estuarine habitat. Freshwater, marine and estuarine-dependent species were treated equally. The analysis described habitat in terms of salinity alone, when other measures of habitat, such as temperature, turbidity, and depth, are important for some estuarine-dependent species. Since the quantity of habitat available for a species was described only by river kilometer, complex bathymetry was ignored in the investigation. The Service does not intend to benefit or recover species outside the Estuary, nor does it intend to protect introduced estuarine species. To comply with the Act, the Service must promote the recovery of the delta smelt. Impeding the establishment and success of introduced species, and providing suitable habitat for delta smelt, are significant and complementary components to recovering the species. The Service does not foresee a significant decline in other native estuarine species due to critical habitat designation for the delta smelt. The Service expects the opposite to occur and has evaluated the impacts of EPA's water quality standards through section 7 consultations.

Comment 3: One commenter thought the Roe Island criteria would not benefit the delta smelt because the relationship between the 2 ppt isohaline location and the abundance indices of delta smelt become uncertain as the entrapment zone moves downstream from Chipps Island.

Service Response: The Service need not show statistical significance between the location of the mixing zone and fishery abundance to include variable, low-salinity habitat as a primary constituent element. Under the Act, the Service must base a critical habitat designation on the best scientific information available. A statistical correlation between a primary constituent element and its effect on species recovery is not required. The complexity of the Delta ecosystem and the numerous factors contributing in time and space to the species' decline make it highly unlikely that any one factor would show a direct correlation with its potential recovery.

Comment 4: One commenter thought the Roe Island salinity criteria would have significant impacts on carryover storage in the Sacramento River Basin since meeting those criteria would account for a large portion of carryover storage, and consequently, affect winter-run salmon temperature requirements.

Service Response: The Service is addressing, in recovery planning efforts and in section 7 consultations, the concern that compliance with Roe Island criteria will cause reductions in carryover storage in upstream reservoirs. Recovery planning recommendations for winter-run chinook salmon will be included in the delta smelt recovery plan process through coordination of the respective recovery teams for these species. Section 7 consultations will address any competing needs for winter-run storage in Shasta Reservoir.

Comment 5: One commenter thought that the State Water Project and the Central Valley Project reservoirs located upstream of the Delta lacked the capacity to release enough controlled outflow to regulate salinity at Roe Island on a continuous basis, when recreational safety, flooding, travel time and upstream riparian right constraints are taken into account.

Service Response: The Service notes the isohaline need not be located at Roe Island on a continuous basis, since EPA's Roe Island standard is triggered only when uncontrolled runoff has placed the 2 ppt isohaline seaward of Roe Island. The SWP and CVP reservoirs have the capacity to release outflow to meet the Roe Island criteria once the criteria are triggered.

Comment 6: One commenter believed sampling biases and temporal and spatial variability in the data can be factors that distort or confound the abundance indices used to support the EPA's water quality standards.

Service Response: The Service addressed the concerns regarding data bias in the final rule to list the delta smelt as a threatened species (58 FR 12856), noting that the Service is obliged under the Act to use the best available scientific and commercial information in making a listing

determination. The Service also must use the best available information in designating critical habitat, and must take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat (section 4(b)(2)).

Comment 7: One commenter thought the salinity standards as proposed by the EPA were not protective enough of the delta smelt, and recommended that—(1) additional days be added to the Roe Island standard in below normal to critically dry years to buffer against years when storm flows or reservoir releases place the 2 ppt isohaline at Roe Island for the first time late in the year, (2) a stipulation be added for an eleventh-hour invocation" of the 2 ppt standard if it appears that the 2 ppt requirement will fail to be invoked at all, and (3) the Service include a Middle Ground standard in addition to the Roe Island standard, having the Middle Ground standard implemented independently of any type of trigger or stipulation. The commenter thought water quality criteria at Middle Ground were necessary not only to provide rearing habitat immediately west of Chipps Island (since habitat in that area is positively correlated with delta smelt abundance), but also would allow delta smelt to access the expansive shoals of Grizzly Bay through Honker Bay. Another commenter worried that simply reproducing historic habitat conditions would not be sufficient to recover the delta smelt.

Service Response: The Service believes that EPA's water quality standards, as proposed, will afford protection and promote recovery of the delta smelt. Adding additional independent (i.e., no trigger) criteria at Middle Ground location (between Roe Island and Chipps Island) would defeat the purpose of the Roe Island standard by dampening any variability in the yearly pattern of outflow as discussed in the preceding response.

Use of the term "conservation" in the definition of critical habitat indicates that its designation should identify areas that may be needed for a species' recovery and delisting. However, when critical habitat is designated at the time a species is listed, the Service frequently does not know exactly what may be needed for recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery. The Service will address the cause(s) and remedies for delta smelt decline in the recovery planning process and in future section 7 consultations as new information develops.

Comment 8: One commenter suggested a mechanism for phased compliance be developed for EPA's water quality standards. Another commenter suggested that the standards be set aside in critically dry years until their exact utility in recovering the delta smelt and the estuary is quantified.

Service Response: One of the purposes of designating critical habitat is to identify areas that may be needed for a species' recovery and delisting so that options can be retained for the realization of this goal. The Service recognizes that the degradation of delta smelt critical habitat has occurred over more than a century and that, as a result, it is unreasonable to expect that recovery will be achieved in a relatively short timeframe. Please refer to "The Effects of Critical Habitat" section above for a detailed discussion on how the Framework Agreement (1994), the section 7(a)(1) mandate, and CVP water contract renewals will, in essence, allow compliance with EPA's water quality standards to be phased in.

However, the Act does not permit the protections provided by critical habitat to be delayed in ways that may result in the destruction or adverse modification of critical habitat, such as what may occur in drier water years. Having threatened status under the Act means that the delta smelt is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Designating critical habitat will facilitate the recovery (i.e., delisting) of the delta smelt, rather than allowing the species to continue declining into endangered status.

Water quality (salinity) in the Estuary has been identified by the Service as a primary constituent element essential to the conservation of the delta smelt. A significant modification to EPA's water quality standards, or a substantial delay or break in designating critical habitat for the delta smelt, would not only postpone recovery of the species but could adversely impact the species. The delta smelt's pelagic life history, dependence on pelagic microzooplankton, 1-year life span, limited geographic range, and low fecundity make it susceptible to decimation if its reproductive or larval nursery areas are disturbed for more than two years.

In formulating the basis for the economic impact analysis, the Service assumed that destruction or adverse modification of critical habitat would not occur in any given water year, provided that Federal and State agencies and other parties comply with flows required in biological opinions interim to the State Board's implementation of water quality standards, and that Federal and State agencies are making satisfactory progress towards implementing recovery plan objectives.

Comment 9: Agricultural interests and municipal representatives making comments in the public hearings felt the designation of critical habitat for the delta smelt and EPA's estuarine standards would cause water allocation in California to be inflexible, especially in light of expanding municipal water needs for population growth, natural disasters (e.g., earthquakes and fires) and expanding industry. One commenter was concerned that by designating critical habitat for the delta smelt, construction of new Delta water conveyance facilities would be prevented.

Service Response: Designating critical habitat for the delta smelt will not cause water allocation in California to be inflexible. Section 7 of the Act requires Federal agencies to consult on actions that may affect delta smelt to ensure that their actions are not likely to destroy or adversely modify critical habitat The Service provides advisory recommendations under section 7 by consulting with other Federal agencies to identify and help resolve conflicts between listed species, their critical habitat, and proposed actions. Management actions designed to provide protection for delta smelt through formal consultation or the section 10 incidental take permit process can be achieved in a variety of ways by considering a range of project alternatives or measures. The consultation and permitting processes are flexible, designed to identify solutions on either a project-by-project or regional basis.

A critical habitat designation will not necessarily preclude the construction of new Delta water conveyance facilities The Service's economic analysis for designating critical habitat assumed that construction of water facilities for future economic growth is more affected by application of the jeopardy standard, rather than critical habitat designation Nonetheless, these economic assumptions do not constrain the Service's review of future water project proposals. The construction of a new Delta water conveyance facility may or may not jeopardize the continued existence of the delta smelt, and may or may not result in the destruction or adverse modification of its critical habitat, depending on numerous elements, including the facilities' design, location and operations criteria.

Comment 10: Several commenters believed that implementation of EPA's water quality standards will only remedy one factor contributing to the delta smelt's decline. Commenters

suggested that over-fishing, habitat modification, and the introduction of toxics and heavy metals to the Estuary have contributed to the decline of the delta smelt. Numerous respondents stated that introduced species in the Delta, such as the yellowfin goby (*Acanthogobius flavimanus*), striped bass and inland silversides are the real cause of the delta smelt's decline. Special concern was expressed over the effects that two species of exotic zooplankton and a species of the exotic Asian clam, (*Potamocorbula amurensis*) had on the Estuary ecosystem.

Service Response: Regardless of other related effects, the best available information indicates that diminished water quality and quantity are major factors contributing to the decline of the delta smelt. EPA's water quality (salinity) standards will contribute to the recovery of the delta smelt.

Under the Act, the Service may list species and designate critical habitat even though the interaction of many causes of the species' decline masks the relative contribution of any single factor. Critical habitat preserves options for a species' recovery. As such, designation of critical habitat preserves habitat conditions within which implementation of recovery actions can occur. As stated in the final rule to list the delta smelt, continuing studies may shed light on the causes of decline, and lead to recovery or management actions that may be of benefit to the species.

Comment 11: One commenter was concerned that water users could comply with EPA's water quality standards early in the February-June compliance period, hence adequate salinity would not be provided in later months if the delta smelt were to spawn late in June or early July. The same commenter suggested that a year-round standard might be a better and more reasonable approach.

Service Response: The Service generally agrees with this comment and recognized in the revised proposed rule that delta smelt may spawn as late as July. Providing water quality (salinity) to conserve the delta smelt and its critical habitat is not limited to a defined time period as EPA's standards are to the February through June period. As the "Primary Constituent Elements" section outlines, critical habitat for the delta smelt will be focused on the habitat needs of a particular life stage that may be affected by a project. Additional flows may be required after the February through June period to protect delta smelt present in the south and central Delta from being entrained in the State and Federal projects, and to avoid jeopardy to the species.

Biological Issues

Comment 12: One commenter suggested that the importance of habitat in Grizzly Bay and lower Suisun Bay should be weighted since the bays are a relatively large area of high quality habitat upon which some species rely heavily.

Service Response: Though Grizzly Bay and lower Suisun Bay are important areas of delta smelt habitat, habitat conditions elsewhere in Suisun Bay and upstream in the Estuary are just as important for spawning, larval and juvenile transport, rearing and adult migration. Habitat for each life stage is essential for the recovery of the species and is contained in this designation.

Comment 13: One commenter thought additional flow requirements would not be needed in July or August to protect larval and juvenile delta smelt from being entrained in the State and Federal water projects since delta smelt remain in particular locations despite flow conditions.

Service Response: The Service recognizes that juvenile and adult delta smelt, when given the opportunity, may remain in especially productive areas such as Suisun Bay, after the mixing zone has moved upstream. However, flows may be required in the July-August period to protect delta smelt present in the south and central Delta from being entrained in the State and Federal projects, and to avoid jeopardy to the species.

Comment 14: One respondent noted that the distribution of delta smelt is not determined by flow alone. The commenter cited 1993 tow-net and fall midwater trawl collections that found delta smelt upstream of the mixing zone near Decker Island, and found delta smelt considerably downstream of the mixing zone in Suisun Bay.

Service Response: The Service agrees that the distribution of delta smelt is not based exclusively on flow. When delta smelt are located in suitable, productive habitat, they may not travel with the mixing zone as it moves upstream, or downstream. After being transported to productive rearing habitat, delta smelt may remain and take advantage of safe and productive nursery areas.

Delta smelt do not become "trapped" in the mixing zone, but may remain in particular areas. In the text of the final rule, the Service clarifies this point by referring to the salt and freshwater mixing area as the "mixing zone," rather than the "entrapment zone," to clear any misconception that delta smelt and other estuarine species are associated exclusively or somehow become trapped within the vertical circulation currents created by the saltwater-freshwater interface. This type of circulation pattern is important because it mixes nutrients from the ocean and inland areas, resulting in a productive estuarine ecosystem.

The pattern of delta smelt distribution described by the commenter is consistent with distribution patterns in earlier years when dispersal of delta smelt was greater following wetter springs (Sweetnam and Stevens 1993). In 1993, about half the delta smelt population remained in Suisun Bay throughout the summer, even though the 2 ppt isohaline retreated upstream (Herbold 1994).

Comment 15: One commenter objected to the Service's use of EPA's proposed water quality standards as the factual and scientific basis for the delta smelt's critical habitat.

Service Response: The Service has not based critical habitat for the delta smelt on EPA's water quality standards. Space requirements for delta smelt population growth, cover, and shelter, as well as salinity, were described in detail and were included as primary constituent elements in the proposed rule to designate critical habitat for the delta smelt in 1991, well before EPA promulgated its proposed standards. Since 1991, the EPA and the Service have been working together to coordinate each agencies' actions.

Comment 16: Another commenter thought the Service simply identified the delta smelt's entire geographic range as critical habitat without considering whether the designation was essential to the conservation of the species. Other respondents believed the Service did not distinguish between areas of critical habitat that are essential and nonessential for the conservation of the delta smelt, thereby including marginal areas not necessary for delta smelt recovery.

Service Response: The Service agrees that critical habitat is limited to the specific areas within the geographic area that contain the physical and biological features needed by the species. As discussed in more detail at comment 37, below, the Service has described river, channel, slough and bay water habitats essential for the recovery of the smelt. Without these areas of habitat, the delta smelt cannot survive or reproduce, rear, or be transported between other suitable habitat areas.

Neither the Act or its regulations requires the Service to rank or identify areas of habitat that are more "essential" than others when critical habitat is designated. In the "Primary Constituent Elements"section of this rule, the Service has specifically described the

importance of habitat for each life stage of this annual species. Without adequate habitat for each of these life stages, the delta smelt would not survive or recover. The Service may highlight and propose specific management actions to protect and rehabilitate certain areas in the recovery planning process, such as areas in Cache Slough and the lower Sacramento River complex identified by one commenter.

Finally, the Service did not simply designate critical habitat based on the entire geographic range of the delta smelt. At the time the Service expanded the critical habitat boundary in 1994, larval delta smelt had been located as far north as the confluence of the Sacramento River with the Feather River. This area was not included in the revised proposed critical habitat boundary. Based on recent unpublished data (and brought to our attention in a comment), delta smelt in these most upstream observations may have been misidentified as pond smelt (*Hypomesus nipponensis*, or wakasagi). Portions of San Pablo Bay, the Napa River, and western Suisun Marsh known to support the species are not included in the critical habitat designation.

In addition, California Department of Fish and Game biologists contacted the Service with new information that in 1993, delta smelt were found spawning as far upstream as Sacramento. Based on this new information and the importance of this spawning habitat in some years, the Service expanded critical habitat in the 1994 proposal to extend to these important areas.

Comment 17: One commenter thought the Service did not identify areas currently occupied by the smelt.

Service Response: Delta smelt presently occur throughout the range designated as critical habitat. Delta smelt also occur outside the legal boundary of the Delta, in the Sacramento, San Joaquin, and Mokelumne rivers.

Comment 18: One respondent questioned the need for critical habitat, since delta smelt populations had increased seven-fold in 1993.

Service Response: Designation of critical habitat for the delta smelt is justified even though the 1992 and 1993 summer tow-net and fall midwater trawl abundance indices show increased abundance levels. Based on the best available information, the delta smelt has not recovered, and remains vulnerable to a variety of threats. Delta smelt were listed as threatened because the species was likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species has recovered if the status of the species, based on the best scientific and commercial data available, indicates listing is no longer appropriate under the criteria of the Act (50 CFR 402.02, 424.11(d)(2)). Listing remains appropriate under the Act until long-term population abundance indices remain at high levels and the population is widespread throughout the Estuary for a number of years. One or two years of high abundance levels is not sufficient to ensure recovery of an annual species such as the delta smelt. Specific recovery criteria are being developed in the recovery planning process.

Comment 19: Several commenters were concerned with the Service's "single species approach", whereas other individuals were worried that EPA's water quality standards, having been based on eight estuarine indicator species, were too broad because species other than the delta smelt would benefit from the standards. There was concern how delta smelt recovery would be coordinated with the recovery of other threatened and endangered estuarine fish species (e.g., winter-run chinook and Sacramento splittail), the salt marsh harvest mouse (*Reithrodontomys raviventris*), California clapper rail (*Rallus longirostris obsoletus*), Suisun Marsh management in general, and with other species outside the Estuary area.

Service Response: Designation of critical habitat and identifying water quality (salinity) as a primary constituent element for protection of the delta smelt may incidentally benefit other native estuarine species. Providing variable salinity regimes will facilitate the recovery of the Estuary to its natural state. The Service does not foresee a significant decline in other native estuarine species due to this critical habitat designation, or due to the implementation of EPA's water quality standards.

Delta smelt recovery will be coordinated with the habitat and water quality needs of other fish and other marsh and wetland species in the Estuary. The Delta Native Fishes Recovery Team was formed in 1993 to address the Estuary native fishes in general. The recovery team will consider the population decline of delta smelt and other native Estuary fishes that ultimately may require active management to restore sustainable populations. The recovery team has developed a draft Recovery Plan that has analyzed the needs and recommended management actions for the delta smelt, longfin smelt, Sacramento splittail, green sturgeon, spring-run chinook salmon, late fall-run chinook salmon and San Joaquin fall-run chinook salmon. Winter-run chinook salmon also was included in recovery planning for the delta smelt, using recommendations developed by the Winter-run Recovery Team.

Federal agencies that propose projects that may affect the salt marsh harvest mouse and the California clapper rail, both listed as endangered under the State and Federal Endangered Species Acts, must consult with the Service under section 7 of the Federal Act. All listed species have equal protection under the State and Federal Acts and the Service cannot develop solutions for one species that may jeopardize other listed species.

Comment 20: One commenter claimed that the Service misrepresented Moyle *et al.* (1992) by stating that delta smelt grow faster in the mixing zone.

Service Response: The Service is puzzled by the assertion that Moyle *et al.* (1992) was misrepresented in the revised proposed rule for delta smelt critical habitat. The Service stated: "[w]hen the entrapment zone is located in a broad geographic area with extensive shallow-water habitat within the euphotic zone (depths less than 4 meters), high densities of phytoplankton and zooplankton are produced (Arthur and Ball 1978, 1979, 1980), and larval and juvenile fish, including delta smelt, grow rapidly." (Moyle *et al.* 1992, Sweetnam and Stevens 1993).

Moyle *et al.* (1992) stated "[T]he mixing currents keep the larvae circulating with the abundant zooplankton also found here [in the mixing zone] (Orsi and Knutson 1979; Siegfried *et al.* 1979; Stevens *et al.* 1985). Growth is rapid, and the juvenile fish are 40–50 mm fork length (FL) by early August [citations omitted]."

Sweetnam and Stevens (1993) stated "[D]elta smelt are fast growing and short lived (Moyle 1976) * * * The majority of growth is within the first 7 to 9 months of life * * * "

The purpose of the paragraph written by the Service and pointed out by the commenter was to illustrate estuarine productivity, while explaining the dynamics of the Estuary's mixing zone and the delta smelt's association with the mixing zone. The Service has not knowingly misrepresented information, and does not believe any misrepresentation occurred in this instance.

Comment 21: One respondent commented that delta smelt spawn north of Suisun Bay in Montezuma Slough, Suisun Slough and their tributaries, and believed this fact contradicted the Service's assertion that

delta smelt spawn upstream of the mixing zone.

Service Response: Montezuma Slough, Suisun Slough, and their tributaries are upstream of the area where mixing between freshwater and salt water occurs in wetter water years. In dryer water years, the entrapment zone may move upstream as far upstream as the City of Sacramento in late summer, and these sloughs may become saline. If delta smelt were to spawn late (i.e., July or August), they would probably seek areas other than the sloughs to spawn in freshwater.

Comment 22: Several commenters at the public hearings suggested that the Service use hatcheries to produce enough delta smelt to make the population stable.

Service Response: The Service believes using hatcheries to propagate fish, including delta smelt, should not be a substitute for habitat protection and restoration. Dr. Moyle presented testimony in 1992 (Natural Heritage Institute 1992) summarizing the work of Hilborn (1992), which explained several reasons why hatcheries are not beneficial to the long-term maintenance of fisheries. His points included (1) though initially successful, hatchery effectiveness decreases after a few years; (2) hatchery fish often do poorly in the wild; (3) artificial production poses a threat to the maintenance of wild fish; (4) hatchery fish dilute the naturally adapted genes of wild fish; and (5) hatcheries provide an excuse for habitat loss. Assuming hatcheries could be used to stabilize delta smelt populations, propagated fish would require an environment that provides ample food, low levels of toxic compounds, and low entrainment losses (Moyle and Herbold 1989). Reliance on hatcheries would not adhere to one of the primary purposes of the Act, which is to conserve the ecosystem(s) upon which listed species depend (16 USC 1531(b)).

Comment 23: One commenter asked why the Service stated that delta smelt are more likely to be entrained in river channels than when downstream of the Sacramento-San Joaquin River confluence, when there is no relationship between salvage and subsequent delta smelt abundance. The commenter noted that entrainment also occurs in Pacific Gas and Electric (PG & E) cooling water diversions downstream from the confluence of the two rivers.

Service Response: DWR (1994) states that Federal and State pumps entrain delta smelt. A relationship has been found between the number of juvenile delta smelt salvaged at the State and Federal pumps and both the percent of inflow diverted and total Delta outflow (DWR 1994). Whether or not there is a statistical relationship between the number of delta smelt entrained at the State and Federal water project pumps and subsequent delta smelt abundance, water quality (salinity) is essential to the conservation of the delta smelt. Adequate salinity and flow provide the delta smelt with suitable habitat for all life stages, and will transport delta smelt away from major points of entrainment. The Service recognizes and has stated in previous rules that delta smelt are taken downstream of the Sacramento-San Joaquin River confluence in numerous agricultural, municipal and industrial diversions. Delta smelt are also taken upstream from the confluence in numerous (over one-thousand) agricultural diversions.

Comment 24: One commenter thought the Montezuma Slough Control Structure might aid, rather than interfere, with the distribution of delta smelt within Suisun Marsh.

Service Response: Based on the best available evidence, the Service maintains that operation of the Montezuma Slough Control Structure may result in the destruction or adverse modification of critical habitat. The Service is required by section 4(b)(8) of the Act to identify public or private activities that *may* result in destruction or adverse modification of critical habitat, and does so in the context of this rulemaking. Even though optimal operation of the Montezuma Slough Control Structure may provide valuable habitat to delta smelt, its operation for other purposes may interfere with the distribution of delta smelt to spawning and rearing habitat within Suisun Marsh. The effects of the salinity control structure on delta smelt are currently being investigated by the DWR, in coordination with the Bureau.

Social Issues

Comment 25: Some respondents believe humans are the real endangered species, and that neither delta smelt nor any other animal species should be considered more important than humans. Similarly, one commenter thought humans could survive just fine without delta smelt, but could not survive without farmers.

Service Response: The Act recognizes that species of fish, wildlife, and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people (section 2(a)(3)). Delta smelt possess these attributes. The delta smelt is the only smelt endemic to California and one of only two native estuarine smelt species (the other being longfin smelt) found in the Estuary.

The purpose of the Act is to protect species in danger of becoming extinct in the immediate or foreseeable future. Humans are not in such danger. The number of humans has increased in the last century at a rapid rate. As pointed out in a report submitted by one commenter, total farm-related employment (agricultural services, food manufacturers, and agricultural chemicals) increased between 1977 and 1989 (Carter and Goldman 1992). Agricultural services provided 89,908 jobs in California in 1989, adding some 45,000 jobs and more than 4,000 agricultural firms in 12 years.

Comment 26: Congressman Gary Condit and several other commenters thought the critical habitat proposal failed to account for the human element involved, especially the "[E]ffect and toil of thousands of human hands and hearts to provide healthy and wholesome food for the United States and throughout the world".

Service Response: As required by the Act, the Service has adequately accounted for the "human element" by analyzing the economic impacts of designating critical habitat for the delta smelt. The draft economic analysis has been revised in response to public comments, in response to discussions held at five workshops sponsored by the EPA, and in light of additional research to better portray the economic reality of the critical habitat designation.

Procedural and Legal Issues

Comment 27: One commenter was concerned that efforts by the Federal agencies to manage the Bay/Delta were uncoordinated. On the other hand, one commenter presumed that the Service adopted EPA's water quality standards wholesale, and thought the Service had no authority to do so because the Service designates critical habitat under the narrow purposes of the Act, while the EPA promulgates water quality standards under the framework of the Clean Water Act. Similarly, another commenter thought the Service would, in effect, be interposing or substituting EPA's regulatory judgment for its own if the Service incorporated EPA's water quality standards in its designation of critical habitat.

Service Response: This final rule does not incorporate EPA's water quality standards *per se*, although implementation of these standards may be a means to promote recovery of the delta smelt. The January 6, 1994, revised critical habitat proposal for the delta smelt included a list of habitat conditions and a description of water quality primary constituent elements. These elements were developed in

accordance with the requirements of the Act and its regulations. The Service's proposal also reflects the coordinated approach provided by the Club Fed process. The Service participated with the Bureau, NMFS, and EPA in guaranteeing that the January 6, 1994, critical habitat and water quality proposals were based on the best available scientific and technical information. Another priority was for the proposals to take into account the goals and concerns of the agencies and public and private interests affected by the agencies' programs and activities.

The preservation of rare and endangered species is a substantive link between the proposals of the Service and the EPA. The EPA promulgated the Bay/Delta standards because they disapproved provisions of the 1991 Bay/Delta plan developed by the State Board. The EPA determined that the State had not adopted criteria sufficient to protect designated uses of the Estuary, including the "Preserv[ing] Rare and Endangered Species" designated use. Similarly, in discussing the "Relationship Between Fish and Wildlife Service and EPA Actions," the Service wrote—"* * * [T]he Clean Water Act requires protection of the most sensitive use within each category of designated uses. 'Protection of Endangered and Threatened Species' is considered a designated use within the meaning of the Clean Water Act; therefore, a species listing under the Endangered Species Act provides one method to identify the most sensitive use within the designated uses of a water body." (59 FR 854).

Biologically, the proposed critical habitat for the delta smelt and the salinity criteria that constituted EPA's proposed water quality standards are directly related. "* * * EPA's proposed water quality standards address the location of 2 ppt salinities from February to June and, therefore, address both critical habitat requirements for delta smelt and a range of interrelated parameters that affect other species that rely on estuarine habitat." (59 FR 854) Based on the common legal and biological underpinnings of the critical habitat designation and the proposed water quality standards, the Service's treatment of salinity as a primary constituent element and the textual references to the proposed salinity standards were appropriate and fully consistent with the goal of assuring substantive consistency between the two proposals.

Because the designation of critical habitat and EPA's proposed Bay/Delta standards have common elements, the critical habitat designation must address the standards, and, at a minimum, must not be inconsistent with them, and vice versa. The January 6, 1994, critical habitat proposal did not incorporate specific salinity standards into the regulatory designation of habitat, as was the case with the initial critical habitat proposal published in 1991. Rather, the 1994 proposal designated water quality as a primary constituent element, stating—"salinity concentrations [as] required to maintain delta smelt habitat for spawning, larval and juvenile transport, rearing, and adult migration."

The coordinated Federal effort and the substantive consistency of the EPA and Service proposals are a direct reflection of the agencies' intent to address Bay/Delta issues in an effective and responsible manner. The coordinated Club Fed process is intended to address concerns expressed by the State of California of a perceived lack of coordination among the Federal agencies.

Comment 28: One commenter thought designation of critical habitat was not prudent at this time, since critical habitat would not provide the delta smelt any more protection than the listing of the species had already provided. Another commenter thought designating critical habitat at the present time would interfere with the delta smelt recovery planning process.

Service Response: Designation of critical habitat is prudent at this time because the designation will provide substantive benefits to the delta smelt beyond those already resulting from its status as a threatened species. Critical habitat serves to preserve options for a species' eventual recovery. A critical habitat designation contributes to species conservation primarily by identifying important geographic areas, and by describing the features within the areas that are essential to the species. The designation puts public and private entities on notice that the area is important habitat. Section 7 of the Act requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify designated critical habitat. This section requires parties to consult with the Service to avoid jeopardy and destruction or adverse modification to important habitat areas.

A designation of critical habitat provides a clearer indication to Federal agencies as to when consultation under section 7 is required, particularly in cases where the action would not result in direct mortality or injury to individuals of the listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential physical or biological features of the habitat, also assists parties in determining which activities conducted outside the designated area are subject to section 7 consultation (i.e., activities that may affect primary constituent elements of the designated area).

Designating critical habitat also assists private, State, and Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations and section 10 incidental take activities. With the designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Designating critical habitat will not interfere with recovery planning efforts now in progress. A recovery plan would be prepared for the delta smelt pursuant to the Act whether or not critical habitat was designated for the species.

Comment 29: One commenter thought Club Fed could not restore natural resources to levels existing during times of significantly fewer people under current California law. Another respondent believed the Service may not refer to EPA's water quality standards because the estuarine standards are based on historical conditions, rather than on "existing conditions" now occurring in the Estuary. The respondent claims there is a temporal element in the definition of critical habitat, stating that critical habitat is defined in the Act in terms of existing conditions, and the Service must look to specific areas which contain physical and biological features essential to the conservation of the species at the time it is listed. The commenter went on to say that critical habitat may only consist of those areas that currently contain essential physical and biological features.

Service Response: The definition of critical habitat does not require that all primary constituent elements necessarily be conditions existing at the time critical habitat is designated. Conditions existing historically in the Estuary are required to recover the delta smelt. Conditions now occurring in the Estuary have resulted in the decline of the delta smelt population, because the Estuary currently does not contain all of the physical and biological features (e.g., habitat requirements and salinity) necessary for each of the species' life stages. Critical habitat for the delta smelt identifies areas needed to conserve the species, so it may recover and, ultimately, be delisted. In order to accomplish recovery, it is necessary that

critical habitat encompass conditions that are superior to existing conditions, so that all of the physical and biological features necessary for the delta smelt are present in the Estuary. The Delta Native Fishes Recovery Team has identified 1968 as a time when the Estuary had appropriate hydrologic conditions that would allow recovery of the delta smelt. An interagency Statement of Principles (Plenert, Fullerton, and Seraydarian, *in litt.* 1992) among the Service, NMFS and EPA have found that the Estuary ecosystem and its anadromous and resident fisheries were relatively healthy during the years between 1960–1970. The Service recognizes no significant conflict with managing toward historic conditions for all primary constituent elements as a conservation strategy for the delta smelt.

The Service notes that the 1994 revised proposed critical habitat for the delta smelt contains the physical and biological features essential for the conservation of the delta smelt. Using equations developed by Kimmerer and Monismith (1992) to calculate salinity, DWR (1993) determined that the isohaline was located downstream of the Roe Island historic reference point 124 days, and was between Roe Island and Chipps Island habitat 14 days between February 1 and June 31 in 1993 (DWR 1993). Therefore, conditions for spawning, larval and juvenile transport, rearing and adult migration was, in fact, available for all life stages as recently as 1993. However, these physical and biological features do not occur frequently enough, and are not protected during critical periods in February through June, especially in drier water years. The mixing zone was pushed out beyond Roe Island during this period because 1993 was a wet year Water quality criteria are necessary to ensure habitat suitable for the delta smelt are available at critical times in all water-year types.

Comment 30: The Service did not identify a plan, any directives, or a goal to ensure that delta smelt are protected, or to indicate when the species is recovered.

Service Response: A critical habitat designation need not, and should not, include specific management plans or recovery goals. Designating critical habitat for a species does not result in a management or recovery plan. Critical habitat simply identifies areas where conservation efforts should be concentrated. Designating critical habitat alone will not dictate how the delta smelt should be protected, nor will it require identification of goals to measure the success of the designation. Plans, goals, and directives will be identified and set in motion during the recovery planning process. Section 4(f)(1) of the Act specifies what should be included in a recovery plan. Criteria for downlisting or delisting are contained in recovery plans, which function as goals to achieve species conservation. The Delta Native Fishes Recovery Team has developed a draft Recovery Plan for the delta smelt and other estuarine fish species, and will include recovery and delisting criteria for the delta smelt. The public will have the opportunity to comment on a draft delta smelt Recovery Plan before it is approved as a final plan as required by section 4(f)(4) of the Act.

Comment 31: Senator Phil Wyman and The California Farm Bureau were disappointed with the quality of the public hearings held in Fresno because only the Service and the EPA attended the meeting to hear testimony and answer questions. The Senator and the Farm Bureau believed the Bureau and NMFS should have been at the hearing, since the issues involved "Club Fed". Moreover, several of the participants in Fresno felt the hearings were simply a "going-through-the-motions" exercise.

Service Response: Section 4(b)(5)(E) of the Act requires the Service to hold a public hearing if one is requested within 45 days of the publication of a proposed rule. The Service received such a request, and held hearings in Fresno, Irvine, Sacramento, and San Francisco to accept public comment on two proposals by the Service and on one proposal by EPA—the proposed critical habitat designation for the delta smelt, listing of the Sacramento splittail, and Bay/Delta water quality standards.

The hearings are not a "going-through-the-motions" event. Service staff review all oral comments presented at the public hearings from the hearing transcripts. Oral comments are given the same weight and consideration as are comments submitted in written form.

Comment 32: Many commenters thought the Service should prepare an Environmental Impact Statement (EIS) required by NEPA, to comply with the holding in *Douglas County* v. *Lujan*. These commenters thought the Service should assess the environmental and social impacts that may occur in or near the Estuary, and outside the Estuary area as a result of designating critical habitat for the delta smelt. Commenters identified potential environmental impacts, including groundwater overdraft and subsequent land subsidence, sagging canals and leaking rivers, fugitive dust, warming of reservoir water, impacts on regional water quality control plans, increased energy use, impacts on listed and candidate species, loss of water for wetlands, loss of open-space habitat provided by farms, and impacts on regional recreational use at reservoirs.

Service Response: The decision in *Pacific Legal Foundation* v. *Andrus* (657 F.2d 829) held that an EIS is not required for listings under the Act. The decision noted that preparing an EIS on listing actions does not further the goals of NEPA or the Act. The Service believes that, under the reasoning of this decision, preparing an EIS for the delta smelt critical habitat designation would not further the goals of NEPA, or the Act, and is not legally required.

The United States District Court for the District of Oregon in *Douglas County* v. *Lujan* held that critical habitat designations should be analyzed under NEPA. However, the decision is stayed pending appeal to the Ninth Circuit.

In addition, see the discussion in this rule respecting NEPA compliance.

Comment 33: One commenter thinks the Service violated the Federal Advisory Committee Act (FACA) because it relied on scientific information developed by the San Francisco Estuary Project (SFEP) in developing the revised critical habitat designation.

Service Response: Section 4(b)(2) of the Act specifies that "The Secretary shall designate critical habitat * * * on the basis of the best scientific data available * * *." When the Service identifies critical habitat, it relies on scientific data in published literature, data gathered as a result of status reviews, data received during the public comment periods, and information communicated in conversations with biologists, economists and other specialists. A summary of the findings of the SFEP (1993) was included in the body of information that the Service used to revise the proposed rule to designate critical habitat.

Critical habitat for the smelt was first proposed in October, 1991. The Service revised the critical habitat boundaries in 1994, relying on the best scientific information available from California Department of Fish and Game biologists, Service biologists, and new scientific information received during the public comment period from the EPA and other commenters. Included in this information were the findings and recommendations of the SFEP.

Had the Service not used SFEP information, the Service would not have complied with section 4(b)(2) of the Act, which requires use of the best scientific evidence available. SFEP was created in 1988 as part of EPA's National Estuary Program. The SFEP is an Environmental Management Program of EPA, the State

of California and the Association of Bay Area Governments. The Service has participated in the SFEP extensively over the past several years. The SFEP developed recommendations for estuarine standards, and complied with FACA when they conducted workshops and meetings, and when they chose participants to work on the standards.

Comment 34: One commenter thought the critical habitat designation is defective since the data supporting the expansion of critical habitat for the delta smelt was based on personal communications not available for the public review.

Service Response: The Service relied on information that has been available to the public by contacting the California Department of Fish and Game, EPA or the Service. The administrative record for the critical habitat designation is and has been available for public inspection since publication of the initial proposed rule in 1991.

Comment 35: One commenter urged the Service and the EPA to exhaust all possible remedies to recover the delta smelt (e.g., by using the Delta Protection Act) before more burdens were placed on California's water users with the designation of critical habitat.

Service Response: Pursuant to 50 CFR 424.12, the Service must designate critical habitat unless it is not prudent to do so. The Service has not concluded that it is not prudent to designate critical habitat. Further, critical habitat is determinable. Therefore, the requirement at section 4(b)(6)(c)(ii) to publish a final designation by not more that one year after listing applies.

Comment 36: One commenter felt the proposed critical habitat designation should be withdrawn since the Service did not comply with the statutory time period for designating critical habitat for the delta smelt. The commenter cited *Idaho Farm Bureau Federation* v. *Babbitt,* 839 F.Supp. 739 (D. Idaho 1993) to support its contention.

Service Response: In this rulemaking, the Service first proposed critical habitat for the delta smelt in 1991. It revised its proposal in 1994 after public comment indicated that the Service had not included important spawning habitat for the species. These facts are significantly different from those of the case cited by the commenter. As such, the Service does not apply the holding in that case to this rulemaking effort.

Comment 37: One commenter thought measures implemented in the past to protect delta smelt habitat be given a "credit" in any future section 7 consultation or section 10 determination with the Service.

Service Response: Under sections 7 and 10 of the Act, the Service assesses the merits of project proposals on a case-by-case basis. In a formal section 7 consultation, the Service evaluates the effects of an action, creating an environmental baseline (50 CFR 402.14(g)(3)). This baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process (50 CFR 402.02). Conservation actions proposed by project proponents can be considered as suitable measures to reduce the impact of incidental take, or otherwise reduce, mitigate, and compensate for project effects.

Economic Issues

Comment 38: Many commenters thought the economic analysis prepared for the Service by the EPA was inadequate.

Service Response: The economic analysis is described and its results are summarized in this final rule. The Service believes the economic analysis is sufficient in that it adequately and appropriately identifies costs of designating critical habitat. As such, it enables the Secretary to exclude areas from critical habitat designation if the benefits of an exclusion are found to outweigh the benefits of including an area as critical habitat.

Comment 39: Several commenters accused the Service of incorrectly minimizing the economic impacts in the delta smelt critical habitat designation since the impacts associated with the critical habitat designation were separated from the economic impacts attributable to the listing of the species.

Service Response: Section 4(b)(2) of the Act requires the Service to consider the economic and other relevant impacts of designating critical habitat. It does not direct the Service to assess the economic impacts of both listing the species and designating its critical habitat. Section 4(b)(1)(A) of the Act explicitly precludes the Service from considering the economic impacts of listing a species as threatened or endangered. The congressional intent behind inclusion of this statutory provision was to ensure that only relevant biological criteria are used to assess the ecological status of a species.

The 1994 revised proposed critical habitat designation for the delta smelt explained the economic impacts attributable to listing and to critical habitat designation. Subsequent to listing and prior to this final critical habitat designation, protective measures for the delta smelt (e.g., as provided through section 7 consultation with the Bureau) have been in place and created economic impacts not associated with critical habitat designation. In a comprehensive economic analysis prepared by the EPA and other economists for the Service, the economic impacts attributed to designating critical habitat have been evaluated. The Service has not limited the examination of economic impacts so as to minimize the economic effects of designating critical habitat.

Comment 40: One commenter thought that the Service could not begin to define critical habitat until it fully considered the economic impacts of the designation. The commenter thought a proposed rule for critical habitat could not be drafted until an economic analysis was conducted, and an opportunity to comment on the analysis was provided to interested parties. Another commenter thought the public should be able to comment on a revised critical habitat designation in the event the Secretary excludes portions of habitat which were included in the revised proposed rule.

Service Response: The Service has not defined critical habitat prematurely for the delta smelt because the Act does not require completion of an economic analysis before the Service can propose critical habitat areas. In a critical habitat rulemaking conducted in accordance with the Act and the Administrative Procedure Act (APA), the Service defines and proposes critical habitat boundaries, conducts an economic impact analysis, takes public comment on the proposed critical habitat designation and the economic analysis, makes exclusions, if any, to critical habitat boundaries, and promulgates a final rule. The Secretary, through the Service, has the discretion to exclude critical habitat areas based on economics, in accordance with the section 4(b)(2) standard. The section allows the Secretary to exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of critical habitat, provided that exclusion will not result in extinction of a species. The Service has properly conducted critical habitat rulemaking for the delta smelt.

Neither the Act, nor its regulations, require the Service to allow public comment on revised critical habitat designations where the Secretary has excluded areas of proposed critical

habitat. The standard rulemaking process requires preparation of a proposed rule followed by a final rule. Publishing a draft final rule is not required. The Service acknowledges that the public was allowed to comment in the above described manner in the critical habitat designation for the Northern Spotted Owl, however, the opportunity for public comment was a policy decision made specifically for that rulemaking and is not required by law.

The Service has provided ample opportunity for the public to comment on the delta smelt critical habitat designation proposals and on the economic analysis during prescribed comment periods from October 3 to February 3, 1992; March 16 to April 30, 1993, and again from January 27 to March 11, 1994. Four public hearings also were held to solicit comments on the revised proposed critical habitat designation.

Comment 41: One commenter thought the critical habitat designation was flawed since the economic analysis could not properly analyze economic impacts likely to arise from the proposed designation, because the Service failed to present any focused or concrete indication of what specific management measures would be pursued. The commenter thought the public was not able to effectively comment on the critical habitat designation due to this inadequacy.

Service Response: Designating critical habitat does not result in a management plan. Specific management measures are identified in a draft Recovery Plan that currently is being prepared by the Service, and need not be identified in a proposed critical habitat designation.

As described in the above comment, the Service believes the public was given an opportunity to effectively comment on the critical habitat designation and the draft economic analysis. The draft RIA was available for review and provided sufficient detail so that the public could provide meaningful comments.

Comment 42: One commenter believes the critical habitat designation is deficient because the Service failed to analyze the potential economic impacts of any particular portion of the Delta.

Service Response: Section 4 of the Act requires the Secretary to take into consideration "The economic impact * * * of specifying any particular area as critical habitat." The Service may exclude any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of critical habitat, unless failure to designate such area will result in the extinction of the species.

The Service believes it has adequately analyzed the potential economic impacts of the Estuary "area." The Act does not require an agency to analyze potential economic impacts for any specific or particular "area." An "area" is not limited to particular reaches of a river, or particular areas of a species' habitat.

Comment 43: The Department of the Army thought the Service did not sufficiently analyze the economic impacts of designating critical habitat, and did not include adequate economic data. They thought the Service should have included channel dredging activities and the maintenance of flood control levees in the economic analysis, including the economic impacts of potential failure and flooding since maintenance might be limited due to critical habitat designation.

Service Response: The Service believes the economic impacts of designating critical habitat have been sufficiently addressed, and include discussion of dredging and levee maintenance. As discussed in the final rule to list the delta smelt, and in the revised proposed rule to designate critical habitat for the species, the Service determined that the economic impact of restricting activities associated with deep water navigation channel dredging were attributable to the jeopardy standard imposed by the listing of the delta smelt as a threatened species. Hence, the economic impacts of these activities can not be associated with designating critical habitat.

The Service did determine that levee maintenance may adversely modify critical habitat without necessarily jeopardizing the delta smelt. The economic impacts of restrictions associated with the construction and implementation of these projects have been analyzed to determine the economic cost or benefit of critical habitat designation. Properly scheduling maintenance and construction activities to avoid periods critical to a species can allow projects to go forward without incurring large economic impacts.

National Environmental Policy Act

The Service has determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule, significant economic impacts will not result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the delta smelt in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

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Authors

The primary authors of this proposed rule are Nadine R. Kanim and Dana Jacobsen, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted

§ 17.11 [Amended]

2. Amend § 17.11(h), in the entry in the table under FISHES for "Smelt, delta," in the column under "Critical habitat" by revising "NA" to read "17.95(e)."

3. Amend § 17.95(e) by adding critical habitat of the delta smelt in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

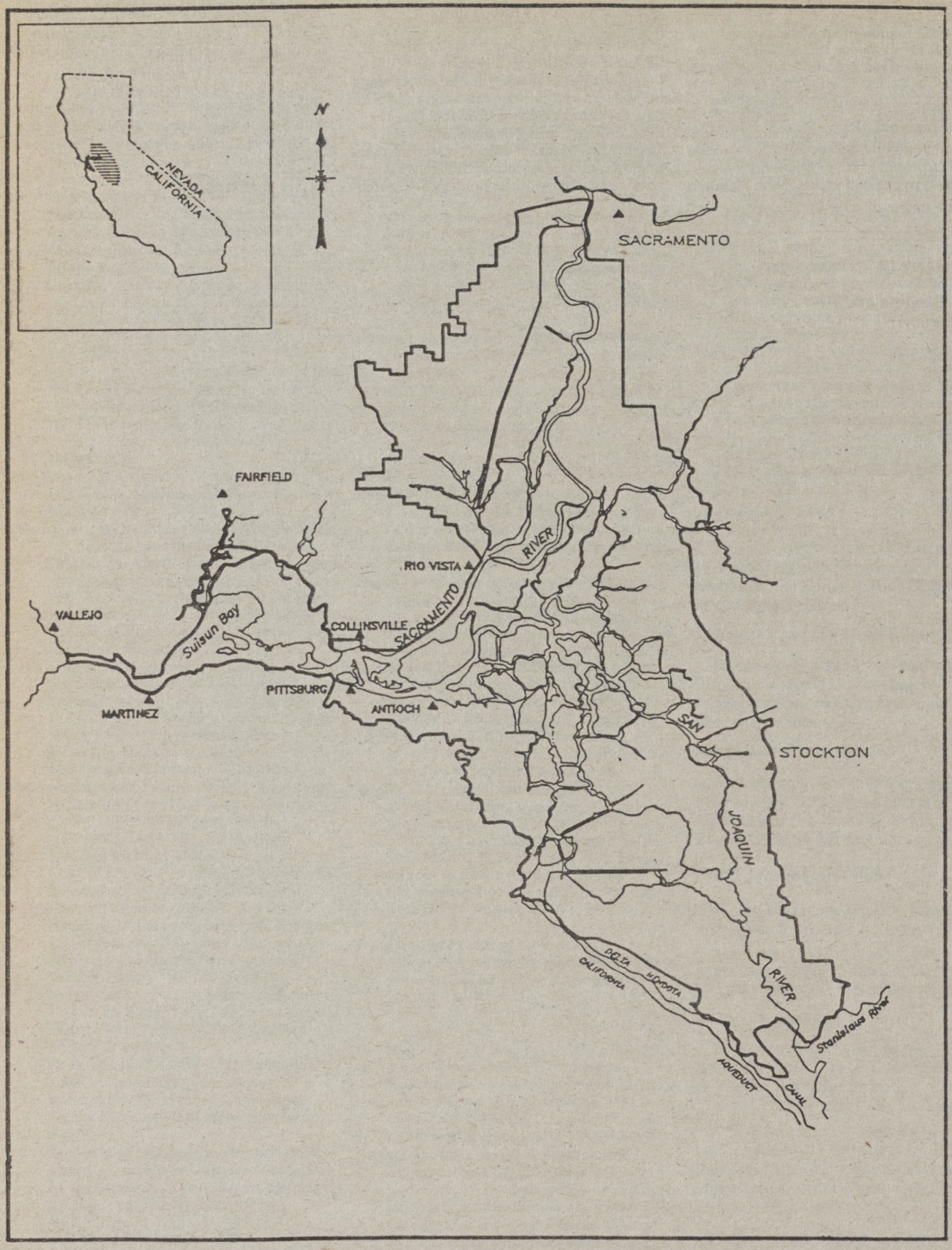
* * * * * *

DELTA SMELT (*Hypomesus transpacificus*)

California—Areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained in Suisun Bay (including the contiguous Grizzly and Honker Bays); the length of Montezuma Slough, and the existing contiguous waters contained within the Delta, as defined by section 12220, of the State of California's Water Code of 1969 (a complex of bays, dead-end sloughs, channels typically less than 4 meters deep, marshlands, etc.) as follows:

Bounded by a line beginning at the Carquinez Bridge which crosses the Carquinez Strait; thence, northeasterly along the western and northern shoreline of Suisun Bay, including Goodyear, Suisun, Cutoff, First Mallard (Spring Branch), and Montezuma Sloughs; thence, upstream to the intersection of Montezuma Slough with the western boundary of the Delta as delineated in section 12220 of the State of California's Water Code of 1969; thence, following the boundary and including all contiguous water bodies contained within the statutory definition of the Delta, to its intersection with the San Joaquin River at its confluence with Suisun Bay; thence, westerly along the south shore of Suisun Bay to the Carquinez Bridge.

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Primary Constituent Elements—physical habitat, water, river flow, and salinity concentrations required to maintain delta smelt habitat for spawning, larval and juvenile transport, rearing, and adult migration.

Dated: December 8, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–31063 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 940393–4093; I.D. 112894B]

Atlantic Tuna Fisheries; Bluefin Tuna

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

ACTION: Bluefin tuna quota transfer.

SUMMARY: NMFS transfers 5 metric tons (mt) of bluefin tuna from the longline-south Incidental subcategory to the longline-north Incidental subcategory. NMFS has determined that the fisheries landing bluefin under the longline-south Incidental subcategory will not achieve the full 1994 quota allocation. This action is being taken to extend the season for the longline-north Incidental subcategory, which will assure additional collection of biological assessment and monitoring data and increase the economic benefits from this fishery without contributing significantly to additional bluefin mortality. In addition, this action will prevent waste of bluefin tuna that might otherwise be discarded dead.

EFFECTIVE DATE: December 14, 1994 through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347 or Ray Baglin, 508–281–9140.

SUPPLEMENTARY INFORMATION: Bluefin tuna are currently leaving the fall feeding grounds in New England and migrating along the Mid-Atlantic waters, so high incidental catches by longline vessels operating south of 34° N. lat. are not expected to occur. After the addition of 5 mt, effective November 4, 1994 (59 FR 55821, November 9, 1994), the longline-north Incidental subcategory has only 0.6 mt remaining of its total new allocation of 28 mt for vessels fishing north of 34° N. lat. Once the quota is reached for this northern subcategory, any bluefin tuna incidentally taken by longline vessels must be discarded at sea. In order to prevent waste of bluefin tuna, which would otherwise be discarded dead, NMFS is transferring an additional 5 mt of quota from the southern to the northern subcategory. With the addition of this 5 mt, the total annual allocation to date for the Incidental subcategory longline-north will be 33 mt. This amount should be sufficient to account for incidental take of bluefin by the northern subcategory for the remainder of this year while any unharvested balance for the southern subcategory will be added to the 1995 quota. After the transfer of this 5 mt, approximately 12 mt remains available in the longline-south Incidental subcategory. Based on reported catches, bluefin taken from the southern subcategory will not exceed the 12 mt remaining of that quota.

Classification

This action is taken under 50 CFR 285.22(i) and is exempt from review under E.O. 12866.

Dated: December 13, 1994.

David S. Crestin,

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

[FR Doc. 94–31095 Filed 12–14–94; 2:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 242
Monday, December 19, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–116–2]

Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and public meetings; reopening and extension of comment period.

SUMMARY: The Animal and Plant Health Inspection Service is reopening and extending the time period for the public to comment on an advance notice of proposed rulemaking regarding the possible importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into certain areas in the United States. Reopening and extending the comment period will give interested persons additional time to prepare and submit comments on the Mexican proposal.

DATES: Consideration will be given only to comments received on or before January 3, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 94–116–2. 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. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD, 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January. Telephone: (301) 436–8645 (Hyattsville); (301) 734–8645 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1994, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (59 FR 59070–59071, Docket No. 94–116–1) an advance notice of proposed rulemaking and a notice of public meetings concerning the possible importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into certain areas in the United States. The two public meetings were held on November 28 and 29. Interested persons were invited to present either written or oral comments at the public meetings on the Mexican proposal. The notice stated that copies of the Mexican proposal were available by calling or writing Mr. Victor Harabin. All written comments on the advance notice and Mexican proposal were required to be received on or before December 13, 1994.

At the public meetings, copies of the Mexican proposal were also made available. A number of persons in attendance at both public meetings stated that this was their first opportunity to review the Mexican proposal and that the copies of the proposal provided were incomplete because Appendices I, II, and III were not included. They requested that the Appendices be provided and that the comment period closing date be extended to allow time for review of the complete proposal and comment. APHIS has forwarded copies of these Appendices to those interested persons who requested copies of the Mexican proposal pursuant to the November 15, 1994, **Federal Register** notice or who received copies of the proposal at the two public meetings. So that interested persons may have additional time to prepare and submit comments on the Mexican proposal, APHIS is reopening and extending the public comment period on Docket No. 94–116–1 until January 3, 1995. APHIS will consider all comments received between November 15, 1994, and January 3, 1995.

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

Done in Washington, DC, this 14th day of December 1994.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–31151 Filed 12–16–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–12]

Tri-Med Specialties, Inc.; Filing of Petition for Rulemaking, Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking; correction.

SUMMARY: This document clarifies a portion of the notice of receipt for a petition for rulemaking filed by Tri-Med Specialties, Inc., and docketed as PRM–35–12. The notice of receipt for this petition was published on December 2, 1994 (59 FR 61831).

DATES: Submit comments by February 15, 1995. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Docketing and Service Branch, Washington, DC 20555. For a copy of the petition, write to the Rules Review Section Rule Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission. Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or toll free: 1–800–368–5642.

SUPPLEMENTARY INFORMATION: In the notice of receipt for PRM–35–12 published on December 2, 1994 (59 FR 61831), the paragraph under the heading, "Benefits of the Test," revised to read as follows:

The petitioner states that under the current regulations, the test is 95 percent accurate and quite inexpensive because of its simplicity. The test would permit doctors to determine easily whether or not ulcer patients have been cured of their infection. By providing the public with an inexpensive, easily accessible diagnostic test, more individuals would be accurately diagnosed and treated for H.pylori infection. This would save the United States an estimated $500 million per annum over conventional therapy.

Dated at Rockville, Maryland, this 13th day of December, 1994.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–31069 Filed 12–16–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81–ANE–03]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that would have amended an existing AD by eliminating an optional on-wing ultrasonic inspection of the 10th stage high pressure compressor (HPC) disk, and by including an engine model inadvertently omitted. That proposal was prompted by a report of an uncontained failure of a 10th stage HPC disk that was previously inspected using the on-wing ultrasonic inspection method. This action revises the proposed rule by removing the reference to the inadvertently omitted engine model, as the FAA has remedied this discrepancy in an earlier correction to the AD, and changing the proposed action from amending AD 81–08–02 R2 to superseding that AD. The actions specified by this proposed AD are intended to prevent uncontained fractures of 9th through 12th stage HPC disks and engine failure.

DATES: Comments must be received by February 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 81–ANE–03, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, Connecticut, 06108. This information may be examined at the FAA, New England Region, Office of Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 81–ANE–03." 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 81–ANE–03, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On February 7, 1984, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 81–08–02 R2, Amendment No. 39–4817 (49 FR 7361; February 29, 1984), to require initial and repetitive inspections of 9th through 12th stage high pressure compressor (HPC) disks at the tierod holes in Pratt & Whitney (PW) JT8D series turbofan engines. That action was prompted by cracks in the tierod holes in HPC disks that resulted in engine failures. That condition, if not corrected, can result in uncontained fractures of 9th through 12th stage HPC disks and engine failure.

On August 30, 1984, the FAA issued a correction to AD 81–08–02 R2, Amendment 39–4817 (49 FR 35618; September 11, 1984), to include an engine model that had been inadvertently omitted from the AD.

Since issuance of AD 81–08–02 R2, the FAA received a report of an uncontained fracture of a 10th stage HPC disk. This disk had been subjected to three previous on-wing ultrasonic inspections prior to fracture. This method has since been determined as inadequate for detecting tierod hole cracking.

On May 8, 1989, the FAA issued an NPRM that was published in the **Federal Register** (54 FR 22306; May 23, 1989), that would have amended the existing AD by eliminating the optional on-wing ultrasonic inspection of the 10th stage HPC disk, and by including an engine model inadvertently omitted.

Since the issuance of that NPRM, the FAA has determined that the reference to the inadvertently omitted engine model was unnecessary, as the FAA had remedied this discrepancy in the August 30, 1984, correction. Also, the FAA now utilizes a revised format that supersedes existing AD's by publishing a complete document rather than only amending applicable paragraphs of the compliance section. This document, therefore, reprints the corrected AD compliance section text in its entirety for clarity.

Since the FAA has changed the format of the proposed rule, the FAA has determined that it is desirable to reopen the comment period to provide additional opportunity for public comment.

There are approximately 200 engines which would be affected by this AD, and the FAA has determined that eliminating the optional on-wing ultrasonic inspection would have negligible economic impact, since most operators use uninstalled tenth stage disk inspections.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 81–ANE–03.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines installed on but not limited to Boeing 727 series and 737 series, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously in accordance with PW Alert Service Bulletin (ASB) No. 4723, Revision 9, dated July 13, 1983; Revision 10, dated September 15, 1986; or Revision 11, dated October 30, 1987. All inspections subsequent to the effective date of this airworthiness directive (AD) must be accomplished in accordance with the methods and intervals identified in PW ASB No. 4723, Revision 12, dated March 8, 1990, except as is specified in paragraph (d) of this AD.

To prevent uncontained fractures of 9th through 12th stage high pressure compressor (HPC) disks and engine failure, accomplish the following:

(a) Initially inspect 9th through 12th stage HPC disks at the tierod holes in accordance with PW ASB No. 4273, Revision 12, dated March 8, 1990.

(b) Thereafter, inspect 9th through 12th stage HPC disks at the tierod holes in accordance with Tables I through V and Table VIII of PW ASB No. 4723, Revision 12, dated March 8, 1990. Disks initially inspected prior to the first inspection limit must be reinspected before reaching the specified reinspection interval, or before reaching the first inspection limit, whichever is later. In no case shall the established life limits of the disks be exceeded.

(c) Remove cracked disks from service prior to further flight, and replace with a serviceable part. Disks may be returned to service if repaired in accordance with Paragraph 7 of PW ASB No. 4723, Revision 12, dated March 8, 1990.

(d) For 10th stage HPC disks that were last inspected in accordance with the on-wing ultrasonic inspection procedure specified in AD 81–08–02 R2 prior to the effective date of this AD, inspect as follows:

(1) Perform a magnetic particle inspection or eddy current inspection in accordance with the procedure defined in Paragraph 6 and Appendix B of PW ASB No. 4723, Revision 12, dated March 8, 1990, no later than 750 cycles in service (CIS) since the last on-wing inspection.

(2) Accomplish all subsequent inspections in accordance with the methods and intervals specified in PW ASB No. 4723, Revision 12, dated March 8, 1990.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) 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 aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 9, 1994.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–31061 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91–CE–40–AD]

Airworthiness Directives; Alexander Schleicher Models ASW–12, ASW–15, ASW–15B, and ASW–17 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 88–11–05, which currently requires repetitively inspecting the wing spar of Alexander Schleicher Models ASW–15 and ASW–15B gliders for wood rot, and replacing any wing spar where wood rot is found. Alexander Schleicher Models ASW–12 and ASW–17 gliders are of a similar type design of the models affected by the current AD, and the Federal Aviation Administration (FAA), in working with the Civil Aviation Authority of Germany, has decided that the actions referenced in AD 88–11–05 should also apply to these glider models. The actions specified by the proposed AD are intended to prevent failure of the wing spar caused by wood rot, which, if not detected and corrected, could result in loss of control of the glider.

DATES: Comments must be received on or before February 24, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–40–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, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher GmbH & Company, D–36163, Poppenhausen-Wasserkuppe, Germany; or Eastern Sailplane, Heath Stage Route Shelburne

Falls, Massachusetts 01370; telephone (413) 625–6059. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft 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. 91–CE–40–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. 91–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A report of an in-flight wing failure because of box spar wood rot on a Model ASW–15 glider that was certificated for operation in Australia prompted the FAA to issue AD 88–11–05, Amendment 39–5997. This AD requires repetitively inspecting the wing spar for wood rot on Alexander Schleicher Models ASW–15 and ASW–15B gliders that are certificated for operation in the United States, and replacing any wood wing spar where wood rot is found. These actions are accomplished in accordance with Alexander Schleicher ASW–15 Technical Note (TN) No. 23, dated April 21, 1988.

The wing configuration of these gliders includes a wood box wing spar. Water can penetrate the box spar interior, which permits the growth of wood destroying mold fungus. This fungus could destroy the balsa wood spar webs and plywood blocks of the spar to the point where the residual spar strength would no longer be sufficient.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that Alexander Schleicher Models ASW–12 and ASW–17 gliders contain a similar wing configuration. The LBA advises that, if periodic inspections are not accomplished on the wing spar of the referenced gliders, then wood rot could occur. This condition, if not detected and corrected, could result in failure of the wing spar and subsequent loss of control of the glider.

Alexander Schleicher has issued ASW–12 TN No. 4, dated May 10, 1989, and ASW–17 TN No. 12, dated May 8, 1989, which specify procedures for repetitively inspecting the wing spar on the Models ASW–12 and ASW–17 gliders.

This airplane model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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 Alexander Schleicher Models ASW–12, ASW–15, ASW–15B, and ASW–17 gliders of the same type design, the proposed AD would supersede AD 88–11–05, Amendment 39–5997, with a new AD that would (1) retain the requirement of repetitively inspecting the wing spar for wood rot on the Models ASW–15 and ASW–15B gliders, and replacing the wing spar if wood rot is found; and (2) extend these repetitive inspections and possible replacement to Models ASW–12 and ASW–17 gliders. The proposed inspections would be accomplished in accordance with either Alexander Schleicher ASW–15 TN No. 23, dated April 21, 1988; Alexander Schleicher ASW–12 TN No. 4, dated May 10, 1989; or Alexander Schleicher ASW–17 TN No. 12, dated May 8, 1989, as applicable.

The compliance time presented in the proposed AD is based upon calendar time instead of hours time-in-service. Rotting of the wood wing box spar is caused by moisture and the condition could exist or develop regardless of whether the glider is in actual operation. For this reason, the FAA has determined that the compliance time of the proposed AD action should be in calendar time.

The FAA estimates that 50 gliders (7 ASW–12's, 27 ASW–15's, 6 ASW–15B's, and 10 ASW–17's) in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $110 per glider, and the proposed core analysis would cost $185 Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $32,750. This figure is based upon the assumption that no affected glider owner/operator has accomplished the proposed inspection, nor does it account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

In addition, AD 88–11–05 required the same actions as is proposed on 33 airplanes. With this in mind, the cost impact of the proposed AD upon U.S. operators is reduced $21,615 from $32,750 to $11,135.

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 removing AD 88–11–05, Amendment 39–5997, and by adding a new airworthiness directive to read as follows:

Alexander Schleicher: Docket No. 91–CE–40–AD; Supersedes AD 88–11–05, Amendment 39–5997.

Applicability: Models ASW–12, ASW–15, ASW–15B, and ASW–17 gliders (all serial numbers), certificated in any category.

Compliance: Required initially as follows, and thereafter as indicated in the body of this AD:

1. For Models ASW–12 and ASW–17: Within the next 6 calendar months after the effective date of this AD, unless already accomplished.

2. For Models ASW–15 and ASW–15B: On or before the last day of the 12th calendar month after the last inspection required by AD 88–11–05, Amendment 39–5997.

To prevent failure of the wing spar caused by wood rot, which, if not detected and corrected, could result in loss of control of the glider, accomplish the following:

(a) Visually inspect the wing spar for wood rot in accordance with either Action Paragraphs 1.1 through 1.3 of Alexander Schleicher ASW–12 Technical Note (TN) No. 4, dated May 10, 1989; Action Paragraphs 1.1, 1.2, and 2.1 of Alexander Schleicher ASW–15 TN No. 23, dated April 21, 1988; or Action Paragraphs 1.1 and 1.2 of Alexander Schleicher ASW–17 TN No. 12, dated May 8, 1989, as applicable.

(b) Mark and send wood cores obtained through the inspection specified in paragraph (a) to a mycology laboratory for microscopical inspection for heavy wood destroying fungal infestation in accordance with either Action Paragraph 1.3 of Alexander Schleicher ASW–12 TN No. 4, dated May 10, 1989; Action Paragraph 2.1 of Alexander Schleicher ASW–15 TN No. 23, dated April 21, 1988; or Action Paragraph 1.2 of Alexander Schleicher ASW–17 TN No. 12, dated May 8, 1989, as applicable.

(c) If moisture damage, swelling, evidence that water has penetrated into the spar fork, or fungal infestation is found, prior to further flight after the inspection required by paragraph (a) of this AD, accomplish the following:

(1) Wait for the results of the microscopical examination and then obtain a repair scheme from the manufacturer through the Manager, Small Airplane Directorate, at the address specified in paragraph (g) of this AD, and incorporate this repair scheme.

(2) Apply preservative, strengthen the inspection hole area, and close the hole in accordance with either Action Paragraph 1.4 of Alexander Schleicher ASW–12 TN No. 4, dated May 10, 1989; Action Paragraph 2.2 of Alexander Schleicher ASW–15 TN No. 23, dated April 21, 1988; or Action Paragraph 1.3 of Alexander Schleicher ASW–17 TN No. 12, dated May 8, 1989, as applicable.

(d) If no moisture damage, swelling, evidence that water has penetrated into the spar fork, or fungal infestation is found, accomplish the following:

(1) Prior to further flight after the inspection required by paragraph (a) of this AD, apply preservative, strengthen the inspection hole area, and close the hole in accordance with either Action Paragraph 1.4 of Alexander Schleicher ASW–12 TN No. 4, dated May 10, 1989; Action Paragraph 2.2 of Alexander Schleicher ASW–15 TN No. 23, dated April 21, 1988; or Action Paragraph 1.3 of Alexander Schleicher ASW–17 TN No. 12, dated May 8, 1989, as applicable.

(2) The airplane may be operated during the microscopical examination of the wood core. However, if these examination results reveal heavy wood destroying fungal infestation, prior to further flight after receiving the results, obtain a repair scheme from the manufacturer through the Manager, Small Airplane Directorate, at the address specified in paragraph (g) of this AD, and incorporate this repair scheme.

(e) The inspection requirements specified in paragraphs (a) through (c) of this AD, excluding the wood core microscopical examination requirements, shall be accomplished annually on or before the last day of the 12th calendar month after the last inspection.

(f) 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.

(g) 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, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to Alexander Schleicher GmbH & Company, D–36163, Poppenhausen-Wasserkuppe, Germany; or Eastern Sailplane, Heath Stage Route Shelburne Falls, Massachusetts 01370; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 88–11–05, Amendment 39–5997

Issued in Kansas City, Missouri, on December 13, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–31062 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AWP–21]

Proposed Establishment of Class E Airspace; Colorado City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Colorado City, AZ. A Nondirectional Radio Beacon (NDB) standard instrument approach procedures (SIAP) has been developed for the Colorado City Municipal Airport. Controlled airspace extending from 700 feet and 1200 feet above the surface is needed for aircraft executing the NDB approach. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Colorado City Municipal Airport.

DATES: Comments must be received on or before January 31, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 94–AWP–21, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261. An informal docket may also be examined during normal

business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Colorado City, AZ. The effect of this proposal is to provide adequate Class E airspace for IFR operators executing the NDB approach at Colorado City, AZ. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as transition areas for airports are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

AWP CA E5 Colorado City, AZ [New]

Colorado City Municipal Airport, AZ
(lat. 36°57′08″ N, long. 113°00′59″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Colorado City Municipal Airport, and within 4 miles either sides of the 173° bearing from the Colorado City Municipal Airport extending from the 6.5-mile radius to 12 miles south of the Colorado City Municipal Airport; that airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 36°58′00″ N, long. 112°52′00″ W, thence south to lat. 36°40′00″ N, long. 112°52′00″ W, thence west to lat. 36°40′00″ N, long. 113°11′00″ W, thence north to lat. 36°57′00″ N, long. 113°12′00″ W, thence north to lat. 37°13′00″ N, long. 113°12′00″ W, thence northeast to lat. 37°15′00″ N, long. 113°06′00″ W, thence southwest to the point of beginning.

* * * * *

Issued in Los Angeles, California, on November 30, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–31083 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AWP–25]

Proposed Amendment of Class E Airspace; Red Bluff and Redding, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would modify the Class E airspace at Red Bluff, CA, and Redding, CA. Additional controlled airspace designated as a surface area for an airport and extending from 700 feet or more above the surface is necessary for three Standard Instrument Approach Procedures (SIAPs) at the Red Bluff Municipal Airport. These three SIAPs are being amended to incorporate the use of the Redding altimeter setting for part-time use. This proposal would provide the controlled airspace necessary for the VHF Omnidirectional Range/Distant Measuring Equipment

(VOR/DME), VHF Omnidirectional Range (VOR), and Nondirectional Radio Beacon (NDB) SIAPs at the Red Bluff Municipal Airport.

DATES: Comments must be received on or before January 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 94–AWP–25, Air Traffic Division, P.O. Box 92007, World Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–25." The postcard will be date/time stamped ad returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldwide Postal Center, Los Angeles, California 90009.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace areas at Red Bluff, CA, and Redding, CA. This proposed action would provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Red Bluff Municipal Airport, specifically, the VOR RWY 33, VOR/DME RWY 15, and NDB RWY 33 approach to Red Bluff, CA. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as transition areas for airports are published in Paragraph 6002 and Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 1854, 25 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

AWP CA E2 Red Bluff, CA [Revised]

Red Bluff Municipal Airport, CA
(lat. 40°09'04" N, long. 122°15'08" W)
Red Bluff VORTAC
(lat. 40°05'56" N, long. 122°14'11" W)
Proberta NDB
(lat. 40°06'51" N, long. 122°14'15" W)

Within a 6.5-mile radius of the Red Bluff Municipal Airport and within 2.6 miles either side of the 161° bearing from the Red Bluff Municipal Airport extending from the 6.5-mile radius to 10 miles south of the Red Bluff Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AWP CA E5 Red Bluff, CA [Revised]

Red Bluff Municipal Airport, CA
(lat. 40°09'04" N, long. 122°15'09" W)
Red Bluff VORTAC
(lat. 40°05'56" N, long. 122°14'11" W)
Proberta NDB
(lat. 40°06'51" N, long. 122°14'15" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile

radius of the Red Bluff Municipal Airport and within 8 miles east and 4 miles west of the 161° bearing from the Red Bluff Municipal Airport extending from 2 miles south to 17 miles south of the Red Bluff Municipal Airport. That airspace extending upward from 1200 feet above the surface within a 17.4-miles radius of the Red Bluff VORTAC and within 7.8 miles each side of the Red Bluff VORTAC 291° radial, extending from the 17.4-mile radius to 45.2 miles west of the Red Bluff VORTAC and within 26.1-mile radius of the Red Bluff VORTAC, extending from the north edge of V–195 to the west edge of V–23 and within 7.8 miles west of and 8.7 miles east of the Red Bluff VORTAC 342° radial, extending from the 17.4-mile radius to 58.2 miles north of the Red Bluff VORTAC and within 8.7 miles west and 5.2 miles east of the Red Bluff VORTAC 015° radial, extending from the 17.4-mile radius to 48.7 miles north of the Red Bluff VORTAC and within an area bounded by a line beginning at lat. 40°41'27" N, long. 121°54"42' W; to lat. 40°34'40" N, long. 121°52'34" W; to lat. 40°21'46" N, long. 121° 56"49" W; to lat. 40°22'35" N, long. 122°01'04" W, to the point of beginning and that airspace within a 20.9-mile radius of the Red Bluff VORTAC, extending from the Red Bluff VORTAC 015° radial clockwise via the 20.9-mile arc to lat. 40°00'00" N.

* * * * *

AWP CA E5 Redding, CA [Revised]

Redding Municipal Airport, CA
(lat. 40°30'32" N, long. 122°17'30" W)
Redding VOR/DME
(lat. 40°30'16" N, long. 122°17'30" W)
Lassn NDB
(lat. 40°23'34" N, long. 122°17'41" W)
Enterprise Skypark, CA
(lat. 40°34'40" N, long. 122°19'19" W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Redding Municipal Airport and within 1.8 miles each side of the Redding Instrument Landing System (ILS) localizer North course, extending from the 4.3-mile radius to 10 miles north of the threshold of Runway 16 and within 8 miles west and 5.5 miles east of the 179°/359° bearing from/to the Lassn NDB extending from 9.5 miles north of the Lassn NDB to 16 miles south of the Lassn NDB and that airspace within a 5.5-mile arc of the Redding VOR/DME from the Redding VOR/DME 110° radial clockwise to the Redding VOR/DME 152° radial, excluding the airspace with 1-mile of the Enterprise Skypark Airport. That airspace extending upward from 1200 feet above the surface north of the Redding VOR/DME within an arc of a 20-mile radius of the Redding VOR/DME within an arc of the 20-mile radius of the Redding VOR/DME, extending from the east edge of V–23 clockwise to the west of edge of V–25.

* * * * *

Issued in Los Angeles, California, on December 6, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–31084 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Alabama abandoned mine land reclamation plan (hereinafter referred to as the "Alabama plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions and additions to the Alabama plan pertaining to the incorporation of contractor bidder eligibility screening under OSM's Applicant Violator System for the reclamation of coal and noncoal sites; exclusion of certain noncoal sites from reclamation; requirement of submission of Form OSM–76 upon project completion; and, removal of the fourth priority for noncoal reclamation sites. These changes would be applicable to reclamation of both nonemergency and emergency Abandoned Mine Land Reclamation (AMLR) projects. The amendment is intended to revise the Alabama plan to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T. January 18, 1995. If requested, a public hearing on the proposed amendment will be held on January 13, 1995. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on January 3, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below.

Copies of the Alabama plan, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Birmingham Field Office:

Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209, Telephone: (205) 290–7287

Alabama Department of Industrial Relations, Abandoned Mine Lands Program, 649 Monroe Street, Montgomery, Alabama 36130, Telephone: (205) 242–8265

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, Telephone: (205) 290–7287.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Plan

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990 (Pub. L. 101–508, title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR plan has the responsibility and primary authority to implement the program.

On May 20, 1982, the Secretary of the Interior approved the Alabama plan. Background information on the Alabama plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and amendments to the plan can be found at 30 CFR 901.25.

The Secretary adopted regulations at 30 CFR Part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed

amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Description of the Proposed Amendment

By letter dated December 5, 1994 (Administrative Record No. AL–512), Alabama submitted a proposed amendment to its plan pursuant to SMCRA. Alabama submitted the proposed amendment in response to a September 26, 1994, letter (Administrative Record No. AL–511) that OSM sent to Alabama in accordance with 30 CFR 884.15(d). The provisions of the Alabama plan proposed for revision are "Administrative and Management Structure of the Alabama Abandoned Mine Land Reclamation Program Pursuant to 30 CFR Part 884.13(d)" to incorporate contractor bidder eligibility screening under OSM's Applicant Violator System for the reclamation of coal and noncoal sites; and "Ranking and Selection Procedures Pursuant to 30 CFR Part 884.13(c)(2)" to exclude certain noncoal sites from reclamation; to require submission of Form OSM–76 upon project completion; and, to remove the fourth priority for noncoal reclamation sites. The changes would be applicable to reclamation of both nonemergency and emergency AMLR projects.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on January 3, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe as based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 Dm 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 1994.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–31094 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50608B; FRL–4758–3]

RIN 2070–AB27

Polyalkylene Polyamine; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as polyalkylene polyamine which is the subject of premanufacture notice (PMN) P–89–963 and which is subject to a TSCA section 5(e) consent order issued by EPA. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA by January 18, 1995.

ADDRESSES: Each comment must bear the docket control number OPPTS–50608B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–89–963-for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P–89–963 and a TSCA section 5(e) consent order issued by EPA, in the **Federal Register** of June 8, 1993 (58 FR 32227). EPA received a notice of intent to submit adverse comments for this chemical substance following publication. Therefore, as required by § 721.160, the final SNUR for P–89–963 is being withdrawn elsewhere in this issue of the **Federal Register** and this proposed rule on the substance is being issued.

EPA is not soliciting and will not respond to comments on any of the other SNURs that were published in the June 8, 1993, **Federal Register** because those rules became effective August 7, 1993, or are being withdrawn and proposed in separate actions. The supporting rationale and background to this proposal are more fully set out in the preamble to the direct final SNUR for this substance and in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substance under part 721 subpart E.

PMN Number P–89–963

Chemical name: (generic) Polyalkylene polyamine.
CAS Number: Not available.
Effective date of section 5(e) consent order: June 27, 1992.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment, and that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposures.
Toxicity concern: The PMN substance and similar chemicals have been shown to cause acute toxicity to aquatic organisms at low levels of exposure. Specifically, based on data submitted on the PMN substance, the fish acute LC50 value is 780 ppm, the daphnid acute LC50 value is 10 ppm, and the algal

acute EC50 value is 2.9 ppm. Applying an assessment factor of 100 to the daphnid acute value, EPA predicts that chronic toxicity to aquatic life may occur at concentrations as low as 100 ppb.

Recommended testing: EPA has determined that the results of a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible human health effects posed by the substance. The PMN submitter has agreed not to exceed the production volume limit without performing this test.

CFR citation: 40 CFR 721.6193.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on June 8, 1993, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after June 8, 1993, will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR unnecessarily, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50608B).

VII. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50608). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record without any CBI is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

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

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by the rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460;

and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 1, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.6193 to subpart E to read as follows:

§ 721.6193 Polyalkylene polyamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyalkylene polyamine (PMN P–89–963) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4) (users minimize releases to water), and (g)(5). In addition, a significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a material safety data sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received these substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Requirements as specified in § 721.125(a), (b), (c), (f) through (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. 94–30731 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50612D; FRL–4774–9]

RIN 2070–AB27

Alkenyl Ether of Alkanetriol Polymer; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an alkenyl ether of alkanetriol polymer, which is the subject of premanufacture notice (PMN) P–93–458. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA by January 18, 1995.

ADDRESSES: Each comment must bear the docket control number OPPTS–50612D. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–93–458 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a Significant New Use Notice (SNUN), EPA may take regulatory action under

section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUN. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUNs to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P–93–458 in the **Federal Register** of October 4, 1993 (58 FR 51672). EPA received adverse comments following publication for this chemical substance. Therefore, as required by § 721.160, the final SNUR for P–93–458 is being withdrawn elsewhere in this issue of the **Federal Register** and this proposed rule on the substance is being issued. EPA is not soliciting and will not respond to comments on any of the other SNURs that were published in the October 4, 1993, **Federal Register** because those rules became effective on December 3, 1993, or are being withdrawn and proposed in a separate action. The supporting rationale and background to this proposal are more fully set out in the preamble to the direct final SNUR for this substance and in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

The SNUR for P–93–458 stated that EPA was concerned for potential environmental effects of the substance at concentrations as low as 1 ppb (part per billion) (the concern level) based on the submitted test data and by analogy to nonionic surfactants. The SNUR also stated that use of the substance as a thickening agent for textile printing does not present an unreasonable risk due to the fact that the material would not be released to surface waters at concentrations greater than 1 ppb. As a result, EPA proposed that the significant new use for this material is any use which may result in release of the substance to surface waters at concentrations greater than 1 ppb.

The commenter was the submitter of P–93–458. The commenter stated that the substance is not comparable to nonionic surfactants because the class of nonionic detergents have different proportions of hydrophobic and hydrophilic groups and that the determination to regulate this substance should be based on the data provided within the PMN. EPA used the toxicity data supplied in the PMN to evaluate the acute effects of the substance. However, EPA also used data from chronic toxicity tests on similar chemicals to evaluate potential chronic toxicity of the substance. The substance is classified as a nonionic surfactant by EPA because it has the chemical structural characteristics of nonionic surfactants. The class of nonionic surfactants which EPA has the most data for are the alcohol ethoxylates. EPA realized that this approach may overestimate the toxicity of the substance, but when evaluating potential chronic toxicity in the absence of chronic toxicity data on the specific substance, EPA will use the best relevant data set, even if this may predict higher toxicity, and err on the side of safety rather than underestimate toxicity. Classifying the substance as a nonionic surfactant does not assume that the PMN substance will be a strong detergent.

The commenter stated that on the basis of the acute toxicity studies provided in the PMN, where no mortality or immobilization were found in the fish and daphnids, a high assessment factor should not be used and the maximum environmental concentration of 1 ppb is too conservative. EPA agrees that no effects were observed during fish and daphnid acute toxicity tests. However, the hardness of the dilution water in the acute tests was 250.0 and 246.0 mg/L as $CaCO_3$, for fish and daphnids, respectively. Hard water is known to decrease the effectiveness of detergents and surfactants. EPA recommends a hardness of less than 180 mg/L for freshwater fish, and daphnid acute and chronic toxicity tests. It is possible that if the hardness of the dilution water had been less than 180 mg/L, toxic effects would have been observed. In addition, effects were observed for green algae. EPA has evaluated toxicity data for chemicals which produce no effects at saturation during short-term exposures, but do have toxic effects at longer exposures during the fish early life stage toxicity test and the daphnid reproduction test. EPA has reviewed the submitted acute toxicity and its analogue data. Based on predicted chronic toxicity values of 1 ppm for fish and daphnids, a measured chronic toxicity value of 1 ppm for algae and an assessment factor of 10, the revised concern concentration is 100 ppb.

The commenter stated that EPA had not established that release to surface waters above 1 ppb was indeed a new use. The commenter noted that a Notice of Commencement (NOC) had been filed for the substance on June 16, 1993. The commenter and its customers have been using the substance since that time without the determination required under 40 CFR 721.90(a)(4), (b)(4), and (c)(4). The commenter also stated that release of the substance to surface waters at a concentration greater than 1 ppb did not constitute a change in the type and extent of exposures, production volume, or the manufacturing process specified in the PMN as required under section 5(a)(2) of TSCA. The commenter asserted that the data submitted in the PMN does not indicate that the uses other than that submitted in the PMN may be a significant risk to the environment.

EPA disagrees with these assertions. Based on information in the PMN supplied by the commenter, EPA estimated reasonable worst case water releases during processing and use. None of these estimated water releases were expected to exceed 1 ppb under even reasonable worst case assumptions. The basis for the assumptions made by EPA, including the information in the PMN and EPA's exposure estimates can be found in the public docket for this substance (OPPTS–50612). If any interested parties have data demonstrating releases to surface waters above 1 ppb (or the new concern level of 100 ppb), they should furnish that data with their comments. The mere fact that an NOC has been received or that the determination required under 40 CFR 721.90(a)(4), (b)(4), and (c)(4) has not been made by the submitter or its customers is not evidence that releases exceeding the concern level have occurred.

EPA identified several other uses for the substance including use as a paper binder, a flocculation aid for paper manufacturing, and a surfactant

intermediate. In addition, the commenter noted on the PMN that they intended to import the substance. The commenter or any other manufacturer could elect to manufacture the substance in the United States. Any manufacturer, importer, or processor could use or distribute the substance in commerce for the other uses cited in this paragraph. If domestic manufacture or the other uses of the substance occur, it is possible that a change in the projected volume of manufacturing and processing, the type, form, magnitude, and duration of exposure, or the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal could also occur, resulting in surface water concentrations above the concern level of 100 ppb.

IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721.

PMN Number P–93–458

Chemical name: (generic) Alkenyl ether of alkanetriol polymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as a thickening agent for textile printing. Based on analogy to nonionic surfactants and on the submitted acute aquatic toxicity data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 100 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters at concentrations above 100 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 100 ppb. Based on this information, the PMN substance meets the concern criteria under § 721.170(b)(4)(iii).
Recommended testing: EPA has determined a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test (40 CFR 797.1330), where the dilution water hardness is less than 180 mg/L, would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3367.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on October 4, 1993, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after October 4, 1993, will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50612D).

VII. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50612D). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record without any CBI is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St. SW., Washington, DC 20460.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

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

the principles set forth in this Executive Order.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUNs for the substance. Therefore, EPA believes that the number of small businesses affected by the rule would not be substantial, even if all of the SNUN submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposed rule.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: December 1, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.3367 to subpart E to read as follows:

§ 721.3367 Alkenyl ether of alkanetriol polymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenyl ether of alkanetriol polymer (PMN P–93–458) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 100 ppb (parts per billion)).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 94–30733 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–55; RM–8454]

Radio Broadcasting Services; Vail, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Ryan B. Smith and Jennifer Tufty, requesting the allotment of FM Channel 237A to Vail, Colorado, as that community's second local FM service, based on the petitioners' failure to file comments in response to the *Notice. See* 59 FR 35081, July 8, 1994. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–55, adopted December 6, 1994, and released December 13, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–31091 Filed 12–16–94; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–52; RM–8473]

Television Broadcasting Services; Waimanalo, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses the proposal filed by Joyce Cathcart to allot UHF Television Channel 56 to Waimanalo, Hawaii, as the community's first local television service. *See* 59 FR 32176, June 22, 1994. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–52, adopted December 6, 1994, and released December 13, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–31089 Filed 12–16–94; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–26]

Radio Broadcasting Services; Pago Pago, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission rescinds the *Report and Order* which deleted Channel 266C1 from Pago Pago, American Samoa. *See* 59 FR 59200, November 16, 1994. Channel 266C1 is not allotted to Pago Pago but to Leone, American Samoa. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–26, adopted December 6, 1994, and released December 13, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Federal Communications Commission.

John A Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–31088 Filed 12–16–94; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–53; RM–8475]

Television Broadcasting Services; Kailua, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses the proposal filed by Paul Alfred Tennyson, to allot UHF Television Channel 50 to Kailua, Hawaii, as that community's first local television service. *See* 59 FR 32176, June 22, 1994. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–53, adopted December 6, 1994, and released December 13, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–31090 Filed 12–16–94; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. 94–96; Notice 1]

RIN 2127–AF18, 2127–AF38

Manufacturing Incentives for Alternative Fuel Vehicles

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Under the corporate average fuel economy program, certain incentives are provided for the manufacture of alternative fuel vehicles, including dual fuel vehicles. Among other things, dual fuel passenger automobiles which meet a minimum driving range qualify for special treatment in the calculation of fuel economy. In order to implement a new statutory requirement, NHTSA is proposing to amend its existing regulation concerning minimum driving range. The minimum driving range for all dual fuel passenger automobiles other than electric vehicles would be set at 200 miles. The agency is also proposing to establish gallons equivalent measurements for certain gaseous fuels. These measurements are needed to calculate the fuel economy of alternative fueled vehicles.

DATES: Comments must be received on or before February 17, 1995.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW, Washington, DC 20590. The Docket is open 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Motor Vehicle Requirements Division, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Background

A. Alternative Motor Fuels Act of 1988

Section 6 of the Alternative Motor Fuels Act of 1988 amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 513, "Manufacturing Incentives for Automobiles." Section 513 contained incentives for the manufacture of vehicles designed to operate on alcohol or natural gas, including dual fuel vehicles, i.e., vehicles capable of operating on one of those alternative fuels and either gasoline or diesel fuel.

Section 513 provided that dual fuel vehicles meeting specified criteria qualify for special treatment in the calculation of their fuel economy for purposes of the corporate average fuel economy (CAFE) standards. The fuel economy of a qualifying vehicle is calculated in a manner that results in a relatively high fuel economy value, thus encouraging its production as a way of facilitating a manufacturer's compliance with the CAFE standards. One of the qualifying criteria for passenger automobiles was to meet a minimum driving range, which was to be established by NHTSA.

NHTSA was required to establish two minimum driving ranges, one for "dual energy" (alcohol/gasoline or diesel fuel) passenger automobiles when operating on alcohol, and the other for "natural gas dual energy" (natural gas/gasoline or

diesel fuel) passenger automobiles when operating on natural gas. In establishing the driving ranges, NHTSA was required to consider the purposes of the Alternative Motor Fuels Act, consumer acceptability, economic practicability, technology, environmental impact, safety, driveability, performance, and any other factors deemed relevant.

The Alternative Motor Fuels Act and its legislative history made it clear that the driving ranges were to be low enough to encourage the production of dual fuel passenger automobiles, yet not so low that motorists would be discouraged by a low driving range from actually fueling their vehicles with the alternative fuels. Section 513(h)(2)(C) provided that the minimum driving range for "dual energy" passenger automobiles may not be less than 200 miles. Section 513(h)(2)(B) allowed passenger automobile manufacturers to petition the agency to set a lower range for a particular model or models than the range established by the agency for all models. However, the minimum driving range could not be reduced to less than 200 miles for any model of "dual energy" passenger automobile.

B. Establishment of Part 538

On April 26, 1990, NHTSA published in the **Federal Register** (55 FR 17611) a final rule establishing 49 CFR part 538, *Driving Ranges for Dual Energy and Natural Gas Dual Energy Passenger Automobiles.* The agency established a minimum driving range of 200 miles for "dual energy" passenger automobiles, and a minimum driving range of 100 miles for "natural gas dual energy" passenger automobiles. NHTSA did not specify higher ranges because it was concerned that such ranges could discourage manufacturers from producing dual fueled vehicles, since the manufacturers would need to redesign their vehicles to accommodate additional or larger fuel tanks in order to meet the higher ranges.

In part 538, NHTSA also established procedures by which manufacturers may petition the agency to establish a lower driving range for a specific model or models of "natural gas dual energy" passenger automobiles and by which the agency may grant or deny such petitions.

C. Energy Policy Act of 1992

The Energy Policy Act of 1992 amended section 513 of the Cost Savings Act to expand the scope of the alternative fuels it promotes. The amended section provided incentives for the production of vehicles using, in addition to alcohol and natural gas, liquified petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), and any fuel NHTSA determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

Section 513 continued to provide incentives for the production of dual fuel vehicles, i.e., vehicles that operate on one of a now expanded list of alternative fuels and on gasoline or diesel fuel. NHTSA notes that some statutory terminology was changed by the 1992 amendments. Among other things, the terms "dual energy" and "natural gas dual energy" were dropped, and the terms "alternative fueled automobile," "dedicated automobile," and "dual fueled automobile" were added.

Section 513 also continued to require dual fueled passenger automobiles to meet specified criteria, including meeting a minimum driving range, in order to qualify for the special treatment in the calculation of their fuel economy for purposes of the CAFE standards.

One change made by the 1992 amendments concerning driving ranges was that, under section 513(h)(2), the minimum driving range set by NHTSA may not be less than 200 miles for dual fueled passenger automobiles other than electric vehicles. The amendments also provided that the agency may not, in response to petitions from manufacturers, set an alternative range for a particular model or models that is lower than 200 miles, except for electric vehicles.

The 1992 amendments necessitate amending part 538. First, the existing 100 mile minimum driving range for vehicles previously categorized as "natural gas dual energy" vehicles must be raised to at least 200 miles. Also, NHTSA must establish a minimum driving range for the expanded scope of dual fueled vehicles. Part 538's petition procedures also need to be amended to conform to the new statutory provisions.

In addition to necessitating amendments to part 538's driving range provisions, the 1992 amendments also require NHTSA to "determine the appropriate gallons equivalent measurement for gaseous fuels other than natural gas * * *." Such a measurement is needed to carry out the special fuel economy calculations that apply to alternative fuel vehicles.

Proposal

In this document, NHTSA is proposing to amend part 538 to make it consistent with the 1992 amendments to the Cost Savings Act. As discussed below, the agency is proposing to set the minimum driving range for all dual fueled passenger automobiles other than electric vehicles at 200 miles. NHTSA is also proposing to remove the petition procedures until it sets a minimum driving range for electric dual fueled passenger automobiles.

The agency notes that, due to the complexity of the issues relating to establishment of a minimum driving range for electric dual fueled passenger automobiles, otherwise known as hybrid electric vehicles, it is addressing that issue in a separate rulemaking. On September 22, 1994, NHTSA published in the **Federal Register** (59 FR 48589) a request for comments seeking information that would help it develop a proposal in that area.

The agency is also proposing in this document to add to Part 538, gallons equivalent measurements for compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and hythane.

NHTSA notes that, on July 5, 1994, the Cost Savings Act was revised and codified "without substantive change." The provisions formerly found in section 513 of the Cost Savings Act are now at 49 U.S.C. 32901, 32905, and 32906.

A. Minimum Driving Range for Dual Fueled Passenger Automobiles Other Than Electric Vehicles

In light of the 1992 amendments to the Cost Savings Act, NHTSA is proposing to set the minimum driving range for dual fueled passenger automobiles other than electric vehicles at 200 miles.

As before, the agency is required to consider the following factors in prescribing a minimum driving range: The purposes of the Alternative Motor Fuels Act of 1988, consumer acceptability, economic practicability, technology, environmental impact, safety, driveability, performance, and any other factors considered relevant. Moreover, given the purposes of the Alternative Motor Fuels Act and its legislative history, NHTSA continues to believe that the minimum driving ranges should be low enough to encourage the production of dual fueled passenger automobiles, yet not so low that motorists would be discouraged by a low driving range from actually fueling their vehicles with the alternative fuels.

As discussed above, NHTSA addressed the appropriate level for minimum driving range in April 1990. The agency believes that the only relevant changed conditions since that

time are: (1) the decision by Congress to require the minimum driving range for dual fueled passenger automobiles other than electric vehicles to be at least 200 miles, and (2) the expanded scope of dual fueled passenger automobiles for which a minimum driving range must be established.

Part 538 currently specifies a minimum driving range of 200 miles for alcohol dual fueled passenger automobiles. The agency does not believe that any relevant events have occurred since that range was established that should lead to a different range. NHTSA notes that alcohol dual fueled vehicles are designed so that the same fuel tank is used for either alcohol or gasoline. The available space in a passenger automobile for fuel tanks is limited. In setting a driving range of 200 miles for these vehicles, the agency was concerned that a higher minimum range could require some automobiles to be redesigned to accommodate larger fuel tanks, thereby discouraging the production of such vehicles.

NHTSA believes that the same considerations that apply to alcohol dual fueled vehicles also apply to ones fueled by other liquids. The agency is unaware of any other potentially available liquid alternative fuels that would have a significantly higher energy content than alcohol on a volume basis. Assuming that other liquid alternative fuels do not have a significantly higher energy content, a driving range greater than 200 miles for dual fueled passenger automobiles using any liquid fuel could necessitate redesign of the vehicles to accommodate a larger fuel tank. The agency requests comments on whether there are any potentially available liquid alternative fuels that do have a significantly higher energy content than alcohol on a volume basis, and, if so, whether a driving range higher than 200 miles should be set for such fuels. Depending on the comments, the agency may set a higher driving range for such vehicles.

The above discussion assumes that the same fuel tank could be used for both the alternative liquid fuel and gasoline, as is the case for alcohol dual fueled vehicles. If a separate fuel tank were required for the alternative liquid fuel, the limited available space in a passenger automobile for such an additional tank would be an even more critical reason not to set the minimum driving range above 200 miles.

Gaseous fuels always require a separate fuel tank from gasoline or diesel fuel. In the previous rulemaking concerning minimum driving range, the agency's concerns about the limited available space in a passenger automobile for additional fuel tanks led it to establish a 100 mile minimum driving range for natural gas dual fueled vehicles.

Given the 1992 amendments to the Cost Savings Act, NHTSA has tentatively concluded that the minimum driving range for these vehicles should be increased to 200 miles. As discussed above, the agency cannot set a lower minimum driving range for these vehicles. Moreover, NHTSA believes that the minimum range should not be greater than 200 miles because such a range could discourage manufacturers from producing natural gas dual fueled vehicles, given the limited available space for additional fuel tanks. The agency notes that the concerns it expressed in 1990 about a driving range greater than 100 miles for these vehicles would be of even greater significance for ranges above 200 miles.

The same considerations that apply to natural gas dual fueled vehicles also apply to dual fueled vehicles using other gaseous fuels, since all of these vehicles require a separate fuel tank from gasoline or diesel fuel. Therefore, the agency is proposing to establish a 200 mile driving range for these vehicles as well.

B. Proposed Gallon Equivalents for Gaseous Fuels

In order to carry out the special procedures for fuel economy calculations that apply to alternative fuel vehicles, it is necessary, for gaseous fuel vehicles, to have a gallons equivalent measurement. The 1992 amendments to the Cost Savings Act specified that 100 cubic feet of natural gas is deemed to contain 0.823 gallon equivalent of gasoline. The 1992 amendments required NHTSA to determine the appropriate gallons equivalent measurement for gaseous fuels other than natural gas, and a gallon equivalent of such gaseous fuel shall be considered to have a fuel content of 15 one-hundredths of a gallon of fuel.

As part of determining appropriate gallons equivalent measurements for gaseous fuels, NHTSA consulted with the Department of Energy (DOE) Fuels Utilization Data and Analysis Division. NHTSA and DOE agreed that the following gaseous fuels could be potential transportation fuels by 2008: liquefied natural gas (LNG), liquefied petroleum gas (LPG), and hydrogen.

Pursuant to a contract with DOE, Abacus Technology Corporation prepared a report titled "Energy Equivalent Values of Three Alternative Fuels: Liquefied Natural Gas, Liquefied Petroleum Gas, and Hydrogen." This report is available for review at the docket number cited in the heading of this notice. The Abacus report develops gallons equivalent measurements for LNG, LPG, and hydrogen gaseous fuels.

After reviewing the Abacus report, the Environmental Protection Agency (EPA) Office of Mobile Sources recommended adding hythane fuel (a mixture of hydrogen and natural gas (principally methane)) as a gaseous fuel for which a gallon equivalent should be calculated. EPA stated that although hythane is currently being used and evaluated on a limited basis, there is a possibility that hythane fuel may become commercially available as a gaseous fuel. In a follow-up report, which is also available in the docket, Abacus developed an appropriate gallon equivalent measurement for hythane.

NHTSA notes that Abacus recommended using lower heating values for deriving the gallons equivalent measurements for gaseous fuels because this value represents the energy available from combustion in an engine.

1. Liquefied Natural Gas (LNG)

The first Abacus report noted that the Alternative Motor Fuels Act of 1988 included natural gas as an alternative fuel, but did not specify its physical state as a compressed gas or a liquefied gas. The report assumed that the Act was referring to compressed natural gas, which was the more familiar technology when the Act was passed. The Abacus report recommended that the same 0.823 gallon equivalent of natural gas established in the Alternative Motor Fuels Act be applied to LNG based on energy content in British Thermal Unit (BTU)/Standard Cubic Feet (SCF), because LNG composition and heat of combustion are similar to compressed natural gas.

2. Liquefied Propane Gas (LPG)

The Gas Processors Association Standard 2140–92 specifies four grades of LPG. They are commercial propane, commercial butane, commercial butane-propane mixtures, and propane HD–5. Propane HD–5 is recognized as the most suitable fuel for internal combustion engines operating at moderate to high engine severity. The Abacus report concluded that one gallon of LPG, grade HD–5, is equivalent to 0.732 gallon of gasoline, using a lower heating value.

3. Hydrogen

The Abacus report concluded that the gallon equivalent of 100 SCF of hydrogen is 0.240, using a lower heating value.

4. Hythane

Hythane is a combination of two gaseous fuels: hydrogen and natural gas. Most of the experimental engine work involves the mixtures of 85 volume percent natural gas and 15 volume percent hydrogen (Hy5). The maximum concentration of hydrogen that can be used without potentially causing engine problems, such as backfiring, is 15 percent (5 percent energy content). The second Abacus report concluded that the gallon equivalent of 100 SCF of this hythane mixture is 0.725 using the lower heating value.

NHTSA is proposing to adopt the gallons equivalent measurements for LNG, LPG, hydrogen, and hythane recommended by the Abacus reports. The agency requests comments on the methodology used to determine the proposed gallons equivalent measurements. NHTSA also requests comments on whether any other gaseous fuel may potentially be used in automobiles in the foreseeable future, and thus, whether gallons equivalents for any other gaseous fuels should be established.

NHTSA plans to add the gallons equivalent measurements to Part 538. The agency is proposing a new name for this part to reflect its expanded scope.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined that the action is not "significant" under the Department of Transportation's regulatory policies and procedures. In this NPRM, the agency proposes to set the minimum driving range for all dual fueled passenger automobiles other than electric vehicles at 200 miles and to establish gallon equivalents for specified gaseous fuels. None of the proposed changes will result in an additional burden on manufacturers. They would not impose any mandatory requirements but would instead implement statutory incentives to encourage the manufacture of alternative fuel vehicles. For these reasons, NHTSA believes that any impacts on manufacturers will be so minimal as not to warrant preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this proposed rule, if made final, will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that, to the extent that any passenger automobile manufacturers qualify as small entities, their number would not be substantial. Moreover, conversion of vehicles to dual fuel status with the minimum ranges that would be established by this regulation would be voluntarily undertaken in order to achieve beneficial CAFE treatment of those vehicles. Therefore, no significant costs would be imposed on any manufacturers or other small entities.

C. National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment. Increased evaporative emissions due to added fuel volume would be the most important environmental impact of this rulemaking if it induced manufacturers to enlarge the size of existing fuel tanks in order to produce dual fuel vehicles operating on alcohol or other liquid fuel. However, the proposed minimum range would not make it necessary for these dual fuel vehicles to have enlarged fuel tanks. Natural gas and other gaseous dual fueled automobiles will not expect to increase evaporative emissions since gaseous tanks do not normally vent to the atmosphere.

D. Paperwork Reduction Act

The procedures in this proposed rule for passenger automobile manufacturers to petition for lower driving ranges are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 538 have been submitted to and approved by the OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This collection of information has been assigned OMB Control No. 2127–0554. (Minimum Driving Ranges for Dual Energy Passenger Automobiles) and has been approved for use through June 30, 1996.

E. Federalism

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

F. Civil Justice Reform

This proposed rule would not have any retroactive effect and it does not preempt any State law. 49 U.S.C. 32909 sets forth a procedure for judicial review of automobile fuel economy regulations. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

NHTSA solicits public comments on the issues presented in this notice. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the NPRM will be considered, and will be available for examination in the docket at the above address both before and after that date.

To the extent possible, comments filed after the closing date will also be considered. Comments received too late in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket

supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 538

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 538 would be revised to read as follows:

PART 538—[REVISED]

1. Part 538 would be revised to read as follows:

PART 538—MANUFACTURING INCENTIVES FOR ALTERNATIVE FUEL VEHICLES

Sec.
538.1 Scope.
538.2 Purpose.
538.3 Applicability.
538.4 Definitions.
538.5 Minimum driving range.
538.6 Measurement of driving range.
538.7 [Reserved]
538.8 Gallon Equivalents for Gaseous Fuels.

Authority: 49 U.S.C. 32901, 32905, and 32906; delegation of authority at 49 CFR 1.50.

§ 538.1 Scope.

This part establishes minimum driving range criteria to aid in identifying passenger automobiles that are dual fueled automobiles. It also establishes gallon equivalent measurements for gaseous fuels other than natural gas.

§ 538.2 Purpose.

The purpose of this part is to specify one of the criteria in 49 U.S.C. chapter 329 "Automobile Fuel Economy" for identifying dual fueled passenger automobiles that are manufactured in model years 1993 through 2004. The fuel economy of a qualifying vehicle is calculated in a special manner so as to encourage its production as a way of facilitating a manufacturer's compliance with the Corporate Average Fuel Economy Standards set forth in part 531 of this chapter. The purpose is also to establish gallon equivalent measurements for gaseous fuels other than natural gas.

§ 538.3 Applicability.

This part applies to manufacturers of automobiles.

§ 538.4 Definitions.

(a) Statutory terms. (1) The terms *alternative fuel, alternative fueled automobile,* and *dual fueled automobile,* are used as defined in 49 U.S.C. 32901(a).

(2) The terms *automobile* and *passenger automobile,* are used as defined in 49 U.S.C. 32901(a), and in accordance with the determinations in part 523 of this chapter.

(3) The term *manufacturer* is used as defined in 49 U.S.C. 32901(a)(13), and in accordance with part 529 of this chapter.

(4) The term *model year* is used as defined in 49 U.S.C. 32901(a)(15).

(b)(1) Other terms. The terms *average fuel economy, fuel economy,* and *model type* are used as defined in subpart A of 40 CFR part 600.

(2) The term *EPA* means the U.S. Environmental Protection Agency.

§ 538.5 Minimum driving range.

(a) The minimum driving range that a passenger automobile must have in order to be treated as a dual fueled automobile pursuant to 49 U.S.C. 32901(c) is 200 miles when operating on its nominal usable fuel tank capacity of the alternative fuel, except when the alternative fuel is electricity.

(b) [Reserved]

§ 538.6 Measurement of driving range.

The driving range of a passenger automobile model type is determined by multiplying the combined EPA city/highway fuel economy rating when operating on the alternative fuel, by the nominal usable fuel tank capacity (in gallons), of the fuel tank containing the alternative fuel. The combined EPA city/highway fuel economy rating is the value determined by the procedures established by the Administrator of the EPA under 49 U.S.C. 32904 and set forth in 40 CFR part 600.

§ 538.7 [Reserved]

§ 538.8 Gallon equivalents for gaseous fuels.

The gallon equivalent of gaseous fuels, for purposes of calculations made under 49 U.S.C. 32905, are listed in Table I:

TABLE I.—GALLON EQUIVALENT MEASUREMENTS FOR GASEOUS FUELS PER 100 STANDARD CUBIC FEET

Fuel	Gallon equivalent measurement
Compressed natural gas	.823
Liquefied natural gas	.823
Liquefied petroleum gas (grade HD–5)	.732
Hydrogen	.240
Hythane (Hy5)	.725

Issued on: December 13, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–31079 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 93–02; Notice 06]

RIN 2127–AF14

Federal Motor Vehicle Safety Standards; Fuel System Integrity of Compressed Natural Gas Vehicles; Compressed Natural Gas Fuel Container Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT)

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This notice proposes to amend Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles,* and Standard No. 304, *Compressed Natural Gas Fuel Containers.* With respect to Standard No. 303, the notice proposes additional labeling requirements for compressed natural gas (CNG) vehicles. With respect to Standard No. 304, the notice proposes to specify additional performance requirements that would ensure a CNG fuel container's integrity. The proposes tests include environmental cycling tests, an impact test, a gunfire test, a flaw tolerance test, a pendulum impact test, and a drop test. Along with the vehicle labeling requirements, the notice proposes additional labeling requirements for CNG containers. These tests and performance requirements, which are based on the Natural Gas Vehicle Coalition's voluntary standard NGV2, are intended to ensure the structural integrity of CNG containers.

DATES: Comments on this notice must be received by the agency no later than February 17, 1995.

ADDRESSES: Comments on this notice should refer to the above docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590. Telephone (202) 366–5267. Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01 Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202–366–4931).

SUPPLEMENTARY INFORMATION:

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I. Background

A. General Information

Natural gas is a vapor that is lighter than air at standard temperature and pressure.[1] When used as a motor fuel, natural gas is typically stored on-board a vehicle in cylindrical containers at a pressure of approximately 20,684 kPa pressure (3,000 psi). Natural gas is kept in this compressed state to increase the amount that can be stored on-board the vehicle. This in turn serves to increase the vehicle's driving range. Since natural gas is a flammable fuel and is stored under high pressure, natural gas containers pose a potential risk to motor vehicle safety

Vehicles powered by CNG have not been numerous to date, although they are increasing. The number of CNG vehicles in the United States has more than doubled from 10,300 in 1990 to 23,800 at the end of 1992. The number of CNG vehicles is projected to again double to an estimated 50,800 vehicles in 1994. As discussed in detail in a final rule published on April 22, 1994, establishing Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*, recent Federal legislation, as well as the need to meet environmental and energy security goals, will lead to increased production and use of these vehicles. (59 FR 19648)

B. Previous Agency Rulemakings

On October 12, 1990, NHTSA published an advance notice of proposed rulemaking (ANPRM) to explore whether the agency should issue Federal motor vehicle safety standards (FMVSSs) applicable to CNG fuel containers and the fuel systems of motor vehicles using CNG or liquefied petroleum gas (LPG) as a motor fuel. (55 FR 41561). The ANPRM sought comment about the crash integrity of vehicle fuel systems, the integrity of fuel storage containers, and pressure relief for such containers.

On January 21, 1993, NHTSA published a notice of proposed rulemaking (NPRM) in which the agency proposed to establish a new FMVSS specifying performance requirements for vehicles fueled by CNG. (58 FR 5323). The proposal was based on comments received in response to the ANPRM and other available information.The NPRM was divided into two segments: (1) vehicle requirements that focused on the integrity of the entire fuel system, and (2) equipment requirements that focused on the fuel containers alone. In that notice, the agency proposed specific requirements applicable to the initial strength, durability, and pressure relief characteristics of CNG containers. In addition, the agency sought comments about the effects of corrosion and cold temperature extremes on CNG containers, and their rupture without fragmentation.

NHTSA received a large number of comments to the docket addressing the January 1993 proposal. The commenters included manufacturers of CNG containers, vehicle manufacturers, trade associations, other CNG-oriented businesses, research organizations, State and local governments, the United States Department of Energy, and energy companies. In addition, NHTSA met with the Compressed Gas Association (CGA) and the Natural Gas Vehicle Coalition (NGVC) and had telephone conversations meetings with some of the commenters. A record of each of these contacts may be reviewed in the public docket.

The commenters generally believed that a Federal safety standard regulating the integrity of CNG fuel systems and fuel containers is necessary and appropriate. In fact, some commenters, including the CGA, the NGVC, and CNG container manufacturers stated that NHTSA should issue a Federal standard as soon as possible to facilitate the safe and expeditious introduction of CNG fueled vehicles. With respect to the equipment requirements, the commenters generally believe that Federal requirements about the CNG fuel container integrity are needed and should be implemented as quickly as possible.

In addition to comments addressing the proposed requirements for durability, strength, and pressure relief, some commenters favored the promulgation of requirements about corrosion resistance, high and low temperature extremes, damage tolerance, and rupture characteristics of CNG containers.

As noted above, NHTSA recently established Standard No. 303. It specifies vehicle performance requirements for the fuel system of vehicles fueled by CNG. The Standard enhances the fuel system integrity of CNG vehicles by subjecting the vehicles to crash testing and placing a limit on the post-crash pressure drop in the fuel system. The Standard specifies frontal, rear, and lateral barrier crash tests for light vehicles and a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds.

NHTSA has also issued a final rule that establishes a new Federal motor vehicle safety standard, Standard No. 304, *Compressed Natural Gas Fuel Containers*, that specifies tests and performance requirements applicable to a CNG fuel container's durability, strength, and pressure relief. A pressure cycling test evaluates a container's durability by requiring a container to withstand without any leakage, 18,000 cycles of pressurization and depressurization. This requirement helps to ensure that a CNG container is capable of sustaining the cycling loads imposed on the container during refuelings over its service life. A burst test evaluates a container's initial strength and resistance to degradation over time. This requirement helps to ensure that a container's design and material are appropriately strong over the container's life. A bonfire test evaluates a container's pressure relief characteristics when pressure builds in a container, primarily due to temperature rise. In addition, the final rule specifies labeling requirements for CNG fuel containers. These requirements are based on specifications in NGV2, a voluntary industry standard addressing CNG fuel containers which was adopted by the American National Standards Institute (ANSI)[2].

NGV2 specifies four types of container designs. A Type 1 container is a metallic noncomposite container. A Type 2 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a hoop

[1] Standard temperature is 0° Celsius or 32° Fahrenheit and standard pressure is 101.4 kiloPascals (kPa) or 14.7 pounds per square inch (psi).

[2] NGV2 was developed by an industry working group that included container manufacturers, CNG users, and utilities.

wrapped pattern over the liner's cylinder wall. A Type 3 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a full wrapped pattern over the entire liner, including the domes. A Type 4 container is a non-metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a full wrapped pattern over the entire liner, including the domes.

II. Agency Supplemental Proposal

A. General

Based on comments to the January 1993 NPRM and other available information, NHTSA has decided to issue this supplemental notice of proposed rulemaking (SNPRM), to propose additional performance requirements and tests to ensure a CNG container's structural integrity. Among the proposed tests are environmental cycling tests, a low temperature impact test, a gunfire test, a flaw tolerance test, a pendulum impact test, and a drop test. One environmental cycling test would evaluate a container's resistance to internal corrosion and high humidity as well as the effects of high and low temperatures on a container. A second environmental test would evaluate a container's resistance to road salt and other acidic chemicals. The impact test, known as the Charpy test, would evaluate a metal container's brittle fracture characteristics under low temperatures. The gunfire test would evaluate container fragmentation. Three tests, the flaw tolerance test, the pendulum impact test, and the drop test, would evaluate a container's resistance to external damage. Specifically, the flaw tolerance test would evaluate a container's exterior resistance to abrasion; the pendulum impact test would evaluate a container's ability to withstand a sharp external blow; and the drop test would evaluate a container's ability to withstand a blunt external blow. This notice also proposes labeling requirements applicable to CNG vehicles and labeling requirements for CNG containers in addition to those required by the CNG container final rule.

Each of the proposed performance requirements and test procedures are modeled after provisions in NGV2 or are similar to those requirements. The agency tentatively concludes that modeling the Federal standard after NGV2 would be the best way to regulate how a CNG container reacts to such conditions as corrosive substances, temperature extremes, external damage, and rupture. In some instances, the agency departed from NGV2's performance requirements and test criteria to be consistent with 49 U.S.C. 30111 (formerly section 103 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1392). That statute commands the agency to issue "motor vehicle safety standards" that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. One example of such a departure can be found in the environmental cycling performance requirement for internal corrosion. Instead of stating that there shall be no "evidence of distortion, deterioration, or failure," the proposal states that the container "shall not leak or be distorted." Another example can be found in the gunfire test conditions. Instead of stating that "(t)he distance from firing location to test container is not to exceed 46 meters," the proposal states that "(t)he distance from firing location to test container is 46 meters." The most significant differences between the proposal and NGV2 are discussed below.

B. Environmental Cycling Test

Section 1–18(d)(2) of NGV2 includes an environmental cycling test to prevent the unreasonable corrosion of a CNG container's internal surface. In addition, this test evaluates the effect that high humidity as well as high and low temperatures have on the CNG containers.[3]

In the ANPRM and NPRM, NHTSA noted that the level of impurities in CNG (i.e., gas quality) could influence the fuel container's integrity. Specifically, certain compounds in CNG could lead to stress corrosion cracking, corrosion, fatigue or other internal harm to the container's integrity. Such harm could cause the CNG containers to fail. The agency initially decided not to propose a performance test to address a CNG container's ability to withstand corrosion, since the agency was not aware of any readily available performance test that would address the failure modes at issue. Nevertheless, in the NPRM, NHTSA requested comments about the need for a requirement addressing corrosion and, if so, what tests and performance levels are most appropriate. In particular, the agency requested comment about the practicability of using the NGV2's environmental cycling test. In the NPRM, the agency specifically asked whether, instead of adopting the first sentence of the test verbatim, the agency should say "One representative container free of any protective coating shall be cycle tested as follows, and shall not leak * * *"

Commenters on the NPRM stated that there are two principal ways to regulate containers to prevent unreasonable internal corrosion: (1) Regulating the gas quality or (2) regulating container performance. NGVC, Pressed Steel Tank Co., EDO, the National Fire Protection Association, the American Automobile Manufacturers Association (AAMA), Tecogen, and Ontario recommended that the agency adopt gas quality requirements for CNG such as those set forth in a Society of Automotive Engineers (SAE's) Recommended Practice SAE J1616, "Fuel Composition for Natural Gas Vehicles," February 1994. That recommended practice addresses internal corrosion by limiting the amount of water and other impurities in CNG.

After reviewing the comments and other available information. NHTSA has decided to propose a corrosion resistance requirement for CNG containers. The agency notes that under 49 U.S.C. 30101 *et seq.* (formerly the Safety Act, 15 U.S.C. 1381 *et seq.*), NHTSA is authorized to regulate the manufacture of motor vehicles and motor vehicle equipment. However, it has no authority to regulate fuel quality since fuel is not considered to be motor vehicle equipment. Therefore, NHTSA cannot issue standards regulating the quality of CNG. Nevertheless, the agency encourages the industry to improve gas quality for CNG vehicles through voluntary standards such as SA J1616.

NHTSA has decided to propose a performance requirement to ensure that a CNG container resists corrosion. Such a requirement would prevent catastrophic failures of CNG containers due to internal corrosion. This is particularly important since the agency only has statutory authority to issue safety standards that regulate the condition and performance of vehicles prior to their first consumer purchase. The agency does not have any authority to require periodic inspection of containers for corrosion. NHTSA is proposing to adopt an environmental cycling performance requirement and test procedure patterned after the ones in NGV2. The proposed performance requirement is set forth in S7.5, and the proposed test conditions and procedures, in S8.5.

NGV2 states that a "container free of any protective coating shall be cycle tested, without showing evidence of distortion, deterioration or failure * * *" The agency believes that while

[3] The Charpy impact test also evaluates low temperature performance for metal containers and liners because some metals are susceptible to brittle fracture at low temperatures.

the term "without distortion" appears to be objective, the terms "without deterioration or failure" are too ambiguous and broad to permit their incorporation in a Federal Motor Vehicle Safety Standard. Therefore, the agency has decided not to include the terms "deterioration" and "failure" in its proposal. Instead, the agency is proposing that its pass/fail criteria for the environmental cycling test depart from NGV2 and state that, when cycle tested, the CNG container "shall not leak or permanently change in external configuration or dimensions." NHTSA has added the prohibition against leakage, since the absence of leakage can be objectively determined. Further, the prohibition is consistent with the environmental cycling test's safety goal and with the pressure cycling test and hydrostatic burst test that the agency adopted when it issued Standard No. 304.

Under today's proposal, the phrase "shall not . . . permanently change in external configuration or dimensions" throughout the test is intended to serve the same purpose as the NGV2 "no distortion" criterion. Thus, if there were a slight bulge in one location or if there were a change in the container's volume by even one tenth of one percent, the container would be considered to be distorted. A pass/fail gauge could be adjusted to fit the container before the test, and then used again after the test to verify that a container's dimensions had not changed. NHTSA requests comments about this "zero distortion" requirement, and whether some amount of distortion should be allowed. If so, how should the permissible amount of distortion be quantified and measured? The agency also invites comments on how the no distortion criterion might otherwise be objectively expressed. In addition, the agency requests comments on whether there are other terms, such as fiber delamination, which should be incorporated and how they could be objectively defined.

As an alternative, NHTSA is considering a no leakage criterion as the sole pass/failure performance requirement. However, under this alternative, the agency would increase the two sets of 5,000 cycles to 9,000 cycles each. Thus, the standard would specify a total of 18,000 cycles instead of the 10,000 cycles currently specified in NGV2. The agency tentatively concludes that the additional cycles would be necessary since this alternative proposal would otherwise be less stringent than NGV2 which contains additional criteria to disqualify substandard containers, i.e., distortion, deterioration, and failure. The agency further notes that 18,000 cycles is consistent with the ambient pressure cycling in NGV2 and in FMVSS No. 304. That cycling represents severe service, i.e., four refuelings per day, 300 days per year for 15 years. The agency requests comments on this alternative, and on other approaches that might be more appropriate. In addition, the agency requests that commenters suggesting other approaches include measurable pass/fail performance criteria and a proposed test procedure.

Section S8.5 sets forth the procedures and conditions for the environmental cycling test. As with the proposed performance requirements, these provisions are modeled after NGV2. The agency has tentatively adopted modified versions of certain provisions in order to be consistent with the criteria that are within the agency's authority.

NGV2 further specifies that during the environmental cycling test the container is pressurized "using natural gas or methane." This is part of the test's preconditioning phase in which a corrosive material is introduced inside the container to determine its corrosion resistance. The agency is proposing that only automotive grade natural gas be used in the environmental cycling test. The agency believes that specifying only one test gas would make the test more repeatable for enforcement purposes. Further, although the major constituent of natural gas is methane, natural gas does contain other minor constituents which could make the test performed with natural gas more severe than if only pure methane were used. Therefore, the use of natural gas would represent a more severe scenario that is closer to real world use. NHTSA requests comment on the appropriateness of using only natural gas in the environmental cycling test, rather than specifying both fuels.

NHTSA has decided to propose language addressing the use of protective coatings that it believes is consistent with NGV2. Specifically, S8.5.2 states that "A CNG fuel container *free of any protective coating*" is cycle tested in a specified manner. The agency believes that the phrase "free of any protective coating" refers to temporary coatings such as oil and grease, so as not to inhibit action from the corrosive materials during subsequent testing. The agency further believes that it would be inappropriate for the agency to preclude permanent coatings such as paint or other materials, since this would discourage manufacturers from applying permanent coatings that increase corrosion resistance. The agency requests comments on how best to describe this concept. An alternative to the proposal to specify "free of any protective coating," would be to specify "The container shall be in the as manufactured condition."

NHTSA is also proposing relative humidity conditions during the environmental cycling test. Specifically, under the proposal, S8.5.2.2 would specify "Condition the container for 48 hours at zero pressure, 60° C (140° F) and 95 percent relative humidity. To obtain the specified temperature and relative humidity, spray with a fine spray or mist of water at 60° C (140° F) in a chamber held at 60° C (140° F)." NHTSA requests comments on how the phrase "fine spray or mist of water" could be made more objective, since different rates of spray might influence the humidity level. As an alternative, the agency is considering a rate of spray consistent with ANSI standard Z26.1–1977, which is referenced in FMVSS NO. 205, *Glazing Materials*. That provision specifies that "The fine spray of water shall be under a pressure of 172 to 207 kPa (25 to 30 psi) at the nozzle and in sufficient volume to wet the container immediately upon impact." Another alternative would be to specify a relative humidity level of 95 percent. This would allow manufacturers and test facilities the flexibility to determine how that level is achieved. The agency requests comments on how best to specify relative humidity in the environmental cycling test.

In comments to the NPRM, Norris and NGV Systems supported an alternative corrosion test issued by the National Association of Corrosion Engineers (NACE), NACE Standard TM0177–90. The NACE voluntary standard includes several test methods for determining the sulfide stress cracking resistance of steels. Sulfide stress cracking corrosion can result from the presence of too much hydrogen sulfide in natural gas. NHTSA requests comments on the appropriateness of using the NACE test either in conjunction with or in lieu of NGV2's environmental cycling test.

The NACE test provides a laboratory method but does not specify acceptable results. If the agency were to incorporate the NACE test in an FMVSS, it would be necessary to specify performance requirements. The agency believes that this could be done by making the performance requirements consistent with the ones already contained in the draft International Standards Organization (ISO) standard for CNG containers (Section A13). If the agency decides to adopt the NACE test, the NACE Standard Tensile Test method would be used and subsized tensile specimens (gauge diameter 2.54 mm)

would be machined from the wall of a finished container, placed under constant tensile load, and immersed in the NACE test solution. Tests would be conducted to demonstrate that the threshold stress exceeds 20 percent of the specified minimum yield strength of the steel, where threshold stress is the maximum stress at or below which no specimen fails the test for a period of 720 hours. NHTSA requests comments on the need for the NACE test and various aspects of the test, including the appropriateness of setting threshold stress at 20 percent above the yield strength and the number of tests which should be conducted to demonstrate this.

C. Road Salt Environmental Test

NHTSA has decided to propose a road salt environmental test for CNG fuel containers to address the potential for container degradation due to road salt and other acidic chemicals. The proposed test is in addition to the environmental cycling test already discussed.

NHTSA has decided to propose this requirement after learning of two CNG fiberglass fuel container failures which occurred in early 1994. NHTSA is concerned about the exposure of container exterior surfaces to acidic fluids, which may lead to stress corrosion cracking and container failure. Depending on the environmental conditions present, road salt or salt spray while driving in wet conditions, can be acidic in nature. Therefore, the agency proposes this road salt environmental test to address these potential safety problems.

The number of test cycles and the pass/fail criterion are the same as those proposed for the environmental cycling test discussed earlier. However, prior to cycling, the fuel container would be exposed to salt spray in accordance with American Society for Testing and Materials (ASTM) B117-73, "Method of Salt Spray (Fog) Testing." This method of salt spray testing is used in FMVSS NO. 108, *Lamps, Reflective Devices, and Associated Equipment* for testing the corrosion resistance of headlamps.

Under the proposal, a CNG fuel container would be exposed to the salt spray for 240 hours, consisting of ten successive 24 hours periods. Within each period, the container would be exposed to the spray for 23 hours. During the 24th hour, the salt spray would not be activated. Following the 240 hours of salt spray exposure, the container would then be cycled for 5,000 cycles, through hydrostatic pressurization, from not more than 10 percent of service pressure to service pressure. Then it would be hydrostatically pressure cycled for another 5,000 cycles from not more than 10 percent of the service pressure to 125 percent of the service pressure. When tested in this way, the container would be prohibited from leaking or permanently changing in external configuration or dimensions.

NHTSA requests comments on the appropriateness of using this test to address exterior environmental degradation of CNG fuel containers due to road salt and other acidic chemicals. The agency specifically requests comments on whether the proposed test would adequately address the potential for stress corrosion cracking of fiberglass overwrap in CNG fuel containers, and whether it should be applied to all types of CNG fuel containers, including all metal, hoop wrapped with metal liner, full wrapped with metal liner, and all composite for both fiberglass and carbon fiber. NHTSA also requests comments on whether the 240 hours of salt spray exposure appropriately reflects the amount of exposure which can reasonable be expected during the life of a CNG fuel container.

In addition, NHTSA requests comments on the pH level of the salt solution used in the proposed test method. Under ASTM B–117, the pH level of the salt solution is in the range of 6.5 to 7.2 at 35°C, although the method provides for an upward or downward adjustment in pH. A downward adjustment of pH level would make the solution more acidic, thereby representing more severe road chemicals which CNG containers may encounter. It appears possible that stress corrosion cracking of fiberglass may be accelerated with decreasing pH. Therefore, the agency requests comments on whether a lower pH range for the salt solution should be specified in the test method, such as three to four.

NHTSA also requests comments on whether to specify the pass/fail criterion for the salt spray test to "no leakage" in lieu of "shall not leak or be permanently changed in external configuration or dimensions." Concurrently, the agency would also increase the number of cycles during testing from two sets of 5,000 cycles each to two sets of 9,000 cycles each. The agency requests comments on whether these modifications in the number of cycles would be appropriate for the road salt test as well as the environmental cycling test discussed earlier. The agency also requests comments on the estimated cost of the salt spray test and the extent to which current CNG containers would comply with the requirements.

D. Charpy Impact Test

Section 1–12(d) and 1–13(e) of NGV2 set forth an impact test, known as the Charpy test, and performance criteria to address brittle fracture of steel CNG containers and liners under low temperatures. NGV2 states that this test is an indicator of the performance of heat treated steels.[4] The Charpy test evaluates marginal heat treating performance which can lead to poor fracture performance, degraded resistance to stress corrosion cracking, and lessened fatigue resistance.

In the NPRM, NHTSA requested comments on whether there is a safety problem sufficiently serious to warrant establishing a requirement for low temperature testing of CNG container materials. The agency requested these comments due to its concern that certain materials such as high strength steels can lose their ductility at low temperatures, a situation that could lead to a container's catastrophic failure. The agency requested specific comments on the Charpy impact test set forth in NGV2.

NGV Systems, ARC, Comdyne, Pressed Steel Tank, EDO, Fiber Dynamics, AAMA, Minnesota Gas, Amoco, Navistar, CNG Pittsburgh, and Manchester commented about the need for cold temperature testing. All but Manchester believed that the standard should include some sort of cold temperature testing for containers. Manchester stated that the container's service environment should be examined to determine if such cold temperature testing is needed. Most commenters stated that temperature extremes should be accounted for in the standard but did not elaborate about the specific test. PST recommended that the agency include the Charpy impact test in the Federal standard. AAMA and EDO recommended that the containers be cycled at −40° C (−40° F) and −50° C (−58° F), respectively.

After reviewing the comments, NHTSA has decided to propose amending Standard No. 304 to include a low temperature test patterned after the Charpy impact test. This test is set forth in sections 1–12(d) and 1–13(e) of NGV2, which references *Methods for Notched Bar Impact Testing of Metallic Materials*, ASTM E 23. Section 1–13(e) states that the average energy absorbed by the three test specimens shall not be less than 100 J/cm². The minimum value for any one specimen shall not be less than 80 J/cm². Under the test, a

[4] The Charpy test only evaluates steel CNG containers and liners. The environmental cycling test evaluates composite materials under low temperature conditions.

pendulum swings down and hits a specimen. The test device then measures the amount of energy transmitted into the specimen needed to break it. If the specimen breaks at low levels of energy, then it would fail the test. To illustrate, while a substance such as glass would break at very low energy levels, a non-brittle metal would break only at relatively high energy levels. Specifically, the purpose of this test is to determine the brittle fracture behavior of steels. It also evaluates the performance of steels which have been heat treated as part of the manufacturing process. An improper heat treatment process can result in the material being brittle and thus more susceptible to fatigue and stress corrosion cracking. Non-steel containers and liners need not be tested to comply with the Charpy test because they are not heat treated this way. The agency requests comments about the agency's decision to propose the Charpy impact test. Is it appropriate to only apply these requirements to Type 1 containers and Type 2 and Type 3 containers with steel liners? In addition, NHTSA requests comments on applicable performance tests for fracture and fatigue assessment of liner materials other than steel, if such materials perform a structural function, e.g., aluminum liners or containers. Along with this information, commenters should include a description of the specific performance tests recommended, along with objective pass/fail criteria.

NHTSA agrees with the recommendations by AAMA and EDO that containers be pressure cycled at low temperatures (e.g., −40° C (−40° F)). The agency notes that this low temperature is consistent with test conditions in NGV2 and NHTSA standards, including Standard No. 105, *Hydraulic Brake Systems,* Standard No. 106, *Brake Hoses,* and Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* The agency requests comment about whether the proposed test temperature is appropriate.

In response to Manchester's comment that the service environment should be examined to determine if cold temperature testing is needed for a particular container, NHTSA notes that it would be impracticable to determine what type of environment each individual container would encounter. In establishing a requirement, the agency believes that it is appropriate to test CNG containers in a worst case scenario, such as the low temperature levels being proposed.

E. Gunfire Test

Section 1–18(j) of NGV2 includes a gunfire test that evaluates whether a fully pressurized container fragments upon suffering a high impact puncture. A similar puncture could occur in a motor vehicle crash, causing the propulsion of container fragments at high speeds. The gunfire test assures that a container will instead essentially remain in one piece.

In the NPRM, the agency discussed a specific test criterion in which the container would be permitted to rupture only if there were no fragmentation. The container industry refers to this situation as "leak before burst." Containers that leak before bursting are designed to release their contents through the sidewall without explosive fragmentation when the container becomes overpressurized. The industry tests for this characteristic by piercing the pressurized container with a gunshot. The area around the container is then examined for fragmentation. The container is supposed to be designed so that no fragments will break off during this failure. In the NPRM, the agency requested comments about how to define the term "without fragmenting" for regulatory and compliance purposes.

Brunswick, NGV Systems, PST, EDO, CNG Pittsburg, and AAMA commented about container fragmentation. These commenters stated that in the event of a rupture, the CNG fuel containers should be designed to release their contents through their sidewalls without fragmentation. Brunswick, AAMA, NGV Systems, EDO, and PST commented about how to define the phrase "without fragmenting." EDO recommended that the container be required to remain "in one piece." NGV Systems stated it should be defined as "no separation of parts such that projectiles are possible." AAMA stated that it should be defined as "no separation of pieces exceeding one gram in mass from the fuel tank." Brunswick stated that it should be defined as loss of small pieces not exceeding 30 grams (one ounce) in weight. PST also indicated that 30 grams (one ounce) is an acceptable size.

Based on the comments and other available information, NHTSA has decided to propose amending Standard No. 304 to include a gunfire test similar to the one set forth in NGV2, with some modifications. The agency believes that if a CNG container is punctured in a crash, the failure should result in a controllable situation, e.g., fuel leakage, rather than a catastrophic explosion of the container. A catastrophic failure would present a much more serious failure mode than fuel leakage through the sidewall, since fragments could be propelled in all directions at high speeds and with tremendous force. Such fragments could pose a significant safety risk to vehicle occupants and others near the vehicle.

With respect to the performance criteria for the gunfire test, NGV2 states that "The tested container shall reveal no evidence of a fragmentation failure" and "Loss of small pieces of composite material which would not have sufficient momentum to penetrate sheet metal typically found in automobile construction shall not constitute failure of the test." Under the second phrase, NGV2 allows the fragmentation of small pieces, even though the gunfire test is intended to prevent fragmentation.

NHTSA has tentatively concluded that some of NGV2's performance requirements and test conditions are insufficiently objective for use in a FMVSS. In order to establish objective, safety criteria, NHTSA has decided to propose incorporating the recommendations by Brunswick and PST to prohibit fragments exceeding 30 grams (one ounce) in mass. Although the intent of the gunfire test is to demonstrate no fragmentation, the agency understands that small composite pieces or fragments are considered normal. Therefore, the agency has tentatively concluded that to prohibit all fragmentation, as recommended by EDO and NGV Systems would not be practicable. Similarly, the agency believes that AAMA's recommendation to prohibit the separation of pieces exceeding one gram (0.035 ounce) would not be practicable and would involve very small pieces that could be difficult to measure. NHTSA has tentatively concluded that prohibiting pieces in excess of 30 grams would provide for a practicable, objective, and safe performance criterion for the gunfire test. However, the agency requests comments on the proposed size, and whether the standard should prohibit all fragmentation or whether some smaller level of fragmentation would be measurable and safe. What is the lightest container fragment that would be readily measurable and would not pose an unreasonable risk to the safety of motorists? NHTSA also seeks comment on whether the container should be pressurized with nitrogen or air, since only one gas should be used to assure consistency of testing.

NHTSA has tentatively determined that it is necessary to depart from certain aspects of the gunfire test in NGV2 to make the agency's proposed requirement objective and ensure

repeatable test results. As proposed in this notice, these modifications include specifying the precise muzzle velocity, the projectile's path, and the precise distance.

F. Damage Tolerance Tests

1. General Considerations

NGV2 addresses damage tolerance with three separate tests: a flaw tolerance test, a pendulum impact test, and a drop test. In general, the damage tolerance tests serve to evaluate damage caused by incidental contact with other objects. Such contact can occur in a variety of ways. For instance, containers mounted underneath the vehicle could be damaged by road debris. Similarly, containers mounted in the bed of a pickup truck could be damaged by cargo or tools being thrown on them. The flaw tolerance test evaluates abrasive damage to composite overwraps such as scratches and small cuts on the container. If the overwraps are cut or gouged, they may unravel or delaminate, possibly causing container failure. The pendulum impact evaluates sharp blows to the container. The drop test evaluates blunt impacts to the container.

NHTSA did not address damage tolerance in the January 1993 NPRM. Nevertheless, CGA, Tecogen, Comdyne, ARC, and Brunswick commented that a container's resistance to mechanical damage from incidental contact or road debris should be tested. Of these commenters, only Brunswick suggested a specific test procedure to determine container damage tolerance. Brunswick stated that NGV2 adequately addresses resistance to mechanical damage with the flaw tolerance, pendulum impact, and drop tests. In addition, it stated that the effects of more severe damage, such as a puncture, are addressed with the gunfire test.

NHTSA has decided to propose the three damage tolerance tests in NGV2 because the agency has tentatively concluded that, during normal use, CNG containers may be exposed to each type of external damage addressed by these tests. This may be especially true for containers sold in the aftermarket, since vehicle manufacturers would presumably be more likely than vehicle converters to design their vehicles to protect containers from exposure to road debris and other damage. This is so because vehicle manufacturers can design a CNG vehicle with container placement in mind. Converters are not involved in the original designing of the vehicles they convert and may have to place a container in a relatively vulnerable location given space limitations.

NHTSA is proposing to subject Type 1 containers to the drop test, but not to the other two tests, since noncomposite metal containers are generally not affected by the proposed damage evaluated by those tests. Type 2, 3, and 4 composite containers would be subject to all three damage tolerance tests. The agency requests comments about the appropriateness of applying the proposed damage tolerance tests to the different types of CNG containers.

In NGV2, the criterion for each damage tolerance test is that the container, after having a cut made into the container or being impacted, must sustain 1,500 pressure cycles without evidence of failure such as distortion or leakage. The only exception to this is the drop test. The drop test in NGV2 requires two alternative sets of cycling tests. If the container sustains damage that would cause its rejection at a three year inspection interval specified by NGV2, the container is tested for 1,500 cycles. In contrast, if the container sustains damage that would cause it not to be rejected at a three year inspection, it is tested for 18,000 cycles. The 1,500 cycles in NGV2 apparently corresponds to the maximum number of fills expected during the three year inspection interval. Because NGV2 requires reinspection every three years, it is structured to permit a level of damage to the container that would keep it in service until the maximum inspection interval of three years is completed. In contrast, NHTSA has no statutory authority to require container inspection after the first consumer purchase of the container.[5]

In today's notice, NHTSA is proposing 1,500 cycles for the flaw tolerance and pendulum impact tests, and the more severe alternative of 18,000 cycles for the drop test. This is consistent with the manner of cycles specified in NGV2, after which the agency is patterning its proposal. However, since NHTSA has no authority to require the periodic inspection of CNG containers, the agency requests comments on whether 1,500 cycles is adequate to assure the safety of a CNG container throughout its life. As a alternative, the agency is considering requiring 18,000 cycles for the flaw tolerance and pendulum impact tests. This is consistent with the pressure cycling test in FMVSS No. 304 and with the drop test where no inspection would be involved. It would also represent the worst case scenario for a container which sustains damage early in its service life, but may not be subsequently inspected, since 18,000 cycles represents four refuelings per day, 300 days per year for 15 years. The agency requests comments on the appropriate number of cycles for the flaw tolerance, pendulum impact, and drop tests to assure the safety of the traveling public.

2. Flaw Tolerance Test

Section 1–18(f)(1) of NGV2 sets forth a flaw tolerance test, which evaluates a container's ability to withstand external damage caused by abrasive material scratching a container, NHTSA is proposing to adopt the flaw tolerance test in NGV2 with some minor modifications. The agency's adaptation of these performance requirements and test conditions and procedures is set forth in sections S7.8 and S8.8 of this notice's regulatory text.

NGV2's flaw tolerance test specifies that the container shall be tested "without evidence of distortion, deterioration or failure" and "show no evidence of flaw propagation[6] or other physical damage likely to weaken the container appreciably." as explained in the earlier discussion on the environmental cycling test, these performance requirements contain subjective criteria that the agency believes need to be modified to be objective and enforceable. The agency believes that the terms "without deterioration or failure" and "other physical damage likely to weaken the container appreciably" are unreasonably ambiguous and broad. Therefore, the agency has decided not to include, in the proposed requirement, the terms "deterioration" and "failure" and the phrase "other physical damage likely to weaken the container appreciably" since these terms are not sufficiently objective to include in a Federal standard and would not provide measurable criteria for enforcement. The agency welcomes comments about ways to refine terms to make them objective. In addition, the agency requests comments on whether there are other terms, such as fiber delamination, which should be incorporated and how they could objectively be defined.

Instead, the agency is proposing a modified version of the NGV2 pass/fail criteria for the flaw tolerance test that states that when cycle tested, the CNG container "shall not leak or permanently change in external configuration or

[5] The agency is proposing labeling requirements to encourage the periodic inspection of containers every 12 months, as explained below.

[6] Propagation is defined as "enlargement or extension (as of a crack) in a solid body. (*Webster's Ninth New Collegiate Dictionary*)

dimension." In addition, NHTSA is proposing an additional performance provision to prohibit the growth of a longitudinal cut made in the container NHTSA has added the prohibitions against leakage and increase in the size of cut since compliance with them can be objectively determined. It is also consistent with the flaw tolerance test's safety goal and with the performance requirements for the presence cycling test and the hydrostatic burst test in Standard No. 304. The agency previously discussed the no distortion criterion in the environmental cycling section and request similar comments here. In addition, the other requirement being proposed for the flaw tolerance test is that the "cut made in accordance with S8.8 for the purpose of this test shall not increase in length, width or depth as a result of this test."

NHTSA has tentatively determined that it is also necessary to depart from certain aspects of NGV2's flaw tolerance test procedures and conditions to make agency's flaw tolerance test objective and repeatable. As proposed in this notice, these modifications include specifying the precise dimensions and location of the flaw.

NGV2 specifies that a cut be made in the other wall at approximately midlength and that the cut be not less than 0.75 mm (0.030 inches) in depth. The agency is proposing additional provisions to make the proposed FMVSS more precise, thereby increasing the test procedure's objectivity and repeatability. For instance, the agency is proposing to amend the standard to specify that the cut be 0.75 mm wide. The agency tentatively believes that these dimensions represent abrasions that containers may experience as a result of contacting road debris. However, the agency requests comments on the cut's dimensions, including the appropriate width, and whether the length, width, and number of such cuts should be increased.

3. Pendulum Impact Test

Section 1–18(f)(2) of NGV2 sets forth a pendulum impact test which evaluates a container's ability to withstand a sharp external blow. NHTSA is proposing to adopt the pendulum impact test in NGV2 with some minor modifications. The agency's adoption of these performance requirements and test conditions is set forth in sections S7.9 and S8.9 of this notice's regulatory text.

NGV2 specifies that "The tests shall be made on the points of the container which are regarded as vulnerable. The points regarded as vulnerable are those which are most exposed or weakest having regard to the shape of the container and/or the way in which it is installed on the vehicle."

NHTSA has decided to propose modifying this provision since it is not objective. Instead, the agency is proposing to require that the pendulum impact test be conducted at "any point and any angle." NHTSA anticipates that to be able to certify compliance with the requirement, manufacturers would direct the test impacts to the container's most vulnerable points. Such a test procedure would be consistent with the regulatory language specified in Standard No. 301's moving contoured barrier test. The agency requests comments about whether such a test condition would be appropriate for pendulum impact testing of CNG containers.

4. Drop Test

Section 1–18(g) of NGV2 sets forth a drop test, which evaluates a container's ability to withstand a blunt external blow. NHTSA is proposing to adopt the drop test in NGV2 with some minor modifications. The agency's adoption of these performance requirements and test procedures is set forth in sections S7 10 and S8.10 of this notice's regulatory text.

As with NGV2, NHTSA is proposing to specify that a container be dropped at ambient temperature without internal pressurization or attached valves. In the test, the container is held in a horizontal position with the container's bottom 3.05 meters (10 feet) above the surface onto which it is dropped.

Today's proposal, consistent with NGV2, specifies that the surface onto which the CNG container is dropped "shall be a smooth, horizontal concrete pad or flooring." NHTSA notes that this definition of the surface is not fully objective. As an alternative, the agency is considering specifying that the surface be made of concrete that is at least four inches thick. NHTSA requests comments on this alternative, and on how the surface could otherwise be more objectively defined.

G. Bonfire Test Fuel

In the NPRM, NHTSA proposed that the fire for the bonfire tests be generated by No. 2 diesel fuel. This fuel type was proposed so that the standard would be consistent with the bonfire test in NGV2, which specifies this type of fuel.

NGVC, CGA, AAMA, and Norris commented that the agency should specify a different fuel to generate a bonfire that is more environmentally sound. CGA stated that the large amounts of smoke that would be created by burning diesel fuel are contrary to the environmental objectives of developing CNG vehicles NGVC and Norris suggested using a CNG or propane grill for the test

In the final rule, NHTSA decided to specify the use of No 2 diesel fuel The agency explained that it was aware of the environmental problems associated with this type of fuel and would further study whether other fuels should be used to generate the bonfire test However, the agency stated that until it could determine that a different fuel is an appropriate (e g , generates a fire of comparable heat and intensity replacement for No 2 diesel fuel that fuel will be specified for generating the bonfire

NHTSA has decided to propose to amend the bonfire test conditions to allow alternative types of fuel given the environmental difficulties resulting from No 2 diesel fuel One alternative would be to allow manufacturers to conduct the test with any fuel that generates a flame temperature equivalent to that of No 2 diesel fue Under this alternative, any fuel that generates a flame temperature of 850° to 900° C (the flame temperature of No 2 diesel fuel) for the duration of the test would be permitted To verify the flame temperature of 850° to 900° C for a period of 20 minutes or until the container is fully vented or fails three thermocouples would be located on the container's bottom, 102 mm above the fuel surface, as measured before the fire is started The thermocouples would be placed so that one would be at the center of the container's bottom and one on each side of the container where the dome and sidewall intersect NHTSA requests comments about the appropriateness of this alternative including the use of flame temperature to define "equivalence" among fue types Would a different fuel characteristic such as Btu/lb be more appropriate? If a commenter believes that an alternative approach would be more appropriate it should submit the test procedures associated with such an alternative

H. Labeling Requirements

1. CNG Containers

a. *Labeling information* In the NPRM NHTSA proposed to require that container manufacturers certify that each of their containers comply with the proposed equipment requirements by permanently labeling the container with the following information The symbol "DOT" to constitute a certification by the manufacturer that the container conforms to all requirements of the standard; the date of manufacture of the container· the name and address of the

container manufacturer; and the maximum service pressure. The agency stated that labeling the container would provide vehicle manufacturers and consumers with assurance that they are purchasing containers that comply with the Federal safety standards. In addition, the agency believed that the proposed requirement would facilitate the agency's enforcement efforts by providing a ready means of identifying the container and its manufacturer.

EDO, NGVC, Thomas, NYCFD, and Volvo GM addressed the proposed labeling requirements. EDO and NYCFD stated that the label should include the maximum fill pressure at a location close to the fill receptacle. NGVC recommended that a blank area for the container installation date be included in the label to be filled in by the installer. Volvo GM stated that only containers manufactured after the standard's effective date should be entitled to display the DOT symbol. Thomas stated, without elaboration, that the labeling requirements of NGV2 should be adopted. NHTSA's proposal did not include certain information specified in NGV2, including the type of container, inspector symbols, trademarks, manufacturers's part number, and serial numbers.

In the CNG container final rule, NHTSA decided to adopt the proposed labeling requirements with a slight modification from the proposed format. In item (a), the agency modified the proposal which states "The tank manufacturer's name and address" to state the following: include the statement that "If there is a question about the proper use, installation, or maintenance of this container, contact [*manufacturer's name, address, and telephone number*]." In the final rule, the agency decided not to require the other additional items of information in NGV2 since the agency had not proposed requiring such information. Notwithstanding the agency's decision not to require this additional information, the agency explained that a manufacturer may list such information on the label, provided that the additional information does not obscure or confuse the required information. In particular, NHTSA urged manufacturers to include the container type, e.g., Type 1, 2, 3 or 4, since the agency had adopted NGV2's design and material specifications in the final rule. The agency believed that specifying the type of container would facilitate oversight of compliance tests since each type of container is required to undergo a hydrostatic burst test with a safety factor unique to that type.

In the final rule, NHTSA also explained that it anticipated proposing additional requirements about the CNG fuel container's label. The agency is now proposing to amend S7.4 to specify that CNG containers be labeled with the following additional information:

(1) The container designation (Type 1, 2, 3, or 4),

(2) The statement "CNG ONLY,"

(3) The statement: "This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months for damage and deterioration in accordance with the Compressed Gas Association (CGA) guidelines C–6 and C–6.1 for Type 1 containers and C–6.2 for Types 2, 3, and 4 containers."

(4) The statement: "Do Not Use After _____," inserting the year that is the 15th year beginning after the year in which the container is manufactured.

NHTSA believes that it would be in the interest of motor vehicle safety to add this information to the CNG container label. Adding information about container type, e.g., Type 1, 2, 3 or 4 would be consistent with the agency's adoption of NGV2's design and material specifications in the CNG final rule. The agency believes that specifying the type of container would facilitate oversight of compliance tests since each type of container is required to undergo a hydrostatic burst test with a safety factor unique to that type. Adding the phrase "CNG ONLY" would assure that CNG containers are used only for CNG and are not used for other fuels for which the containers were not designed, such as liquefied petroleum gas (LPG).

Since NHTSA has no statutory authority to require the periodic inspection of CNG containers after the first consumer purchase, adding information about periodic inspections would help assure their safe use after this time. Such statements would alert owners to the desirability for reinspection over time or in the event of an accident. The agency notes that the proposed requirement is consistent with NGV2's guidelines for visual inspection of CNG containers every 36 months. Reference to the CGA guidelines would provide standardized criteria by which to inspect containers built by different manufacturers. The agency is proposing use of the visual inspection guidelines contained in CGA C–6, C–6.1, and C–6.2, and not those for hydrostatic testing. In addition to the proposal that the container be inspected after an accident or at least every 36 months, NHTSA requests comments about the need to specify both a time interval and a mileage interval (e.g., the agency could require the following statement: "This container should be visually inspected after a motor vehicle accident or fire, and for damage or deterioration at least every 36 months or 36,000 miles, whichever comes first, in accordance with . . ."). What time and mileage intervals would be most appropriate? Would an agency requirement for inspection every 12 months be appropriate?

NHTSA is proposing to require information about the container's service life in the belief that this information would help assure that a CNG container is removed from service after its design service life expires. As commenters on the NPRM stated, this is especially important since there is a finite period during which CNG containers can be used safely. The agency is proposing 15 years because CNG containers built to follow NGV2 have a design service life of 15 years. Nevertheless, since containers may be built for a service life other than 15 years, the agency would allow a manufacturer to specify the service life length appropriate to its containers.

The agency requests comments about the need for each of these proposed items of information and alternative ways to specify this information.

b. *Label location.* In response to the NPRM, EDO and NYCFD stated that the label should include certain labeling information such as the maximum fill pressure at a location close to the fill receptacle.

NHTSA has decided to propose requirements related to the label's location. Accordingly, the agency has decided to propose that the containers be installed in a manner that ensures the visibility of the container labeling. Specifically, the agency is proposing to require the label to be near the end of the container containing the outlet valve, since such a location would help ensure that the label would be more visible during refueling. The agency notes that NGV2 contains a similar requirement.

2. Vehicle labeling

The CNG vehicle final rule did not specify requirements for the labeling of CNG fueled vehicles. In this SNPRM, the agency is proposing to amend Standard No. 303 to include two items of information.

S5.3.1 The statement: "Maximum service pressure _____ kPa (_____ psig)."

S5.3.2 The statement "See instructions on fuel container for inspection and service life."

The agency believes that the first item of information would help assure that CNG containers are not overfilled

during refueling. The second item is intended to assure that vehicle owners and operators are informed about the important safety information on container inspection. In addition, the agency is proposing that for vehicles manufactured or converted prior to the first sale to the consumer, the manufacturer provide this information in writing to the consumer, either in the owner's manual or on a one page statement. The agency requests comments about the need for vehicle labeling and written information bearing this and other information.

I. Other Safety Information

NHTSA requests comments on the following additional issues related to the safe performance of CNG containers. What are the safety implications of fast-filling CNG containers during refueling, which can result in pressure levels of 125 percent of service pressure due to the heat of pressurization? Do the initial permeation rates of CNG containers constructed of nonmetallic liners remain constant over the life of the container? What are the consequences of gas permeation from vehicles fueled by multiple CNG containers? What are the degradation characteristics of vinyl esters and thermoplastic resins for composite material? Should containers and container liners have longitudinal or circumferential welds?

J. Leadtime

NHTSA is proposing to make the requirements in this notice effective one year after publication of the final rule in the **Federal Register**. The agency believes this would be a reasonable time period for container manufacturers to test their containers and certify compliance to the additional tests being proposed in this notice. The agency anticipates that container manufacturers would readily be able to certify compliance to the proposed requirements. This is because container manufacturers already certify compliance with NGV2, which is essentially consistent with the proposed requirements. The one exception is the proposed salt spray test. The agency requests comments about the leadtime. Does one year provide sufficient time for manufacturers to certify compliance to the proposed requirements? Would the addition of the proposed salt spray test require a longer leadtime than one year?

In the meantime, prior to the standard's effective date, the industry is free to advertise containers as meeting the CNG equipment standard that will take effect in one year. Manufacturers have sought to achieve early compliance with other agency requirements[7] such as those relating to dynamic side impact protection and air bags. The agency encourages manufacturers to seek, to the extent feasible, to manufacture their CNG containers to meet these new requirements before the date the standard takes effect.

K. Benefits

As explained earlier, NHTSA anticipates that the number of CNG fuel vehicles will increase greatly in the near future, in light of directives by the Clinton Administration and legislation by Congress to develop vehicles powered by cleaner burning fuels. This notice will enhance the safety of this growing population of vehicles, since CNG containers will be required to comply with the tests in Standard No. 304. The necessity for certifying compliance with the Federal requirements will provide added assurance that the containers are safe. The benefits of the proposal to issue additional requirements applicable to CNG containers are to provide assurances of the structural integrity of the CNG containers. The agency is adding one test not currently part of NGV2 (the salt spray test) to simulate environmental roadway conditions. In addition, by helping to minimize any safety concerns associated with CNG vehicles, this rule should result in positive environmental impacts.

L. Costs

For six of the seven tests proposed, there would be no additional costs of upgrading current containers to comply with the proposed requirements, since CNG container manufacturers already comply with NGV2. Similarly, there would be no additional compliance test costs for these six tests, since the manufacturers already meet the NGV2 tests. Testing and container costs for these six tests are estimated to range from $13,800 to $30,650 per container size and type. The agency does not know whether existing containers can meet the proposed salt spray test, and what costs might be incurred if the containers do not meet the proposed test. The agency estimates that the testing and container cost for the salt spray test to range from $1,220 to $4,130. Total testing and container cost for the proposal are $15,020 to $34,780. The agency has made the criteria in some of the tests more objective than NGV2 by changing unacceptably subjective and broad terms to more measurable and therefore more objective criteria.

Rulemaking Analyses and Notices

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures NHTSA has estimated the costs of the amendments in a Preliminary Regulatory Evaluation (PRE) which has been placed in the docket for this rulemaking As discussed in that document, NHTSA estimates that total testing and container costs for this proposal are $15,020 to $34,780 per container size and type The agency believes that a CNG container which meets the current industry standard, NGV2, would also comply with the requirements of this proposal, with the exception of the salt spray test

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule would not have a significant economic impact on a substantial number of small entities. For six of the seven tests, there will be no small business impacts since the proposed standards are already being met. Comments are requested on current compliance with the salt spray test and whether this would have small business impacts. Information available to the agency indicates that the businesses manufacturing CNG fuel containers are not small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No state has adopted requirements regulating CNG containers.

D. National Environmental Policy Act

In accordance with the national Environmental Policy Act of 1969,

[7] However, the agency emphasizes that a manufacturer may not certify a container as meeting the equipment standard until the standard goes into effect. Under the statte, a certification is a statement that a vehicle or item of equipment meets all applicable Federal Motor Vehicle Standards that are then in effect. Therefore, until a standard is effective, manufacturers may not certify compliance with it

NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule would have no adverse impact on the quality of the human environment. On the contrary, because NHTSA anticipates that ensuring the safety of CNG vehicles would encourage their use, NHTSA believes that the rule would have positive environmental impacts since CNG vehicles are expected to have near-zero evaporative emissions and the potential to produce very low exhaust emissions as well.

E. Civil Justice Reform

The proposal does not have any retroactive effect. Under 49 U.S.C. 30103, 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, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure 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.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to thee submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 303; *Fuel System Integrity of Compressed Natural Gas Vehicles* and Standard No. 304: *Compressed Natural Gas Fuel Container Integrity*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

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

§ 571.303 [Amended]

2. In § 571.303, S5 would be amended to add S5.3 through S5.3.2 and S5.4 which would read as follows:

* * * * *

S5.3 Each CNG vehicle shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2. The information shall be visible during refueling, in English, and in letters and numbers that are not less than 4.76 mm (3/16 inch) high.

S5.3.1 The statement: "Maximum service pressure _____ kPa (_____ psig)."

S5.3.2 The statement "See instructions on fuel container for inspection and service life."

S5.4 When a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, or, if there is no owner's manual, on a one-page document. The information shall be in English and in not less than 10 point type.

* * * * *

3. Section 571.304, Standard No. 304; *Compressed Natural Gas Fuel Container Integrity*, would be amended by revising S7.4, adding S7.5 through S7.11, revising S8.3.2 through S8.3.4, S8.3.6, and S8.3.7, and adding S8.5 through S8.11.3, to read as follows:

§ 571.304 Standard No. 304, Compressed natural gas fuel container integrity.

* * * * *

S7.4. *Labeling.* Each CNG fuel container shall be permanently labeled, within 30.5 cm (12 inches) of the end of the container containing the outlet valve, with the information specified in paragraphs (a) through (h) of this section. The information shall be in English and in letters and numbers that are at least 12.7 mm (½ inch) high.

(a) The statement: "If there is a question about the proper use, installation, or maintenance of this container, contact _____," inserting the *CNG fuel container manufacturer's name, address, and telephone number.*

(b) The statement: "Manufactured in _____," inserting the month and year of manufacture of the CNG fuel container.

(c) The statement: "Maximum service pressure _____ kPa, _____ psig)."

(d) The symbol DOT, constituting a certification by the CNG container manufacturer that the container complies with all requirements of this standard.

(e) The container designation (e.g., Type 1, 2, 3, 4).

(f) The statement: "CNG Only."

(g) The statement: "This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months for damage and deterioration in accordance with the Compressed Gas Association (CGA) guidelines C–6 and C–6.1 for Type 1 containers and C–6.2 for Types 2, 3, and 4 containers."

(h) The statement: "Do Not Use After _____," inserting the year that is the 15th year beginning after the year in which the container is manufactured.

* * * * *

S7.5 *Environmental cycling test.* Each CNG fuel container shall not leak or permanently change in external configuration or dimensions, when tested in accordance with S8.5.

S7.6 *Charpy impact test.* Each steel container and each steel liner shall

comply with the requirements of this section. When three 5×10 mm specimens of a steel container or steel liner are tested in accordance with S8.6—

S7.6.1 Each specimen shall absorb not less than 80 J/cm² before breaking.

S7.6.2 The average of the amounts of energy absorbed by the three specimens before breaking shall be not less than 100 J/cm².

S7.7 *Gunfire test.* Each CNG fuel container shall comply with this section. When a container is tested in accordance with S8.7, no piece exceeding 30 grams in mass shall separate from the container.

S7.8 *Flaw tolerance test.* When tested in accordance with S8.8, each Type 2, Type 3, and Type 4 CNG fuel container shall not leak or permanently change in external configuration or dimensions. In addition, the cut made in accordance with S8.8 for the purpose of this test shall not increase in length, width or depth as a result of this test.

S7.9 *Pendulum impact test.* Each Type 2, Type 3, and Type 4 CNG container shall not leak, when tested in accordance with S8.9.

S7.10 *Drop test.* Each CNG fuel container shall not leak, when tested in accordance with S8.10.

S7.11 *Road salt environmental test.* Each CNG fuel container shall not leak or permanently change in external configuration or dimensions, when tested in accordance with S8.11.

* * * * *

S8.3.2 The CNG fuel container is positioned so that its longitudinal axis is horizontal. Attach three thermocouples to measure temperature on the container's bottom side along a line parallel to the container longitudinal centerline. Attach one at the midpoint of the container, and one at each end at the point where the dome end intersects the container sidewall. Subject the entire length to flame impingement, except that the flame shall not be allowed to impinge directly on any pressure relief device. Shield the pressure relief device with a metal plate.

S8.3.3 If the test container is 165 cm (65 inches) in length or less, place it in the upright position. Attach three thermocouples to measure temperature on the container's bottom side along a line which intersects the container longitudinal centerline. Attach one at the midpoint of the bottom of the container, and one each at the point where the dome end intersects the container sidewall. Subject the container to total fire engulfment in the vertical. The flame shall not be allowed to impinge directly on any pressure relief device. For containers equipped with a pressure relief device on one end, the container is positioned with the relief device on top. For containers equipped with pressure relief devices on both ends, the bottom pressure relief device shall be shielded with a metal plate.

S8.3.4 The lowest part of the container is suspended at a distance above the fire such that the container bottom surface temperatures specified in S8.3.6 are achieved.

* * * * *

S8.3.6 The fire is generated by any fuel that generates a flame temperature between 850 ° and 900 °C for the duration of the test, as verified by each of the three thermocouples in S8.3 2 or S8.3.3.

S8.3.7 The fuel specified in S8 3 6 is such that there is sufficient fuel to burn for at least 20 minutes. To ensure that the sides of the fuel container are exposed to the flame, the surface area of the fire on a horizontal plane is such that it exceeds the fuel container projection on a horizontal plane by at least 20 cm (8 inches) but not more than 50 cm (20 inches).

* * * * *

S8.5 *Environmental cycling test procedures.*

S8.5.1 Adjust a pass/fail gauge to fit the container before the test.

S8.5.2 After the removal of any protective coating or temporary coating such as oil or grease, a CNG fuel container is cycle tested as follows:

S8.5.2.1 Precondition the container's interior as follows: Fill container ½ full with water, pressurize container to 1.0 psi with hydrogen sulfide, increase pressure to 50 psi with carbon dioxide, then increase pressure to 67 percent of the service pressure with automotive grade natural gas. Maintain the pressure at room temperature for 15 days, then increase the room temperature to 60 °C (140 °F) and hold for 15 days. Depressurize the container, drain and dry. Add an amount of compressor oil sufficient to coat the interior surfaces of the container. Pressurize to 67 percent of the service pressure using automotive grade natural gas and hold for 15 days at 60 °C (140 °F) room temperature. Depressurize the container.

S8.5.2.2 Condition the container for 48 hours at zero pressure, 60 °C (140 °F) and 95 percent relative humidity. To obtain the specified temperature and relative humidity, spray with a fine spray or mist of water at 60 °C (140 °F) in a chamber held at 60 °C (140 °F).

S.8.5.2.3 For 5,000 cycles at 60 °C (140 °F) and 95 percent relative humidity, hydrostratically pressurize the container from (1) a level not more than 10 percent of the service pressure to (2) 125 percent of the service pressure.

S8.5.2.4 Stabilize at zero pressure and ambient conditions.

S8.5.2.5 For 5,000 cycles at 40 °C (−40 °F), hydrostatically pressurize the container from (1) a level not more than 10 percent of the service pressure to (2 the service pressure

S8.5.2.6 The cycling rate does not exceed 10 cycles per minute

S8.5.3 Determine that the container has not leaked or permanently changed in external configuration or dimension With respect to changes in the container's external configuration or dimension, adjust a pass/fail gauge to fit the container. Compare the measurement with the one in S8.5 1

S8.6 *Charpy impact test procedures*

S8 6 1 Cut one set of three longitudinal 5X10 mm Charpy Vee notch specimens from one container or liner Each specimen is then tested at 40° C (−40° F) in accordance with the *Methods for Notched Bar Impact Testing of Metallic Materials*, ASTM E 23

S8.7 *Gunfire test procedures* A container is pressurized with nitrogen or air to service pressure The container is then impacted by a 0.30 caliber armor-piercing projectile having a muzzle velocity of 853 meter/second (2,800 feet/second) The container is positioned so that the projectile impact point is in the container sidewall, with the trajectory passing through the container longitudinal centerline at an angle of 45 degrees and exiting through the opposite sidewall The distance from the muzzle to the test container is 46 m (50 yards)

S8.8 *Flaw tolerance test procedures*

S8.8.1 Adjust a pass/fail gauge to fit the container before the test

S8.8.2 Make a 25 4 mm (1 inch) long longitudinal cut into the outer wall of a CNG test container at its midlength The cut's depth is 0.75 mm (0.030 inch) and width is 0 75 mm.

S8.8.3 For 1,5000 cycles at ambient temperature, hydrostatically pressurize the container from (1) a level not more than 10 percent of the service pressure to (2) the service pressure

S8.8.4 Determine that the container has not leaked or permanently changed in external configuration or dimension With respect to changes in the container's external configuration or dimension, adjust a pass/fail gauge to fit the container. Compare the measurement with the one in S8 5 1 or S8.81.

S8.9 *Pendulum impact test procedures*

S8.9.1 The container is empty and at 21 °C (70 °F).

S8.9.2 A pendulum impact testing fixture is used for the test. The impact body is a steel pyramid with equilateral triangle faces and a square base. The summit and the edges of the pyramid are rounded to a radius of 3 mm (0.12 inch). The center of percussion of the pendulum coincides with the center of gravity of the pyramid. The center's distance from the axis of rotation of the pendulum is 1 meter (40 inches). The total mass of the pendulum referred to its center of percussion is 15 kg (33 pounds). The energy of the pendulum at the moment of impact is not less than 30 Nm (22.1 ft-lbf).

S8.9.3 During the test, the container is held in position by the end bosses or by the mounting brackets.

S8.9.4 The impact body strikes the test container at any point and any angle on the container.

S8.9.5 For 1,500 cycles at ambient temperature, hydrostatically pressurize the container from (1) a level not more than 10 percent of the service pressure to (2) the service pressure.

S8.9.6 Determine that the container has not leaked.

S8.10 *Drop test procedures.*

S8.10.1 The container is drop tested at ambient temperature without internal pressurization or attached valves. The container is held in a horizontal position with the bottom 3.05 meters (10 feet) above the surface onto which it is dropped. The surface is a smooth, horizontal concrete pad or flooring that is 4 inches thick.

S8.10.2 For 5,000 cycles at ambient temperature, hydrostatically pressurize the container from (1) a level not more than 10 percent of the service pressure to (2) 125 percent of the service pressure, and then for 13,000 cycles from (1) a level not more than 10 percent of the service pressure to (2) the service pressure.

S8.10.3 Determine that the container has not leaked.

S8.11 *Road salt environmental test procedures.*

S8.11.1 Adjust a pass/fail gauge to fit the container before the test.

S8.11.2 A CNG fuel container, free of any protective coating, is cycle tested as follows:

S8.11.2.1 Subject the container to a salt spray (fog) test in accordance with ASTM B–117–73, "Method of Salt Spray (Fog) Testing," for 240 hours consisting of ten successive 24 hour periods. During each period, the container shall be mounted in the middle of the chamber and exposed for 23 hours to the salt spray. The spray is not activated during the 24th hour.

S8.11.2.2 For 5,000 cycles at ambient conditions, hydrostatically pressurize the container from (1) a level not more than 10 percent of the service pressure to (2) 125 percent of the service pressure.

S8.11.2.3 Stabilize at zero pressure and ambient conditions.

S8.11.2.4 For 5,000 cycles at −40° C (−40° F), hydrostatically pressurize the container from (1) a level not more than 10 percent of the service pressure to (2) the service pressure.

S8.11.2.5 The cycling rate does not exceed 10 cycles per minute.

S8.11.3 Determine that the container has not leaked or permanently changed in external configuration or dimension. With respect to changes in the container's external configuration or dimension, adjust a pass/fail gauge to fit the container. Compare the measurement with the one in S8.11.1.

Issued on: December 9, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–31016 Filed 12–16–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC96

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants From Vernal Pools and Mesic Areas in Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for four plants: *Lasthenia conjugens* (Contra Costa goldfields), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), and *Parvisedum leiocarpum* (Lake County stonecrop). These species grow in and around the margins of vernal pools and in seasonally wet areas in northern California. Habitat loss and degradation imperil the continued existence of these plants. This proposal, if made final, would implement the protection of the Act for these plants.

DATES: Comments from all interested parties must be received by February 17, 1995. Public hearing requests must be received by February 2, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Fuller (see **ADDRESSES**) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

Lasthenia conjugens was described from specimen collected near Antioch in Contra Costa County, California (Greene 1888). Hall (1914) included the taxon within *Baeria fremontii*, however, Ferris (1958) later recognized this material as *B. fremontii* var. *conjugens*. Ornduff (1966) submerged the genus *Baeria* under *Lasthenia* and recognized the specific rank of *Lasthenia conjugens*.

Lasthenia conjugens is a showy spring annual in the aster family (Asteraceae) that grows 10 to 30 centimeters (cm) (4 to 12 inches (in)) tall and is usually branched. The leaves are opposite, light green, and usually have a feather-like arrangement with narrow clefts extending more than halfway toward the stem. The flowers are found in terminal yellow heads. The phyllaries are one-third to one-half fused; the achenes are less than 1.5 millimeters (mm) (0.06 in) long and always lack a pappus. *L. conjugens* flowers from March to June. The partially fused phyllaries and the lack of a pappus distinguish this species from *L. fremontii* and *L. burkei*, which it otherwise closely resembles.

Habitat for *Lasthenia conjugens* consists of vernal pools in open grassy areas in woodland and valley grassland communities at elevations of 1 to 445 meters (m) (3 to 1,460 feet (ft)). Historically found in such habitats in Alameda, Contra Costa, Mendocino, Santa Barbara, Santa Clara, Napa, and Solano Counties, California, this species is now apparently restricted to five localized populations in Napa and Solano Counties (California Native Plant Society (CNPS) 1978). One population is located on Travis Air Force Base, Solano County, California. All other populations are on private lands.

The type specimen for *Navarretia pauciflora* was collected from a playa 8 kilometers (km) (5 miles (mi)) north of Lower Lake, Lake County, California (Mason 1946). Day (1993) revised the

treatment of *Navarretia* and reduced *N. pauciflora* to a subspecies of *N. leucocephala*. More than a dozen species of *Navarretia* occur in the region, including several restricted to vernal pools. Five subspecies of *Navarretia leucocephala* are currently recognized (Day 1993), two of which may hybridize with *N. leucocephala* ssp. *pauciflora* (Alva Day, California Academy of Sciences, pers. comm. 1993). These two subspecies, *N. leucocephala* ssp. *bakeri* and *N. leucocephala* ssp. *plieantha*, differ from *N. leucocephala* ssp. *pauciflora* in stature, degree of hairiness, or size, number, or lobing of floral parts. The species that are being proposed for listing are not hybrids.

Navarretia leucocephala ssp. *pauciflora* is a prostrate, spreading, and much-branched annual herb in the phlox family (Polemoniaceae). This plant grows 1 to 4 cm (0.4 to 1.6 in) in height. The nearly hairless leaves are linear and entire, or parted into a few linear lobes, and 1 to 2.5 cm (0.4 to 1.0 in) long. The inflorescence is a head of 2 to 15 blue or white (fading to blue) flowers. A few spiny, leaf-like bracts below each head extend out 1.5 to 3 times the radius of the head; bracts within the head are shorter. The funnel-shaped corollas are 5 to 7 mm (0.2 to 0.3 in) long with five lobes 1.5 mm (0.06 in) long. Each corolla lobe has a single unbranched vein. The stigma has two minute lobes. *N. leucocephala* ssp. *pauciflora* flowers May to June.

Navarretia leucocephala ssp. *pauciflora* is found growing in volcanic ash substrate, clay pan vernal pools in chaparral, grassland, or mixed coniferous forest in southern Lake and Napa Counties. The subspecies has an elevation range of 450 to 850 m (1,400 to 2,800 ft) over a 50 square kilometer (sq km) (20 square mile (sq mi)) area. Historically, *N. leucocephala* ssp. *pauciflora* was known from nine sites in Napa and Lake Counties. The subspecies has become extirpated from six historic localities (CNPS 1990a). The three extant populations occur on private lands.

Navarretia plieantha was described from the margin of Bogg's Lake in Lake County, California (Mason 1946). Day (1993) revised the treatment of *Navarretia* and reduced the taxon to a subspecies of *N. leucocephala*. *N. leucocephala* ssp. *plieantha* is distinguished from *Navarretia leucocephala* ssp. *pauciflora* by its more numerous flowering heads (20 to 50 flowers versus 2 to 15), and in having three or more pairs of outer bracts with the bract lobes being forked or three-four branched from the base. It is distinguished from other congeners in the region by stature, degree of hairiness, or size, number, or lobing of floral parts.

Navarretia leucocephala ssp. *plieantha* is a prostrate annual herb in the phlox family (Polemoniaceae) that forms a mat 5 to 20 cm (2 to 8 in) wide. The leaves are 3 to 4 cm (1 to 1.6 in) long and linear or with a few widely spaced linear lobes. The inflorescence is a head composed of 20 to 50 white or blue flowers. Each head is 1.5 to 2 cm (0.6 to 0.8 in) across and is subtended by 3 to 4 leaf-like bracts that are simple-pinnate or compound-pinnate and extend out 1 to 2 times the radius of the head. The bracts within the head are shorter. The funnel-shaped corolla is 5 to 6 mm (0.2 to 0.24 in) long with five lobes each 2 mm (0.7 in) long. The stigma is two-cleft or entire. *N. leucocephala* ssp. *plieantha* flowers in May and June.

Navarretia leucocephala ssp. *plieantha* is found in dry meadows, along the margins of volcanic ash substrate vernal pools and lakes, and in open, wet ground in forest openings. It has an elevation range of 700 to 915 m (2,300 to 3,000 ft) over a 1,000 sq km (390 sq mi) area. *N. leucocephala* ssp. *plieantha* is historically known from seven locations in Lake and Sonoma Counties, California. One of the historic populations in Sonoma County has not been seen in 32 years and is considered potentially extirpated (CNPS 1987). Four population localities are found in Lake County. One population is protected on The Nature Conservancy preserve at Bogg's Lake. The remaining three extant populations are on private lands.

Parvisedum leiocarpum was described from 6.5 mi. north of Lower Lake, Lake County, California, as *Sedella leiocarpa* (Sharsmith 1940). Clausen (1946) subsequently reassigned the taxon to *Parvisedum leiocarpum*. Two similar species occur within the range of *P. leiocarpum*. *P. pentandrum* differs in having shorter petals, top-shaped flowers, and carpels with glandular bumps on the surfaces. *Crassula connata* differs in having only one to a few, four-petaled flowers above each leaf base, which are not arranged in definite cymes.

Parvisedum leiocarpum is a very low, erect to spreading, annual in the stonecrop family (Crassulaceae) with reddish stems 3 to 5 cm (1 to 2 in) tall The fleshy, succulent leaves are oblong, 4 to 5 mm (0.16 to 0.19 in) long, and fall off the stem by flowering time. The inflorescence is a cyme of campanulate yellow flowers that are crowded on the curving flowering stems in two rows The five petals are 3 to 3.5 mm (0 12 to 0.14 in) long with large, club-shaped red nectaries. The five carpels have smooth surfaces. *P leiocarpum* flowers in April and May

Parvisedum leiocarpum is found on volcanic substrate in areas of impeded drainage, such as in and along the margins of vernal pools and depressions in bedrock. The historic range of the species encompasses six collection localities within a 16 km (10 mi) radius from Siegler Springs near Lower Lake Lake County, California (California Department of Fish and Game (CDFG) 1991b). Elevations of occurrence range from 365 to 790 m (1,300 to 2,600 ft) *P. leiocarpum* has apparently been destroyed at three sites within this area (CDFG 1991b, CNPS 1990b). The extant site populations of *P leiocarpum* cover a total area of less than 1.2 hectares (ha) (3 acres (ac)). All populations occur on private lands; none are protected.

Previous Service Actions

Federal government actions on these four plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9 1975, and included *Lasthenia conjugens* as threatened; and *Navarretia pauciflora* (now known as *Navarretia leucocephala* ssp. *pauciflora*), *Navarretia plieantha* (now known as *Navarretia leucocephala* ssp. *plieantha*), and *Parvisedum leiocarpum* as endangered. The Service published a notice in the July 1, 1975 **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein The above four taxa were included in the July 1 1975, notice. On June 16, 1976 the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Navarretia pauciflora* and *Navarretia plieantha* were included in the June 16, 1976, **Federal Register** document. General

comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Lasthenia conjugens, Navarretia pauciflora, Navarretia plieantha,* and *Parvisedum leiocarpum* as category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 39526). This supplement changed *Lasthenia conjugens, Navarretia plieantha, Navarretia pauciflora,* and *Parvisedum leiocarpum* from category 1 to category 2 candidates. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

The plant notice was revised on September 27, 1985 (50 FR 39526). *Lasthenia conjugens, Navarretia pauciflora, Navarretia plieantha,* and *Parvisedum leiocarpum* were included as category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision *Lasthenia conjugens, Navarretia plieantha,* and *Parvisedum leiocarpum* were elevated to category 1 candidates. *Navarretia pauciflora* was retained as a category 2 candidate. Since the publication of that notice, the Service has received additional information on the status of *Navarretia leucocephala* ssp. *pauciflora* that supports the proposed listing of this species. The September 30, 1993, plant notice of review (58 FR 51144) included all four plant taxa as category 1 candidates.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Lasthenia conjugens, Navarretia pauciflora, Navarretia plieantha,* and *Parvisedum leiocarpum* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1983 through 1993. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lasthenia conjugens* Ornduff (Contra Costa goldfields), *Navarretia leucocephala* Benth. ssp. *pauciflora* (H. Mason) Day (few-flowered navarretia), *Navarretia leucocephala* Benth. ssp. *plieantha* (H. Mason) Day (many-flowered navarretia), and *Parvisedum leiocarpum* (H. Sharsm.) R.T. Clausen (Lake County stonecrop) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

The primary threats to *Lasthenia conjugens, Navarretia leucocephala* ssp. *pauciflora, Navarretia leucocephala* ssp. *plieantha,* and *Parvisedum leiocarpum* consist of activities that result in the destruction of the plants or hydrologic changes in their vernal pool habitats. Such activities include urbanization, industrial development, agricultural land conversion, off-highway vehicle use, horseback riding, trampling by grazing cattle, and road widening. Damage or destruction of vernal pool habitat happens quickly and easily due to the extremely friable nature of the soil and the dependency of the pool upon an intact durapan or impermeable subsurface soil layer.

Lasthenia conjugens is no longer found in five of the seven counties in which it historically occurred. Agricultural land conversion, urbanization, and associated developments have extirpated populations of this species in Alameda, Contra Costa, Santa Clara, and Santa Barbara Counties (CNDDB 1993, CNPS 1978). Agricultural land conversion has extirpated one additional population of *L. conjugens* in Napa County (CNDDB 1993). Widening and straightening of Ledgewood Creek north of Cordelia Road in Solano County by the U. S. Army Corps of Engineers eliminated a large amount of habitat and plants of *L. conjugens* (Ann Howald, CDFG, pers. comm., 1993). Urbanization threatens a population of *L. conjugens* in Napa County (CNDDB 1993; Jake Ruygut, CNPS, *in. litt.*, 1993). Off-highway vehicle traffic has adversely impacted this same population (CNDDB 1993). Industrial development threatens a population of *L. conjugens* in Solano County (CNDDB 1993).

Navarretia leucocephala ssp. *pauciflora* has disappeared at over 50 percent of the sites from which it historically occurred. Extant populations continue to decline due to anthropogenic activities. Two population sites have been adversely affected by drainage or, in one case, by the attempt to create a more permanent water source (CDFG 1989b). One partially drained site, Manning Flat in Lake County, has experienced significant accelerated soil erosion, reducing the amount of available habitat and the plant population (McCarten 1985; CDFG 1989b). Off-highway vehicle use has damaged several population sites in Lake County (CDFG 1989b; CNDDB 1993). Agricultural land conversion to a rice field adversely affected another population site in Lake County (CDFG 1989b). Pond construction for cattle watering partially destroyed the population of *N. leucocephala* ssp. *pauciflora* at Ely Flat in Lake County and severely altered the hydrology of its habitat (CDFG 1989b). Agricultural land conversion threatens this same population (CDFG 1989b; CNPS 1990a).

Navarretia leucocephala ssp. *plieantha* has apparently been extirpated at one population site in Sonoma County. This area has been severely impacted by horseback riding, feral pigs (*Sus scrofa*), and a tree eradication program (CNDDB 1993; John Herrick, CNPS, pers. comm., 1993). Off-highway vehicle use has resulted in the destruction of plants and habitat of this subspecies at one location in Sonoma County, and at four population sites in Lake County (CDFG 1991a). Urbanization threatens one population site in Lake County and the extant

population site in Sonoma County (CNDDB 1993). Attempted drainage of a pool in Lake County containing *Navarretia leucocephala* ssp. *plieantha* has resulted in the invasion of two competitive weeds, *Centaurea solstitialis* and *Taeniatherum caput-medusa* (CNDDB 1993).

Parvisedum leiocarpum has been extirpated from 50 percent of its historic population sites. Attempted drainage has altered the hydrology of two of the three remaining vernal pools containing populations of this plant (CNPS 1990b). Drainage attempts at one of the sites resulted in severe erosion and a reduction of habitat and plant numbers (CNPS 1990b). Widening of Highway 29 by California Department of Transportation also threatens to impact this population (CNPS 1990b). Discing has occurred at the third population site (CNDDB 1993). All population localities occur on privately owned, flat land next to major roads. This makes them vulnerable to urban development and agricultural land conversion (CDFG 1989a, CNPS 1990b). Off-highway vehicle use has occurred at two of the three *P. leiocarpum* population sites (CNDDB 1993, CNPS 1990b).

Population sites for each of the four species are impacted by trampling from grazing cattle and by feral pigs. Trampling by livestock threatens all populations of *Parvisedum leiocarpum* (CDFG 1989a).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Due to the localized and limited distribution of *Lasthenia conjugens*, *Navarretia leucocephala* ssp. *pauciflora*, *Navarretia leucocephala* ssp. *plieantha*, and *Parvisedum leiocarpum*, indiscriminate collecting of plants could seriously affect these species. Overutilization is not known to occur at this time.

C. Disease or Predation

Not known to be applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of California Fish and Game Commission has listed *Parvisedum leiocarpum* and *Navarretia plieantha* (now known as *Navarretia leucocephala* ssp. *plieantha*) as endangered species under the California Endangered Species Act (Chapter 1.5 Section 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). The California Fish and Game Commission also has listed *Navarretia pauciflora* (now known as *Navarretia leucocephala* ssp. *pauciflora*) as threatened. Listing by the State of California requires individuals to obtain a memorandum of understanding with the CDFG to possess or "take" a listed species. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, Chapter 10 Section 1908 and California Endangered Species Act, Chapter 1.5 Section 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Chapter 10 Section 1913).

The California Environmental Quality Act ((CEQA) Public Resources Code Sections 21000–21177) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered, but are not so listed, are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Section 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependant upon the discretion of the agency involved.

Because vernal pools are generally small and scattered, they are treated as isolated wetlands or waters of the United States for regulatory purposes by the U. S. Army Corps of Engineers under section 404 of the Clean Water Act. The Clean Water Act regulates discharge of fill material into wetlands but does not itself protect the plants. Nationwide Permit No. 26 (33 CFR part 330.5 (a)(26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands up to 4 ha (10 ac). For project proposals falling under Nationwide Permit No 26 the Corps has been reluctant to withhold authorization unless a federally listed threatened or endangered species is known to be present, regardless of the significance of other wetland resources. The section 404 regulations require an applicant to obtain an individual permit to fill isolated wetlands or waters greater than 4 ha (10 ac). A project proponent affecting wetland fill of less than one acre is only required to notify the Corps of their intent to fill wetlands. Compensatory mitigation generally is not required for projects affecting less than one acre. In either case, candidate species receive no special consideration Additionally and equally important upland watersheds are not provided any protection. Disturbance to or loss of pool hydrological conditions has damaged populations and habitat as discussed previously in Factor A Reductions in water volume and inundation adversely affect all four plants. Thus, as a consequence of the small scale of vernal pools and lack of protection of associated uplands, these vernal pools receive insufficient protection.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

These four plant species are restricted in range and population numbers *Lasthenia conjugens* is currently known from five population sites, *Navarretia leucocephala* ssp *pauciflora* from three sites, *Navarretia leucocephala* ssp *plieantha* from four sites, and *Parvisedum leiocarpum* from three sites All four species occupy highly restricted and vulnerable habitats The combination of low populations, narrow range, and restriction and vulnerability of habitat make these plants susceptible to destruction of all or a significant part of any population from random natural events such as flood, drought, disease or other natural occurrences Low population numbers also make the populations vulnerable to genetic variations. Changes in gene frequency inbreeding, and genetic drift can result from populations becoming genetically depauperate

The Service has carefully assessed the best scientific and commercial information available regarding the past present, and future threats faced by these species in determining to propose this rule Based on this evaluation the preferred action is to list *Lasthenia conjugens*, *Navarretia leucocephala* ssp *pauciflora*, *Navarretia leucocephala* ssp *plieantha*, and *Parvisedum leiocarpum* as endangered. Endangered status is

appropriate for these four species due to the vulnerability of their restrictive habitats, threats posed to those habitats by urbanization, agricultural land conversion, drainage, road widening, off-highway vehicle use, stochastic events, and inadequate regulatory mechanisms. Critical habitat is not proposed for these species for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for these species at this time. Because the four species face numerous anthropogenic threats (see Factors A, B, and E in the "Summary of Factors Affecting the Species") and occur predominantly on private land, Federal actions affecting these species are limited. Designating critical habitat would not provide any additional protection to the species. The publication of precise maps and descriptions of critical habitat in the **Federal Register** may make the plants even more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of the four plant species. Thus, designation of critical habitat would not be beneficial and is accordingly, not prudent. Responsible agencies will be notified of the importance of protecting the habitat of the species. Protection of the species' habitat will be addressed through the recovery process and, under limited circumstances, through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement may include Federal mortgage programs, including the Veterans Administration and the U.S. Department of Housing and Urban Development (Federal Home Administration loans), the Federal Highway Administration in the case of impacts from federally funded bridge and road construction, the Army Corps of Engineers through jurisdiction of section 404 of the Clean Water Act, the Environmental Protection Agency through the Clean Water Act's provisions for pesticide registration and waste management actions, and proposed activities on Travis Air Force Base.

Listing *Lasthenia conjugens*, *Navarretia leucocephala* ssp. *pauciflora*, *Navarretia leucocephala* ssp. *plieantha*, and *Parvisedum leiocarpum* as endangered would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The recovery plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of these four plants. Additionally, pursuant to section 6 of the Act, the Service would be more likely to grant funds to affected states for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the four plants from the four counties in northern California, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or remove and reduce to possession federally listed plant species from areas under Federal jurisdiction; maliciously damage or destroy any such plant species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the four species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241, FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lasthenia conjugens*, *Navarretia leucocephala* ssp. *pauciflora*, *Navarretia leucocephala* ssp *plieantha*, and *Parvisedum leiocarpum*;

(2) The location of any additional populations of these species and the

reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Kenneth W. Fuller, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted

2. Section 17.12(h) is amended by adding the following, in alphabetical order, under the plant families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historical range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	* *		*	*		*
Asteraceae—aster family:						
* *	* *		*	*		*
Lasthenia conjugens	Contra Costa goldfields	U.S.A. (CA)	E		NA	NA
* *	* *		*	*		*
Crassulaceae—stonecrop family:						
* *	* *		*	*		*
Parvisedum leiocarpum	Lake County stonecrop	U.S.A. (CA)	E		NA	NA
* *	* *		*	*		*
Polemoniaceae—phlox family:						
* *	* *		*	*		*
Navarretia leucocephala ssp. *pauciflora* (-*Navarretia pauciflora*).	Few-flowered navarretia	U.S.A. (CA)	E		NA	NA
* *	* *		*	*		*
Navarretia leucocephala ssp. *plieantha* (-*Navarretia plieantha*).	Many-flowered navarretia	U.S.A (CA)	E		NA	NA
* *	* *		*	*		*

Dated: November 9, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–31064 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 242
Monday, December 19, 1994

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

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Rajeev Sharma, Individually and Formerly Doing Business as Libra Electronics, Inc.

In the Matter of: Rajeev Sharma, individually and formerly doing business as Libra Electronics, Inc., Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Rajeev Sharma, individually and formerly doing business as Libra Electronics, Inc. (hereinafter collectively referred to as Sharma), of its intention to initiate an administrative proceeding against him pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act),[1] and Part 788 of the Export Administration Regulations (the Regulations), based on allegations that, on four separate occasions between approximately May 4, 1988 and approximately July 13, 1988, Sharma exported U.S.-origin computers and accessories from the United States to Australia, without obtaining the validated licenses required by Section 772.1(b) of the Regulations;

The Department and Sharma having entered into a Consent Agreement whereby the Department and Sharma have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Consent Agreement having been approved by me;

It is therefore ordered, that, first, a civil penalty of $20,000 is assessed against Sharma. Payment of the $20,000 civil penalty shall be suspended in its entirety for a period of two years beginning on the date of entry of this Order, and shall thereafter be waived provided that, during the period of suspension, Sharma has committed no violation of the Act or any regulation, order, or license issued under the Act.

Second, Rajeev Sharma, individually and formerly doing business as Libra Electronics, Inc., 5255 Via Cartagena, Yorba Linda, California 92687, shall, for a period of two years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States and subject to the Regulations.

A. All outstanding individual validated export licenses in which Sharma appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Sharma's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Sharma by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

D. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public, and this Order shall be published in the **Federal Register.**

This Order is effective immediately.

Entered this 9th day of December, 1994.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 94–31154 Filed 12–16–94; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12934 (59 FR 43437 (1994)) continued the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Termination.

SUMMARY: In response to a request by a petitioner and a respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers seven firms and the period September 1, 1992, through August 31, 1993. The review indicates the existence of margins for the firms.

As a result of this review, we preliminarily determine to assess antidumping duties equal to the difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230; telephone (202) 482–4195 or 482–3814, respectively.

Background

On September 20, 1991, the Department published the antidumping duty order on chrome-plated lug nuts from Taiwan. The Department published a notice of "Opportunity to Request Administrative Review" on September 7, 1993 (58 FR 47116). The petitioner, Consolidated International Automotive, Inc. (Consolidated), and a respondent, Gourmet Equipment (Taiwan) Corporation (Gourmet), requested that we conduct an administrative review for the period September 1, 1992, through August 31, 1993. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on October 18, 1993 (58 FR 53710), for the following firms: Buxton International, Gourmet, Chu Fong Metallic Industrial Corporation (Chu Fong), San Chien Electric Industrial Works, Ltd. (San Chien), Everspring Plastic Corp. (Everspring), Kuang Hong Industries Co., Ltd. (Kuang), and Transcend International Co. (Transcend). Questionnaires were sent to Buxton, Everspring, Kuang, Transcend, Gourmet, Chu Fong, and San Chien. Everspring responded that it has never sold the subject merchandise. Only Gourmet and Buxton responded to the questionnaire.

The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than $1\frac{1}{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least $\frac{3}{4}$ inches (19.05 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of this review.

During the period of review (POR), chrome-plated lug nuts were provided for under subheading 7318.16.00.10 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Use of Best Information Available (BIA)

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department determines, on a case-by-case basis, what constitutes BIA. For the purposes of these preliminary results, we applied the following two-tier BIA analysis where we were unable to use a company's response for purposes of determining a dumping margin (*see Final Results of Antidumping Duty Administrative review of Antifriction Bearings and Parts Thereof from France, et al.*, 58 FR 39739, July 26, 1993):

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, we used as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperates with our requests for information and, substantially cooperates in verification, but fails to provide the information requested in a timely manner or in the form required or was unable to substantiate it, we used as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Chu Fong, Kuang, Transcend, and San Chien failed to respond to the Department's questionnaire. Accordingly, for these companies we applied the first-tier BIA rate of 10.67 percent, which is the highest rate the Department found in the original LTFV investigation.

Gourmet and Buxton provided us with responses to our questionnaires. However, the Department determined that the data Gourmet submitted could not be reconciled to its audited financial statements. Reliance on the accounting system used for the preparation of the audited financial statements is a key and vital part of the Department's determination that a company's sales and constructed value data are credible. An "in-house" system which has not been audited and is not used for the preparation of the financial statements or for any purpose other than internal deliberations of the company does not assure the Department that such costs have been stated in accordance with generally accepted accounting principles, or that all sales and costs have been appropriately captured by the "in-house" system (*see Final Determination at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Korea*, 58 FR 37186 (July 9, 1993)). Because their submissions were unreconcilable to their audited financial statements, we have determined to apply BIA to Gourmet and Buxton, (*see* Use of BIA memo to Holly Kuga, Director, Office of Antidumping Compliance). Accordingly, we applied the second-tier BIA rate of 6.47 percent to Gourmet and 6.93 percent to Buxton. These rates represent the highest rates ever applicable to each firm.

Everspring responded that it never sold the subject merchandise, and we have no information to contradict this claim. If Everspring begins to sell the subject merchandise, it entries will receive the "all other rate" cash deposit rate until we conduct an administrative review upon request.

Preliminary Results of Review

We have preliminarily determined that the following margins exist for the period September 1, 1992, through August 31, 1993:

Manufacturer/exporter	Margin (percent)
Gourmet Equipment (Taiwan) Corporation	6.47
Buxton International	6.93
Chu Fong Metallic Industrial Work Co., Ltd	10.67
Transcend International	10.67
Kuang Hong Industrial Works	10.67
San Chien Industrial Works, Ltd	10.67
Everspring Corporation	6.93

The Department shall determine and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions concerning these respondents directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed firms will be those firms' rates established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the "all others" rate will remain at 6.93 percent as established in the LTFV investigation.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all other" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to apply the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposit in all current and future administrative reviews. The "all others" rate in the LTFV investigation was 6.93 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and a hearing within 10 days of the date of publication. Any hearing requested will be held as early as convenient for parties but not later than 44 days after date of publication, or the first workday thereafter. Case briefs, or other written comments, from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of review, including its results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31138 Filed 12–16–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–614–801]

Fresh Kiwifruit From New Zealand; Amended Final Results of Antidumping Administrative Review

Date: December 8, 1994.

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

ACTION: Notice of Amendment of Final Results of Antidumping Duty Administrative Review.

SUMMARY: We are amending the final results of the administrative review of the antidumping duty order on fresh kiwifruit from New Zealand published on September 22, 1994, to reflect the correction of ministerial errors made in the margin calculations in those final results. We are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATES: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ann Ngo or Thomas F. Futtner, Office of Antidumping compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5346 or 482–3814, respectively.

Background

The review covers one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB), and the period November 27, 1991, through May 31, 1993. The Department of Commerce (the Department) published the preliminary results on May 6, 1994 (59 FR 23691) and the final results on September 22, 1994 (59 FR 48596) of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand.

Scope of the Review

The product covered by the order under review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of the order. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Amendment of Final Results

On October 18, 1994, NZKMB alleged that the Department made clerical errors in its final results of review. First, NZKMB argued that the Department used an incorrect data set when calculating third-country weighted-average prices. Second, NZKMB argued that in calculating foreign market value the Department used an incorrect amount for third-country packing costs. Third, NZKMB argued that the Department failed to use the correct quantity adjustment information for U.S. sales in its calculations.

Petitioners, the California Kiwifruit Commission, have argued that the respondent's allegation of clerical errors submitted on October 18, 1994, was untimely because it was based on a computer program provided at the disclosure on October 5, 1994 (*see* 19 CFR 353.28(b)).

We disagree with petitioners that the respondent's submission alleging clerical error was untimely. The disclosure documents released by the Department to the respondent on October 5, 1994, did not include the computer program for the calculation of the weighted-average third-country price and therefore were incomplete. This computer program was then provided to the respondent on October 11, 1994. Thus, full disclosure occurred on October 11, 1994. Therefore, in accordance with 19 CFR 353.28(6), the deadline for submission of allegations of clerical errors regarding our calculations was October 18, 1994. We received the respondent's allegation of clerical errors in a timely fashion on October 18, 1994, and have therefore analyzed it and amended our calculations accordingly. Specifically, we: (1) Amended the calculations to use the correct data set in the calculation of third-country weighted-average prices, (2) revised third-country packing costs, (3) corrected the results for the quantity adjustment information for U.S. sales.

Final Results of Review

Upon review of comments submitted, the Department has determined that the following margin exists for the period November 27, 1991, through May 31, 1993:

Manufacturer/Exporter	Margin (percent)
New Zealand Kiwifruit Marketing Board	10.18

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for the reviewed firm will be 10.18%; and (2) the cash deposit rate for merchandise exported by all other manufacturers and exporters who are not covered by this review will be the "all others" rate of 98.60 percent established in the less-than-fair-value investigation, in accordance with *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (1993), and *Federal Mogul Corporation*, 822 F.Supp. 782 (1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(f) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: December 8, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–31140 Filed 12–16–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–050]

Racing Plates (Aluminum Horseshoes) From Canada; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on racing plates from Canada. The review covers one firm and the period February 1, 1993, through January 31, 1994.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1974 (39 FR 7579), the Department of Treasury published the antidumping finding of racing plates (aluminum horseshoes) from Canada. The Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" on February 4, 1994 (59 FR 5390). The respondent, Equine Forgings Limited, requested that we conduct an administrative review for the period February 1, 1993, through January 31, 1994. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on March 14, 1994 (59 FR 11769) for Equine Forgings Limited.

The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of racing plates (horseshoes) that are made of aluminum, may have cleats or caulks, and come in a variety of sizes. They are used on race horses, polo, jumping, hunting, and other performing horses, as differentiated from pleasure and work horses. During the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7616.90.00. This HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

United States Price

In calculating USP, the Department used purchased price, as defined in section 772 of the Tariff Act, since sales to the first unrelated purchaser were made prior to the date of importation. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. We made deductions,

where appropriate, for inland freight, U.S. duty, and brokerage/handling charges. We adjusted USP for taxes in accordance with our practice as outlined in *Silicomanganse from Venezuela, Preliminary Determination of Sales at Less Than Fair Value* (59 FR 31204, June 17, 1994). No other adjustments were claimed or allowed.

Foreign Market Value

In calculating FMV, we used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison.

Home market price was based upon the packed f.o.b. price to unrelated purchasers in Canada, with appropriate deductions for rebates. We adjusted for Canadian value-added tax in accordance with our decision *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value* (59 FR 31204, June 17, 1994).

In accordance with the Court of Appeals for the Federal Circuit's decision in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Grey Portland Cement v. United States*, No. 93–1239, (January 5, 1994), we no longer deduct home market movement expenses from FMV pursuant to the Department's inherent power to fill in gaps in the antidumping statute. Accordingly, we now adjust for such expenses under the circumstance-of-sale provision of 19 CFR 352.56 and the ESP offset provision of 19 CFR 353.56(b)(1)(2), as appropriate. As a result, we have not adjusted for Equine Forging's reported home market inland freight as movement expenses. Rather, we have treated Equine Forging's reported post-sale inland freight as a direct selling expense, which we have deducted from FMV.

Preliminary Results of Review

We have preliminarily determined that the following margin exists for the period February 1, 1993, through January 31, 1994:

Manufacturer/Exporter	Margin (percent)
Equine Forgings Limited	0.01

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review. If the rate in the final results of review for Equine Forgings Limited is *de minimis*, there will be no cash deposits required on shipments from this firm. (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period. (3) If the exporter is not a firm covered in this review, a previous review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to apply the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purpose of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for purposes of this review will be 6.77 percent, the "new shipper" rate established in the final results of administrative review published by the Department (47 FR 51779, November 17, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within 5 days of the date of publication of this notice, and a hearing within 10 days of the date of publication. Any hearing requested will be held as early as convenient for parties but no later than 44 days after the date of publication, or the first workday thereafter. Case briefs, or other written comments, from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of review, including its results of its analysis of issues raised in any such written comments or at a hearing.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31139 Filed 12–16–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–614–701]

Determination Not To Revoke Countervailing Duty Order; Certain Steel Wire Nails From New Zealand

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

ACTION: Notice of Determination Not To Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order on steel wire nails from New Zealand.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1994, the Department published in the **Federal Register** (59 FR 49643) its intent to revoke the countervailing duty order on steel wire nails from New Zealand (52 FR 37196; October 5, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation and no interested party requests an administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received objections from domestic interested parties to our intent to revoke this countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke this order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: December 13, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–31141 Filed 12–16–94; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Members of the Performance Review Board

AGENCY: Corporation for National and Community Service.

ACTION: List of Performance Review Board Members.

SUMMARY: The Corporation publishes the revised list of positions which comprise the Performance Review Board established under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, Corporation for National and Community Service (CNCS), 1201 New York Avenue, NW., Room 7309, Washington, DC 20525, (202) 606–5000, extension 321.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisals of senior executives' performance, make recommendations to the appointing authority concerning their performance, to include performance bonuses and to make recommendations for recertification.

The incumbents of the following positions will serve as members of the CNCS Performance Review Board.

1. Chief Operating Officer—Chairman
2. Comptroller
3. General Counsel

Issued in Washington, DC on December 9, 1994.

Eli Segal,

Chief Executive Officer

[FR Doc. 94–31153 Filed 12–16–94; 8:45 am]

BILLING CODE 6050–28–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment, Amendment and Adjustment of Import Limits and Amendment of a Restraint Period for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

December 14, 1994.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing, amending and adjusting limits and amending a restraint period.

EFFECTIVE DATE: December 20, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The Bilateral Textile Agreement of December 10, 1994 between the Governments of the United States and the People's Republic of Bangladesh establishes limits for the periods February 1, 1994 and through December 31, 1994 and December 1, 1994 through December 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current limits for certain categories for the new restraint period beginning on February 1, 1994 and extending through December 31, 1994. These amended limits include special carryforward, as well as flexibility previously applied Also, the new limit established for Categories 352/652 for the period December 1, 1994 through December 31, 1994 has been adjusted for carryforward and special carryforward. As a result of the amendments to Categories 340/640 and 634, these limits, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 4039, published on January 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

December 14, 1994

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1994 and extends through January 31, 1995.

Effective on December 20, 1994, you are directed, pursuant to the Bilateral Textile Agreement of December 10, 1994 between the Governments of the United States and the People's Republic of Bangladesh, to amend the current restraint period to end on December 31, 1994 at the adjusted limits listed below. Also, you are directed to establish a limit at 1,210,000 dozen [1] for Categories 352/652 for the period December 1, 1994 through December 31, 1994

[1] The limit has not been adjusted to account for any imports exported after November 30, 1994

Category	Adjusted eleven-month limit[a]
237	386,680 dozen
331	979,638 dozen pairs.
334	122,843 dozen.
335	211,811 dozen.
336/636	364,124 dozen.
338/339	1,001,185 dozen.
340/640	2,602,866 dozen.
341	2,156,239 dozen.
342/642	315,315 dozen.
347/348	1,932,163 dozen.
351/651	592,500 dozen.
363	23,149,740 numbers.
369–S[b]	1,354,399 kilograms.
634	432,778 dozen.
635	280,390 dozen.
638/639	1,094,804 dozen.
641	946,407 dozen.
645/646	281,880 dozen.
647/648	1,018,307 dozen.
847	704,828 dozen.

[a]The limits have not been adjusted to account for any imports exported after January 31, 1994.

[b]Category 369–S: only HTS number 6307.10.2005.

Textile products in Categories 352/652 which have been exported to the United States prior to December 1, 1994 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–31223 Filed 12–15–94; 2:19 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Marine Mammals

AGENCY: Advanced Research Projects Agency.

ACTION: Notice of public hearing on draft environmental impact statement; change in public comment period.

SUMMARY: The Advanced Research Projects Agency (ARPA), in cooperation with the National Marine Fisheries Service (NMFS), and the University of California, San Diego (UCSD) as the state lead agency, announced notice on December 2, 1994 (59 FR 61882) of a public hearing on a draft environmental impact statement/environmental impact report EIS/EIR) for the California Acoustic Thermometry of Ocean Climate (ATOC) Project and its associated Marine Mammal Research Program. This notice is to extend the public comment period to January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Advanced Research Projects Agency, Attn: Dr. Ralph W. Alewine, III, (703) 696–2246.

Dated: December 13, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–31033 Filed 12–16–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; and OMB Control Number: Freight Carrier Qualification Statement/Required Documents; MT Forms 377–R, 380–R, and 381–R; OMB Control Number 0702–0088

Type of Request: Reinstatement

Number of Respondents: 1,400

Responses per Respondent: 1

Annual Responses: 1,400

Average Burden per Response: 8.5 hours

Annual Burden Hours: 11,900

Needs and Uses: The information collected hereby, enables the Military Traffic Management Command (MTMC) to determine the capability of carriers to perform quality service transporting Department of Defense freight. The information which the carriers furnish MTMC assists in determining if individuals or associated companies are affiliated with government-debarred carriers, as well as in determining carriers' financial stability

Affected Public: Businesses or other for-profit; Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce WHS/DIOR, 1215 Jefferson Davis Highway Suite 1204, Arlington, VA 22202–4302.

Dated: December 13, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–31031 Filed 12–16–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: National Civic Outreach Program

Type of Request: New collection

Average Burden Hours/Minutes per Response: 10 minutes

Responses per Respondent: 1

Number of Respondents: 2,500

Annual Burden Hours: 417

Annual Responses: 2,500

Needs and Uses: This information collection is used to analyze and determine the effectiveness of the National Civic Outreach Program. Since our customers are the public (civic organizations, business leaders, etc.) these surveys provide the most accurate source of information to evaluate this program

Affected Public: Individuals or households, businesses or other for-profit, small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. William P Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway Suite 1204, Arlington, Virginia 22202–4302.

Dated: December 13, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–31032 Filed 12–16–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12 January 1995.

Time of Meeting: 0930–1700.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Study Panel to monitor the Army's implementation of the ASB 1994 Summer Study "Technical Architecture for C4I" will have a working session in the Pentagon on the above mentioned date. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–31155 Filed 12–16–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.217]

Ronald E. McNair Postbaccalaureate Achievement Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: The purpose of this program is to provide grants for higher education institutions to prepare low-income, first-generation college students, and students from groups underrepresented in graduate education, for doctoral study. This program supports the National Education Goals by funding projects designed to increase the number of United States undergraduate and graduate students, especially minorities, who complete advanced degrees in numerous disciplines, including the fields of mathematics and science.

Eligible Applicants: Institutions of higher education and combinations of those institutions.

Deadline for Transmittal of Applications: February 3, 1995.

Deadline for Intergovernmental Review: April 4, 1995.

Applications Available: December 23, 1994.

Available Funds: $17,900,000.

Estimated Range of Awards: $190,000—$250,000 per year.

Estimated Average Size of Awards: $195,000 per year.

Estimated Number of Awards: 92.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 647 as published in the **Federal Register** on August 25, 1994 (59 FR 43986–92).

For Applications or Information Contact: Eileen S. Bland, Special Services Branch, Division of Student Services, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–5249. Telephone: (202) 708–4804. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–15.

Dated: December 13, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–31099 Filed 12–16–94; 8:45 am]

BILLING CODE 4000–01–P

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: January 26, 1995, from 1 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 703A/727A, 200 Independence Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644 Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to (1) Update the membership on the reauthorization IDEA, and (2) finalize the FICC strategic plan.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the

meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays except Federal holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–31144 Filed 12–16–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Issuance of Proposed Decisions and Orders During the Week of November 14 through November 18, 1994

Office of Hearings and Appeals

During the week of November 14 through November 18, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 C.F.R. Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, 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: December 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Farm, Fuel & Feed, Kuna, Idaho, LEE–0164, Reporting Requirements

Farm, Fuel & Feed 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 November 14, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Hood River, Supply Association, Hood River, OR, LEE–0134, Reporting Requirements

Hood River Supply Association 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 serious hardship or gross inequity. Accordingly, on November 14, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–31134 Filed 12–16–94; 8:45 am]

BILLING CODE 6450–01–P

Oak Ridge Operations Office; Financial Assistance Award; United States Automotive Materials Partnership

AGENCY: Department of Energy.

ACTION: Notice of intent to award an unsolicited application financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), Oak Ridge Operations Office, announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Cooperative Agreement Number DE–FC05–950R22363 to the United States Automotive Materials Partnership (USAMP). USAMP is a consortium of Chrysler Corporation, Ford Motor Company, and General Motors Corporation. The proposed cooperative agreement will provide estimated funding in the amount of $1,660,000 by the DOE for a project entitled, "Automotive Lightweight Materials Program". The purpose of this effort is to define and conduct pre-competitive, vehicle-related research and development (R&D) in materials and materials processing which will improve the competitiveness of the U.S. automotive industry. USAMP goals are to develop several families of automotive materials that will impact strategic needs of the industry. These funds will be matched equally by USAMP under this cooperative agreement.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, ORNL Site Office, Energy Programs Division, ATTN: Mary H. Rawlins, ER–11, Bethel Valley Road, Oak Ridge, TN 37831–6269.

SUPPLEMENTARY INFORMATION: The DOE has determined in accordance with 10 CFR 600.14(f), that the unsolicited application for financial assistance submitted by USAMP, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The applicant is a consortium of the three largest automotive manufacturers in the United States. These competitive companies have come together as several consortia under the United States Council for Automotive Research (USCAR) to work together to jointly advance "precompetitive" automotive technologies.

The anticipated term of the proposed cooperative agreement is one year from the effective date of the award. This award will not be made for at least 14 days after publication to allow for public comment.

Issued in Oak Ridge, Tennessee, on December 8, 1994.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 94–31136 Filed 12–16–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before January 18, 1995. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 254–5346.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–890
3. 1905–0189
4. Clean City Vehicle Fleet Survey
5. Revision
6. On occasion
7. Voluntary
8. State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
9. 30,000 respondents
10. 1 response
11. .048 hours per response
12. 1,430 hours respondent burden
13. EIA–890 will be used to collect data on private and local government fleets of motor vehicles. Data will be used to meet the objectives of the Energy Policy Act. Respondents will consist of a sample of all fleets in 5 metropolitan areas. (The Atlanta area was surveyed in 1994 and the Denver area has been selected as the second metropolitan area for this survey.)

Statutory Authority: Sec. 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. § 3506(a) and (c)(1).

Issued in Washington, D.C., December 12, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–31135 Filed 12–16–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–33–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Tariff Filing

December 13, 1994.

Take notice that on December 9, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing in response to the November 30, 1994, Letter Order issued in the above-referenced docket, Substitute First Revised Sheet No. 243 to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that in the November 30 Letter Order, the Commission rejected Williston Basin's proposed deletion of certain language in First Revised Sheet No. 243. Williston Basin states that on the apparent assumption that the only change contained in First Revised Sheet No. 243 was the deletion of that language, the Letter Order rejected the entirety of the sheet. However, it states, that sheet also contained changes that were necessitated by the changes made to the tariff sheets that were accepted by the Letter Order.

Williston Basin states that it is resubmitting the tariff sheet in question with the previously stricken language included along with the changes necessary to conform Sheet No. 243 with the accepted tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31053 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–68–000]

Alabama-Tennessee Natural Gas Company; Notice of Report of Refunds

December 13, 1994.

Take notice that on September 9, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing its report concerning refunds it received from its historical, upstream natural gas pipeline supplier, Tennessee Gas Pipeline Company (Tennessee), in connection with Tennessee's settlement of various matters in Docket No. RP91–203–000, et al.

Alabama-Tennessee states that the refund includes principal amounts for the period prior to Tennessee's

Restructuring under Order No. 636 (February 1, 1993 through August 31, 1993) and interest through June 3, 1994 at the FERC interest rate in accordance with Section 154.67(c)(2) of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice Procedure 18 CFR 385.211. All such protests should be filed on or before December 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31049 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–109–000]

CNG Transmission Corporation; Application

December 13, 1994.

Take notice that on December 2, 1994, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26031, filed in an abbreviated application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing CNG to construct and operate, for the transmission of natural gas, 4.73 miles of 30-inch underground pipeline in Rotterdam Township, Schenectady County, New York, all as more fully set forth in the application which is one file with the Commission and open to public inspection. The construction cost is estimated by CNG to be $7,991,600 dollars. The proposed facility, designated CNG's TL–450 Extension 5, is needed by CNG to continue to maintain pressure requirements and meet post Order No. 636 obligations for Niagara Mohawk Power Corporation's distribution system serving the Albany, New York area.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 3, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31050 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–219–000]

Columbia Gulf Transmission Company; Notice of Informal Settlement Conference

December 13, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on December 20, 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 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, contact Edith A. Gilmore at (202) 208–2158 or Hollis J. Alpert at (202) 208–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31051 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–85–000]

Mississippi River Transmission Corporation; Notice of Proposed Change in FERC Gas Tariff

December 13, 1994.

Take notice that on December 7, 1994, Mississippi River Transmission Corporation (MRT), submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet NO. 9A, proposed to be effective November 1, 1994.

MRT states that the purpose of the filing is to retire Original Sheet No. 9A which provided for the billing of certain Account Nos. 191 and 858 costs during October, 1994, and reserve Sheet No. 9A for future use.

MRT states that a copy of the filing has been mailed to all of its former jurisdictional sales customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31052 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–284–000]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

December 12, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket Nos. ER94–284–000, ER94–1007–000 and ER94–1047–000]

Take notice that on October 31, 1994, Wisconsin Public Service Corporation tendered for filing a supplement to its March 15, 1994 filing in the above-referenced dockets.

Comment date: December 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–258–000]

Take notice that on December 5, 1994, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with Orange & Rockland Utilities, Inc. (O&R) to provide for the sale of energy and capacity subject to cost based ceiling rates. The ceiling rate for energy is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr, plus transmission costs, where the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. The ceiling rate for capacity sold by O&R is $14.79 per megawatthour.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: December 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Company

[Docket No. ER95–259–000]

Take notice that on December 1, 1994, Tucson Electric Power Company (Tucson), tendered for filing an Amendment No. 1 (the Amendment) to the Economy Energy Agreement dated April 26, 1994 between Tucson and the Colorado River Commission of the State of Nevada (CRC). The Amendment makes an administrative change to the billing provisions of the Agreement.

Tucson requests an effective date of December 1, 1994, and therefore requests waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: December 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER95–260–000]

Take notice that on December 5, 1994, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a Service Agreement dated as of November 14, 1994 between Louis Dreyfus Electric Power Inc. and SCS (as agent for Southern Companies) for service under the Short-Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: December 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER95–262–000]

Take notice that on December 6, 1994, Pacific Gas and Electric Company (PG&E), tendered for filing as an initial rate schedule, a Control Area and Transmission Service Agreement (Agreement) covering rates, terms and conditions for services rendered by PG&E to Destec Power Services, Inc. (DPS).

The Agreement: (1) Identifies the types of suppliers from which DPS can purchase, describes the types loads it can service, and provides the equations for accounting for balancing of such loads and resources; (2) establishes DPS control area reliability obligations, *e.g.*, load following, spinning reserve and power deviation requirements, and gives DPS options to satisfy these obligations by purchasing services from PG&E, purchasing services from third parties, or satisfying these obligations using its own resources; and (3) provides flexible network transmission service on both a firm short term and annual basis among specified generation "Input" points and load "Output" points.

PG&E is requesting any necessary waivers.

Copies of this filing were served upon DPS and the California Public Utilities Commission.

Comment date: December 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31048 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 3721–001; Project No. 4270–001; Project No. 4282–001; Project No. 4312–001; Project No. 4628–001; Project No. 4738–002; Project No. 9231–000]

Puget Sound Power & Light Company, et al., Intent To Hold a Public Meeting in Bellingham, WA, To Discuss the Draft Environmental Impact Statement (DEIS) for Seven Proposed Projects in the Nooksack River Basin

December 13, 1994.

On December 2, 1994, the Notice of Availability of the Nooksack River Basin DEIS was issued in the **Federal Register** (59 FR 61894). The DEIS evaluates the potential environmental and engineering impacts of constructing, operating, and maintaining seven proposed hydroelectric projects in Whatcom County, Washington.

The DEIS evaluated three alternatives for the seven projects: (1) No action (deny licenses); (2) issue licenses for the projects as proposed in the license applications; and (3) issue licenses for the projects with additional mitigation measures proposed by the Commission's staff.

The public meeting, which will be recorded by an official stenographer, is scheduled to begin at 7:00 p.m. on Wednesday, January 11, 1995, at the County Council Chambers, Whatcom County Courthouse, 311 Grand Avenue, Bellingham, Washington.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

Persons choosing not to speak at the meeting, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. Written comments may be filed with the

Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, until January 30, 1995.

All written correspondence should clearly show the following caption on the first page: Nooksack River Basin Docket No. EL85–19–118.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the offical service list.

For further information, please call Tom Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31047 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3913–001; Project No. 4376–001; Project No. 4437–006; Project No. 6984–000; Project No. 9787–000; Project No. 10100–000; Project No. 10269–002; Project No. 10311–002; Project No. 10416–003]

Puget Sound Power & Light Company, et al.; Intent To Hold a Public Meeting in Mount Vernon, Washington, To Discuss the Draft Environmental Impact Statement (DEIS) for Nine Proposed Projects in the Skagit River Basin

December 13, 1994.

On December 2, 1994, the Notice of Availability of the Skagit River Basin DEIS was issued in the **Federal Register** (59 FR 61894). The DEIS evaluates the potential environmental impacts of constructing, operating, and maintaining nine proposed hydroelectric projects in Skagit and Whatcom Counties, Washington.

The DEIS evaluated three alternatives for the nine projects: (1) No action (deny licenses); (2) issue licenses for the projects as proposed in the license applications; and (3) issue licenses for the projects with additional mitigation measures proposed by the Commission's staff.

The public meeting, which will be recorded by an official stenographer, is scheduled to begin at 7:00 p.m. on Thursday, January 12, 1995, in Ford Hall (Room 101), Skagit Valley College, Mount Vernon, Washington.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

Persons choosing not to speak at the meeting, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. Written comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, until January 30, 1995.

All written correspondence should clearly show the following caption on the first page: Skagit River Basin DEIS, FERC Docket No. EL85–19–119.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

For further information, please call John McEachern at (202) 219–3056.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31046 Filed 12–16–94; 8:45 am]

BILLING CODE 6717–01–M

Notice of Cases Filed; The Office of Hearings and Appeals, Week of October 10 Through October 14, 1994

During the Week of October 10 through October 14, 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. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 C.F.R. 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: December 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 10 through October 14, 1994]

Date	Name and location of applicant	Case No.	Type of submission
7/7/94	Cantu Shell, Hardin, KY	RR315–10	Request for Modification/Rescission in the Shell Refund Proceeding. If granted: The March 1, 1991 Dismissal Letter, Case Number RF315–10007, issued to Cantu Shell regarding the firm's Application for Refund submitted in the Shell refund proceeding would be modified.
9/13/94	Westside Gas, Eugene, OR	RR321–169	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The September 9, 1994 Dismissal Letter, Case Number RF321–19684, issued to Westside Gas regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.
10/11/94	Arrow Lakes Dairy, Memphis, TN	RR300–260	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The August 11, 1994 Decision and Order, Case Number 15606, issued to Arrow Lakes Dairy would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of October 10 through October 14, 1994]

Date	Name and location of applicant	Case No.	Type of submission
10/12/94	Citizen Action, Washington, DC	VFA–0002	Appeal of an Information Request Denial. If granted: The September 21, 1994 Freedom of Information Request Denial issued by the Office of Energy Markets and End Use would be rescinded, and Citizen Action would receive access to copies of the Energy Information Administration study entitled "The Short-Term Impact of Lower World Oil Prices on the United States Economy" which was prepared sometime between 1984 and 1986.
10/12/94	Jane Affleck, Kent, England	VFA–0003	Appeal of an Information Request Denial. If granted: The June 6, 1994 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and Jane Affleck would receive access from the Department of Defense to updated information concerning the Concept Paper by Tom Starke regarding Non-Lethal Weapons from the Los Alamos National Laboratory. Jane Affleck would receive a waiver of all fees incurred in the processing of this information request.
10/12/94	Vulcan Power Company, Boston, MA	VFA–0004	Appeal of an Information Request Denial. If granted: The August 3, 1994 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Vulcan Power Company would receive access to certain Department of Energy Information.
10/13/94	Albuquerque Operations Office, Albuquerque, NM.	VSO–0004	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by a sub-contractor at the Los Alamos National Laboratory would receive a hearing under 10 CFR Part 710.

REFUND APPLICATIONS RECEIVED

[10/10/94–10/14/94]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/13/94	Graff's Arco	RF304–15461
10/13/94	Pride Companies, L.P	RF345–32
10/17/94	Harvey, IL	RF272–99152

[FR Doc. 94–31131 Filed 12–16–94; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed; Office of Hearings and Appeals, Week of October 31 through November 4, 1994

During the Week of October 31 through November 4, 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. Submissions inadvertently omitted from earlier lists have also been included.

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: December 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 31 to November 4, 1994]

Date	Name and location of applicant	Case No.	Type of submission
11/01/94	Rocky Flats Field Office, Golden, Colorado	VSO–0006	Request for a Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.
11/01/94	Rocky Flats Field Office, Golden, Colorado	VSO–0007	Request for a Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.
11/01/94	Rocky Flats Field Office, Golden, Colorado	VSO–0008	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of October 31 to November 4, 1994]

Date	Name and location of applicant	Case No.	Type of submission
11/01/94	Sause Brothers Ocean Towing Co., Inc., Portland, Oregon.	RR272–183	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The August 26, 1994 Decision and Order, Case number RF272–90161, issued to Sause Brothers Ocean Towing Company Incorporated would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
11/02/94	Headquarters, Washington, D.C.	VSO–0009	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at the Department of Energy Headquarters would receive a hearing under C.F.R. Part 710
11/02/94	PSI Energy, Inc., Plainfield, Indiana	VEA–0001	Appeal from Special Assessment to the Uranium Enrichment Decontamination and Decommissioning Fund. If granted: The written determination issued by the Department of Energy on October 3, 1994 would be rescinded and PSI Energy, Inc. (PSI) would receive a refund of payments made to the Decontamination and Decommissioning Fund, all future obligations of PSI would be cancelled and PSI's assessment would be adjusted to zero.
11/02/94	Weed Associates, Easton, Maryland	VFA–0009	Appeal of an Information Request Denial. If granted: The September 27, 1994 Freedom of Information Request Denial issued by the Office of Procurement and Assistance Management would be rescinded, and Weed Associates would receive access to withheld portions of a contractor's Technical Proposal.
11/04/94	Eric Engberg, Washington, D.C.	VFA–0010	Appeal of an Information Request Denial. If granted: The October 25, 1994 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and Eric Engberg would receive access to the names of DOE employees deleted from copies of DOE Travel Authorizations released to him.
11/04/94	Savannah River Operations Office, Aiken, South Carolina.	VSO–0010	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Savannah River Operations Office would receive a hearing under 10 C.F.R. Part 710.
12/28/93	St. Bernard Parish School Board, Paris, Tennessee.	RR272–184	Request for Modification/ Rescission in the Crude Oil Refund Proceeding. If granted: The December 17, 1993 Dismissal letter, Case Number RF272–88449, issued to St. Bernard Parish School Board would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of October 31, 1994 to November 4, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/31/94	Petro, Ltd	RF349–19
11/01/94	Baker's Texaco #2	RF321–21040
05/20/91	Melton Gulf	RF300–21813
11/04/94	Spiro Karamalegos	RF321–21041

[FR Doc. 94–31133 Filed 12–16–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Proposed Decision and Order During the Week of October 10 through October 14, 1994

During the week of October 10 through October 14, 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, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: December 12, 1994.

George B. Breznay

Director, Office of Hearings and Appeals.

Quint Cities Petroleum Company, Moline, IL LEE–0154, Reporting Requirements

Quint Cities Petroleum Company 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 October 12, 1994, the DOE issue a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–31143 Filed 12–16–94; 8:45 am]

BILLING CODE 6450–01–P

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of a total of $10,700,000, plus accrued interest, in alleged crude oil overcharges obtained pursuant to a Consent Order entered into with Murphy Oil Corp., Murphy Oil USA, Inc., and Murphy Exploration and Production Co., Case No. VEF–0003 (Murphy). The OHA has tentatively determined that the funds obtained from Murphy, plus interest accrued, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before January 18, 1995, and should be addressed to the Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585. All comments should be marked with the reference number VEF–0003.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $10,700,000, plus accrued interest, obtained by the DOE under the terms of the Consent Order entered into with Murphy on July 15, 1994. These funds were paid towards the settlement of alleged violations of the DOE petroleum price and allocation regulations that were in effect from August 19, 1973, through January 28, 1981.

The OHA has proposed to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27,899 (August 4, 1986)(the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the volume of petroleum products they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 3 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: December 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy, Implementation of Special Refund Procedures

Name of Firm: Murphy Oil Corp. / Murphy Oil USA, Inc.
Date of Filing: October 25, 1994
Case Number: VEF–0003

December 12, 1994

On October 25, 1994 the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute $10,700,000 remitted by Murphy Oil Corp., Murphy Oil USA, Inc., and Murphy Exploration & Production Co. (collectively referred to as "Murphy"), pursuant to the Consent Order entered into between Murphy and the DOE on July 15, 1994. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the present Consent Order This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

Murphy is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. As such, it was subject to the federal petroleum price and allocation regulations. During that time, the ERA conducted an extensive audit of Murphy and issued an issue letter to Murphy on September 29, 1976. ERA issued a Notice of Probable Violation to Murphy on January 28, 1981. ERA issued a Proposed Remedial Order (PRO) to Murphy on December 15, 1986 which Murphy contested before the OHA.

On February 9, 1987, Murphy and the DOE entered into a Consent Order which resolved disputes regarding Murphy's refined petroleum product operations during the period the petroleum price and allocation regulations were in effect. *See Murphy Oil Corp.*, 17 DOE ¶85,782 (1987) (the first Consent Order). The first Consent Order left the issue of Murphy's alleged violations as a producer of crude oil unresolved. Those issues were decided by the OHA on June 17, 1992 when the OHA issued a modified version of ERA's PRO as a Remedial Order (RO). *See Murphy Oil Corp.*, 22 DOE ¶83,005

(1992). Murphy subsequently appealed the OHA's determination to the Federal Energy Regulatory Commission (FERC). On January 24, 1994 a FERC Administrative Law Judge issued a Decision and Proposed Order (D&PO) which modified the RO. *See Ocean Drilling & Exploration Co., et al.*, 66 FERC ¶63,002 (1994).

On July 15, 1994, Murphy and the DOE entered into the present Consent Order, the second between Murphy and the DOE. This second Consent Order, which does not modify or affect the terms of the first Consent Order, resolves all existing or potential civil and administrative claims against Murphy for alleged violations of the federal petroleum price and allocation regulations left unresolved by the first Consent Order. Under the terms of this second Consent Order, Murphy has remitted $10,700,000 to the DOE, and all outstanding or potential claims by the DOE against Murphy have been extinguished. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see* The Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07; *Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's Petition that we implement a Subpart V proceeding with respect to the second Murphy Consent Order fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the Murphy funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. *See City of Columbus, Georgia*, 16 DOE ¶85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. *See, e.g., Texaco, Inc*, 19 DOE ¶85,200 (1989); *Shell Oil Co.*, 17 DOE ¶85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE ¶85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

We propose to adopt the DOE's standard crude oil refund procedures to distribute the monies remitted by Murphy We have chosen initially to reserve 20 percent of the fund, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges. *See Mountain Fuel*, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove they were injured as a result of the alleged violations.

We will adopt a presumption that the alleged crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. *See Shell*, 17 DOE at 88,406

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in refined product cases. *Id* These applicants, however, may use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶90,507 (1985). *See also* PODRA § 3003(b)(2), 15 U.S.C. 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. *See Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer Ct. App.), 3 Fed. Energy Guidelines ¶26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F Supp. 1267 (D. Kan.), 3 Fed Energy Guidelines ¶26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., A. Tarricone, Inc.*, 15 DOE ¶85,495 (1987).

A party that has already submitted a claim to any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date.

The DOE had previously established June 30, 1994 as the final deadline for filing an Application for Refund from the crude oil funds. *See* 58 FR 26318 (May 3, 1993). Although that date has passed, it has been decided to re-open the crude proceeding. *See* 59 Fed. Reg. 55656 (November 8, 1994). The new closing date for this proceeding has been tentatively set for June 3, 1996. *Id.* It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. While we anticipate that applicants that filed their claims before June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. *See, e.g., Seneca Oil Co.*, 21 DOE ¶85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register.**

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we propose that the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, should be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That:

The funds remitted by Murphy Oil Corp., Murphy Oil USA, Inc., and Murphy Exploration & Production Co. pursuant to the Consent Order entered into with the DOE on July 15, 1994 will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–31132 Filed 12–16–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRI–5124–8]

Proposed Settlement Agreement; PM–10 SIP for the State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with Section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency ("EPA") by Edward M. Ober, through his counsel David S. Baron of the Arizona Center for Law in the Public Interest (hereafter "ACLPI"). The lawsuit concerns EPA's alleged failure to perform a nondiscretionary duty with respect to promulgating a PM–10 final implementation plan ("FIP") for the Phoenix, Arizona Planning Area. The proposed settlement agreement provides that EPA shall sign a Notice of Final Rulemaking ("NFRM" regarding the moderate nonattainment area PM–10 State implementation plan ("SIP") submitted by the State of Arizona for the Phoenix Planning Area, respecting which a Notice of Proposed Rulemaking ("NPRM") was published at 59 FR 38402 (July 28, 1994), no later than March 1, 1995. If final rulemaking action by EPA results in disapproval of the SIP, in whole or in part, EPA would agree to sign a NFRM promulgating a FIP that corrects the disapproved portions of the SIP no later than March 1, 1996, unless prior to that date EPA has fully approved a SIP revision that corrects the deficiency that formed the basis for the disapproval action. If EPA takes final rulemaking action approving the SIP, in whole or in part, the parties will file a joint motion to stay litigation in the district court pending the outcome of appellate review. Additionally, it after appellate review EPA's approval is vacated, the parties will file a joint motion to lift the stay, and plaintiffs would be free to pursue litigation of their original FIP claims without being required to file an addtional 60-day notice of intent to sue or a new complaint. If, however, EPA is upheld on appellate review, plaintiffs shall, within 30 days, file a motion to dismiss or withdraw their complaint.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement in the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U S Environmental Protection Agency, 401 M Street, SW Washington, D.C 20460, (202) 260–7606. Written comments should be sent to Michael A. Prosper at the above address and must be submitted on or before January 18, 1995

Dated· December 12, 1994

Jean C. Nelson,

General Counsel

[FR Doc 94–31108 Filed 12–16–94 8 45 am

BILLING CODE 6560–50–M

[FRL–5124–9]

Arizona: Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Full Program Adequacy for Arizona's Application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945 (c)(1)(B), requires States to develop and implement regulatory programs to ensure that municipal solid waste landfill facilities (MSWLFs) which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised federal MSWLF criteria, codified at 40 CFR Part 258 (the Federal MSWLF Criteria) Section 4005(c)(1)(C) of RCRA, 42 U S C 6945(c)(1)(C), requires the Environmental Protection Agency (EPA to determine whether States have adequate regulatory programs for MSWLFs.

Approved State MSWLF programs provide interaction between the State and MSWLF owners and operators regarding site-specific approval conditions Only owners or operators located in States with approved programs can use the site-specific flexibility provided by 40 CFR Part 258 to the extent the state program allows such flexibility EPA notes that the Federal MSWLF Criteria apply to all MSWLFs, regardless of the approva

status of any state program or individual facility

Arizona applied for a determination of adequacy under Section 4005 of RCRA. EPA reviewed Arizona's application and issued for public comment a tentative determination that Arizona's program is adequate to ensure compliance with the revised MSWLF criteria. Based on a thorough review of Arizona's MSWLF program and the fact that the only comments EPA received supported the tentative determination, EPA is today issuing a final determination that Arizona's MSWLF program is adequate.

EFFECTIVE DATE: The determination of adequacy for Arizona shall be effective on December 19, 1994.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Ms. Donna J. Orebic, mail code H–W–3, telephone (415) 744–2092.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated the Federal MSWLF Criteria, codified at 40 CFR part 258. Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop regulatory programs to ensure that MSWLFs comply with the Federal MSWLF Criteria. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State MSWLF programs to ensure that facilities comply with the Federal MSWLF Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State and Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State and Tribal landfill regulatory programs.

EPA has approved, and will continue to approve, State MSWLF programs prior to the promulgation of the STIR. Prior to the promulgation of the STIR, adequacy determinations will continue to be made on the basis of statutory authorities and requirements. EPA interprets the statutory requirements for States to develop "adequate" regulatory programs to impose several minimum standards. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in facility approval and enforcement as required in Section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the interpretation outlined above. EPA expects States to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States may use the draft STIR as an aid in interpreting these requirements.

On May 6, 1994, Arizona submitted an application for program adequacy determination. On September 15, 1994, EPA published a tentative determination of adequacy for all portions of Arizona's program. Further background on the tentative determination of adequacy appears at 59 FR 47332 (September 15, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA received two comments supporting the determination, but no requests for a public meeting.

B. Decision

In the tentative determination, EPA proposed to fully approve Arizona's MSWLF program. Arizona's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. The State of Arizona has the authority to enforce the requirements of its MSWLF program at all MSWLFs in the State, with the exception of those located on Tribal Lands. Accordingly, Arizona is granted a determination of adequacy for all portions of its MSWLF program.

In addition to enforcement by the States, Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF Criteria at 40 CFR part 258 independent of any state enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state program approved by EPA should be considered to be in compliance with the federal criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's MSWLF program are already in effect as a matter of state law. EPA's action today does not impose any new requirements on the regulated community, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002, 4005 and 4007 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, 6947.

Dated: December 6, 1994.

Nora McGee,

Acting Regional Administrator.

[FR Doc. 94–31107 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–60052; FRL–4920–6]

Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend

were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Francisca Liem, Office of Compliance, Agriculture and Ecosystems Division, Mail Code 2225A, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 564–2365.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section 3(c)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3 set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, Mail Code 1900, U S. Environmental Protection Agency, 401 M St., SW Washington, DC 20460, and an additional copy should be sent to the signatory listed below The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review

The Agency's Rules of Practice at 40 CFR 164 7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EI A in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements In order t

avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance, Agriculture and Ecosystems Division, Mail Code 2225A, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another Section 4 Data Requirements Notice or Section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject Section 4 Data Requirements Notice, please contact Francisca Liem at (202) 564–2365.

Sincerely yours,

Director, Agriculture and Ecosystem Division

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent To Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
A & V, Inc.	01201400044	Chlorinated Isocyanurates	Poolcare/Spacare Dichlor Plus Granules	10/17/94
	01201400056	Chlorinated Isocyanurates	Poolcare Alga-Kill	10/17/94
Abbott Laboratories	00027500078	Chlorinated Isocyanurates	Receptal Saf-Gard Liner System with Germicide	10/17/94
Alex C. Fergusson, Inc.	00083300044	Chlorinated Isocyanurates	Afco Super-Chlor Sanitizer	10/17/94
Alpha Chemical Services, Inc.	01063400003	Chlorinated Isocyanurates	Alpha San 200	10/17/94
	01063400019	Chlorinated Isocyanurates	Alpha San 300	10/17/94
An-Fo Manufacturing Company	00131700065	Chlorinated Isocyanurates	Sani-Du Chlorine Sanitizer	10/17/94
	00131700080	Chlorinated Isocyanurates	Du-Clor Swimming Pool Chlorine	10/17/94
Aqua Clear Industries, Inc.	04530900021	Chlorinated Isocyanurates	Aqua Clear Iso-Gran	10/17/94
Arco Industries, Inc.	00886600024	Chlorinated Isocyanurates	Arco Concentrated Pool Chlorine	10/17/94
	00886600025	Chlorinated Isocyanurates	Arco Chlorinating Concentrated Tablets	10/17/94
Betz Entec, Inc.	03457100014	Chlorinated Isocyanurates	Betz Entec 362	10/17/94
Birko Corp.	01014700010	Chlorinated Isocyanurates	Synchlorozene For Hide-Brine Curing	10/17/94
Calgon Vestal Laboratories	00104300101	Chlorinated Isocyanurates	Cs-420 Wash Sanitizer	10/17/94
Capo Industries, Ltd.	05499800002	Chlorinated Isocyanurates	Concentrated Stabilized Chlorine Granules	10/17/94
Carefree Chemical Co	05389200009	Chlorinated Isocyanurates	Spa Granules	10/17/94
Chemtreat, Inc.	01530000017	Chlorinated Isocyanurates	Chemical Treatment C-2181	10/17/94
	01530000021	Chlorinated Isocyanurates	Chemical Treatment C-2185	10/17/94
Colgate Palmolive Company	00458200065	Chlorinated Isocyanurates	Ajax Disinfecting Cleanser	10/17/94

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
	00458200066	Chlorinated Isocyanurates	Cpl Institutional Ajax Disinfectant Cleanser	10/17/94
	00458200067	Chlorinated Isocyanurates	Ajax Disinfecting Cleanser	10/17/94
Coughlan Products Corp.	00229200096	Chlorinated Isocyanurates	Bacta Clean Sanitizer Tablets	10/17/94
Custom Pools of Houston	06304100001	Chlorinated Isocyanurates	Sta-Clear Jumbo Tablets	10/17/94
Despo Chemicals Int'l., Inc.	04892500001	Chlorinated Isocyanurates	Altasan 16	10/17/94
Ecolab, Inc.	00167700141	Chlorinated Isocyanurates	Bonchem Bon-A-Chlor 100	10/17/94
Fitzpatrick Bros., Inc.	00646600012	Chlorinated Isocyanurates	Kitchen Klenzer	10/17/94
Garratt Callahan Company	00854000014	Chlorinated Isocyanurates	Garratt-Callahan Formula 36	10/17/94
Great Lakes Biochemical Co., Inc.	00736400045	Chlorinated Isocyanurates	Tabex Chlorine Concentrate Granular	10/17/94
	00736400046	Chlorinated Isocyanurates	Tabex Algae Out	10/17/94
	00736400060	Chlorinated Isocyanurates	Tabex Spa/hot Tub Products Chlorinating Conce	10/17/94
	00736400041	Chlorinated Isocyanurates	Tabex Chlorination Tablets	10/17/94
	00736400042	Chlorinated Isocyanurates	Tabex Quick Shock Tablets	10/17/94
	00736400043	Chlorinated Isocyanurates	Tabex Chlorination Tablets - Float Canister	10/17/94
	00736400044	Chlorinated Isocyanurates	Tabex Chlorination Tablets - Feeder Canister	10/17/94
	00736400049	Chlorinated Isocyanurates	Tabex Replacement Chlorinating Canister	10/17/94
	00736400051	Chlorinated Isocyanurates	Tabex Chlorination Sticks	10/17/94
	00736400057	Chlorinated Isocyanurates	Tabex One-Half Ounce Chlorination Tablets	10/17/94
H.B. Fuller Company	00452400040	Chlorinated Isocyanurates	Monoklor	10/17/94
Hoffman, J.I. Co., Inc.	00213600033	Chlorinated Isocyanurates	Hoffman's Stabilized Dry Pool Chlorinator	10/17/94
Jersey Chemicals, Inc.	01007900003	Chlorinated Isocyanurates	Nat-Chlor	10/17/94
King Technology, Inc.	05373500002	Chlorinated Isocyanurates	Sani-King P-Max 8 Cartridge	10/17/94
Luseaux Laboratories, Inc.	00352200018	Chlorinated Isocyanurates	Luseaux Chlo-Rins-Tabs	10/17/94
Miami Products & Chemical Company	00027800050	Chlorinated Isocyanurates	Sanygen Granular Chlorinating Compound	10/17/94
N. Jonas & Co., Inc.	00343200012	Chlorinated Isocyanurates	Maxi-Clor Stabilized Chlorine Power Concentrate	10/17/94
	00343200037	Chlorinated Isocyanurates	Pow Supe Chlorinator	10/17/94
	00343200050	Chlorinated Isocyanurates	Diamond Sani - Spa	10/17/94
	00343200023	Chlorinated Isocyanurates	4lb Continuous Chlorinator	10/17/94
	00343200024	Chlorinated Isocyanurates	Maxi Clor Chlorine Tablets	10/17/94
	00343200035	Chlorinated Isocyanurates	Maxi-Clor Giant Chlorine Tablets	10/17/94
	00343200036	Chlorinated Isocyanurates	Maxi Chlor Chlorinating Sticks	10/17/94
	00343200044	Chlorinated Isocyanurates	Super 90 Chlorinating Powder	10/17/94
	00343200051	Chlorinated Isocyanurates	On Guard Maxi-Clor Super Chlorinating Sticks	10/17/94
	00343200061	Chlorinated Isocyanurates	Onguard Maxi-Clor 3 Inch Super Chlorinating Tablets	10/17/94
Nisso America, Inc.	00803300005	Chlorinated Isocyanurates	Nisso Sdic-60	10/17/94
	00803300004	Chlorinated Isocyanurates	Nisso Tcca - 90	10/17/94
	00803300006	Chlorinated Isocyanurates	Nisso Sdic-55	10/17/94
Oakite Products, Inc.	00102000004	Chlorinated Isocyanurates	Oakite Chlor-Tergent	10/17/94
Occidental Chemical Corporation	00093500058	Chlorinated Isocyanurates	Mwss 60 Wash And Surface Sanitizer	10/17/94
	00093500047	Chlorinated Isocyanurates	Mwws 56 Wash And Surface Sanitizer	10/17/94
	00093500050	Chlorinated Isocyanurates	Maws 56 Acid Wash Sanitizer	10/17/94
	00093500054	Chlorinated Isocyanurates	Mds 56 Detergent Sanitizer	10/17/94
	00093500055	Chlorinated Isocyanurates	Mfds 56 Fabric And Diaper Sanitizer	10/17/94
	00093500057	Chlorinated Isocyanurates	Mwss 56 Wash And Surface Sanitizer	10/17/94
Olde Tyme Products, Inc.	06328700001	Chlorinated Isocyanurates	Mr. O's Sanitizing Tablets	10/17/94
Pace International, L.P.	06486400006	Chlorinated Isocyanurates	Sanit C-16 Bactericide-Deodorizer	10/17/94
	06486400009	Chlorinated Isocyanurates	Master Cax A Heavy Duty Cleaner-Sanitizer-Deo	10/17/94

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Pazianos Associates	03398000001	Chlorinated Isocyanurates	Neo-Chlor 90	10/17/94
	03398000004	Chlorinated Isocyanurates	Neo-Chlor 90 Granular	10/17/94
	03398000005	Chlorinated Isocyanurates	Neo-Chlor One Inch Tablet	10/17/94
	03398000006	Chlorinated Isocyanurates	Neo-Chloro Three Inch Tablet	10/17/94
	03398000002	Chlorinated Isocyanurates	Neo-Chlor 60	10/17/94
	03398000003	Chlorinated Isocyanurates	Neo-Chlor 55	10/17/94
Penetone Corporation	01019000002	Chlorinated Isocyanurates	Salubrite "Chlorinated Detergent"	10/17/94
Phoenix Chemical Co.	04852000010	Chlorinated Isocyanurates	Modern Stabilized Chlorinating Giant Tabs	10/17/94
	04852000011	Chlorinated Isocyanurates	Modern Stabilized Chlorinating Tiny Tabs	10/17/94
	04852000012	Chlorinated Isocyanurates	Modern Stabilized Chlorinating Stix	10/17/94
Pride Mfg., Inc.	06249800001	Chlorinated Isocyanurates	Pool Pride Granular 62	10/17/94
Purdy Products Company	00017800009	Chlorinated Isocyanurates	Stera-Sheen Green Label Sanitizer & Cleaner	10/17/94
Puritan/Churchill Chemical Co.	00054100173	Chlorinated Isocyanurates	Puritan #285 Germicide Concentrate	10/17/94
Richardson Chemical Products Co.	00088100012	Chlorinated Isocyanurates	SC Sanitizer	10/17/94
Saratoga Specialties	00940900001	Chlorinated Isocyanurates	Morrell Chemicals H. D. Sanitizer	10/17/94
Savolite, Inc.	00179100040	Chlorinated Isocyanurates	Klearsol 64	10/17/94
Scientific Water Systems	04538700015	Chlorinated Isocyanurates	Clor Mor Dy-Chlor 62	10/17/94
	04538700017	Chlorinated Isocyanurates	Clor Mor Chlorinated Tablets, "1"	10/17/94
	04538700018	Chlorinated Isocyanurates	Clor Mor Chlorinated Tablets, 3	10/17/94
Steelcrete Co.	04170200007	Chlorinated Isocyanurates	Aztec Small Tablets Stabilized Pool Chlorinating Tablets	10/17/94
Steelcrete Co.	04170200008	Chlorinated Isocyanurates	Aztec Large Tablets Stabilized Pool Chlorinating Tablets	10/17/94
	04170200009	Chlorinated Isocyanurates	Aztec Sticks Stabilized Pool Chlorinating Concentrate	10/17/94
	04170200006	Chlorinated Isocyanurates	Aztec Granular Pool & Spa Stabilized Chlorinating Concentrate	10/17/94
Suncoast Chemicals Company	04604300002	Chlorinated Isocyanurates	Suncoast Tri-Chlor 1 Inch Tablets	10/17/94
	04604300003	Chlorinated Isocyanurates	Suncoast Tri-Chlor 3 Inch Tablets	10/17/94
Swimchem, Inc.	04352100003	Chlorinated Isocyanurates	Super Swim Brite 62	10/17/94
Texo Corp.	00587000033	Chlorinated Isocyanurates	D.C. San	10/17/94
U.S. Army Natick RD&E Center	04051000004	Chlorinated Isocyanurates	Disinfectant, Food Service (Chlorine-Iodine Type) MIL-D-1130	10/17/94
Water Technology & Controls, Inc.	05162400003	Chlorinated Isocyanurates	AQG-003 Algae Control	10/17/94

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following requirement data or information:

TABLE B.—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
Chlorinated Isocyanurates	A & V, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Abbott Laboratories	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6)	8/31/93
Chlorinated Isocyanurates	Alex C. Fergusson, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14)	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Alpha Chemical Services, Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
		90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	An-Fo Manufacturing Company	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Aqua Clear Industries, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Arco Industries, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20)	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Betz Entec, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Birko Corp.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat *	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Calgon Vestal Laboratories	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Capo Industries, Ltd.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Carefree Chemical Company	Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
Chlorinated Isocyanurates	Chemtreat, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Colgate Palmolive Company	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
Chlorinated Isocyanurates	Coughlan Products Corp.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Custom Pools of Houston	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Despo Chemicals Int'L., Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
	Ecolab, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Fitzpatrick Bros., Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Garratt Callahan Company	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Great Lakes Biochemical Co., Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
		90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
	H.B. Fuller Company	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Viscosity	63–18	1/2/94
Chlorinated Isocyanurates	Hoffman, J.I. Co., Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Jersey Chemicals, Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	King Technology, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Luseaux Laboratories, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Viscosity	63–18	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Dermal Sensitization	81–6	1/2/94
	Miami Products & Chemical Company	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	N. Jonas & Co., Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
		90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Nisso America, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Oakite Products, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Occidental Chemical Corporation	Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Olde Tyme Products, Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Pace International, L.P.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Pazianos Associates	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Penetone Corporation	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Phoenix Chemical Co.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Pride Mfg., Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Purdy Products Company	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Puritan/Churchill Chemical Co.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Richardson Chemical Products Co.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Saratoga Specialties	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Savolite, Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	Scientific Water Systems	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Steelcrete Co.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
Chlorinated Isocyanurates	Steelcrete Co.	Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
		Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Suncoast Chemicals Company	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Swimchem, Inc.	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Texo Corp.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93
Chlorinated Isocyanurates	U.S. Army Natick RD&E Center	Confidential Statement of Formula (CSF) Form		1/2/94
		Chemical Identity	61–1	1/2/94
		Beginning Materials & Manufacturing Process	61–2	1/2/94
		Discussion of Formation of Impurities	61–3	1/2/94
		Preliminary Analysis of Product Samples	62–1	1/2/94
		Certification of Ingredient Limits	62–2	1/2/94
		Analytical Method to Verify Certified Limits	62–3	1/2/94
		Color	63–2	1/2/94
		Physical State	63–3	1/2/94
		Odor	63–4	1/2/94
		Density, Bulk Density, or Specific Gravity	63–7	1/2/94
		pH	63–12	1/2/94
		Oxidizing/Reducing Action	63–14	1/2/94
		Viscosity	63–18	1/2/94
		Corrosion Characteristics	63–20	1/2/94
		Acute Oral Toxicity - Rat	81–1	1/2/94
		Acute Dermal Toxicity - Rabbit/Rat	81–2	1/2/94
		Acute Inhalation Toxicity - Rat	81–3	1/2/94
		Primary Eye Irritation - Rabbit	81–4	1/2/94
		Primary Dermal Irritation	81–5	1/2/94
		Dermal Sensitization	81–6	1/2/94
Chlorinated Isocyanurates	Water Technology & Controls, Inc.	90-Day Response		8/31/93
		Confidential Statement of Formula (CSF) Form		8/31/93
		Chemical Identity	61–1	8/31/93
		Beginning Materials & Manufacturing Process	61–2	8/31/93
		Discussion of Formation of Impurities	61–3	8/31/93
		Preliminary Analysis of Product Samples	62–1	8/31/93
		Certification of Ingredient Limits	62–2	8/31/93
		Analytical Method to Verify Certified Limits	62–3	8/31/93
		Color	63–2	8/31/93
		Physical State	63–3	8/31/93
		Odor	63–4	8/31/93
		Density, Bulk Density, or Specific Gravity	63–7	8/31/93
		pH	63–12	8/31/93
		Oxidizing/Reducing Action	63–14	8/31/93
		Viscosity	63–18	8/31/93
		Corrosion Characteristics	63–20	8/31/93
		Acute Oral Toxicity - Rat	81–1	8/31/93
		Acute Dermal Toxicity - Rabbit/Rat	81–2	8/31/93
		Acute Inhalation Toxicity - Rat	81–3	8/31/93
		Primary Eye Irritation - Rabbit	81–4	8/31/93
		Primary Dermal Irritation	81–5	8/31/93
		Dermal Sensitization	81–6	8/31/93

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend sent to each affected registrant follows:

Chlorinated Isocyanurates

On May 7, 1993, the EPA issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing chlorinated isocyanurate used as the active ingredient to develop and submit certain data. These data/information were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Chlorinated Isocyanurate Phase 5 Reregistration Eligibility Document Data Call-In Notice dated May 7, 1993, required each affected registrant to submit data/information to the Agency to address each of the data requirements. Those data/information

were required to be received by the Agency within 8 months of the registrant's receipt of the Notice. Because you have failed to submit appropriate or adequate data/information within the time provided for the data/information requirements listed in Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

List of Subjects

Environmental protection.

Dated: December 6, 1994.

Rick Colbert,

Director, Agriculture and Ecosystem Division, Office of Compliance.

[FR Doc. 94–31106 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50803; FRL–4925–4]

Receipt of an Application for an Experimental Use Permit Amendment for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 20, 1994, EPA received an application from Ciba Geigy, Seed Division to amend their experimental use permit (EUP) for a transgenic plant pesticide by adding test sites in Texas. The Agency has determined that this application may be of regional and national significance. Therefore in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received by January 18, 1995.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50803 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW , Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Janet L. Andersen, Acting Director, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202 (703)308–8712

SUPPLEMENTARY INFORMATION: On October 20, 1994, EPA received an application to amend an EUP from Ciba-Geigy Corporation, Seed Division (Ciba Seeds), P.O. Box 12257, Research Triangle Park, North Carolina 27709–2257. The EUP application is assigned EPA File Symbol 66736–EUP–1 In the **Federal Register** of November 2, 1994 (59 FR 54904), EPA announced issuance of an extension for this EUP The approved EUP extension allows the use of 197 1 grams of the Bacillus thuringiensis δ-endotoxin (produced by a bacterially derived CryIA(b) gene in corn plants) in seeds planted on 190 acres of corn to evaluate the control of the European corn borer and other lepidopteran pests. The program is currently authorized only in the States of California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, and Wisconsin and the Commonwealth of Puerto Rico. The experimental use permit extension is effective for plantings from April 12, 1994 to March 31, 1995, and associated activities such as collection of field data and harvesting and processing of seed after last planting. Corn grown under this permit is not permitted to enter commerce. Ciba Seeds has applied to amend the EUP by diverting plantings of up to 45 acres of transgenic Bt corn from previously authorized plantings in Hawaii and Illinois to Texas. Thus, the additional test sites will not increase the total acreage authorized under the current EUP.

Upon review of the Ciba Seeds application, any comments received in response to this notice and any other relevant information, the U.S. EPA will set conditions under which the experiments will be conducted. Any issuance of an EUP amendment approval will be announced in the **Federal Register**.

Dated: December 9, 1994.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 94–31105 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5123–7]

Notice of Availability of Great Lakes Dredged Material Testing and Evaluation Manual and Request for Comment

SUMMARY: This notice announces the availability of and requests public comment on the draft testing manual entitled "Great Lakes Dredged Material Testing and Evaluation Manual (Draft)" (draft Great Lakes Manual). The manual was prepared by an Environmental Protection Agency (EPA)/Army Corps of Engineers (CE) workgroup comprised of staff with scientific and/or programmatic expertise related to Great Lakes dredged material discharge activities. This manual supplements the manual entitled "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)" (draft National Manual) which was noticed for comment in the **Federal Register** on July 21, 1994 (59 FR 37234). The draft Great Lakes manual contains more specific information for the Great Lakes system, including detailed bioassay test protocols. Both manuals were issued pursuant to the provisions of section 404(b)(1) of the Clean Water Act and 40 CFR part 230.

DATES: Written comments on the draft Great Lakes Manual must be postmarked or submitted by hand on or before March 21, 1995 to Marc Tuchman at the address listed below under **ADDRESSES.**

ADDRESSES: A copy of the draft Great Lakes Manual can be obtained by calling or writing to Jan Miller, USACE North Central Division, CENCD–ED–WL, 111 North Canal Street, Chicago, Ill., 60606–7205; telephone: 312–353–6354.

Comments on the draft Great Lakes Manual may be mailed or delivered to: Marc Tuchman, USEPA Great Lakes National Program Office—G–9J, Attention: Great Lakes Manual Comments, 77 West Jackson Street, Chicago, Ill. 60604; telephone: 312–353–1369. Commentors are requested to submit an original and 3 copies of their

written comments and enclosures. Commentors who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Jan Miller, USACE North Central Division, CENCD–ED–WL, 111 North Canal Street, Chicago, Ill., 60606–7205; telephone: 312–353–6354; Marc Tuchman, USEPA Great Lakes National Program Office—G–9J, 77 West Jackson Street, Chicago, Ill. 60604; telephone: 312–353–1369; or John Dorkin, USEPA Region 5—WS–16J, 77 West Jackson Street, Chicago, Ill. 60604; telephone: 312–886–1980.

SUPPLEMENTARY INFORMATION: Proposed discharges of dredged or fill material in Great Lakes Waters must be evaluated to determine the potential environmental impacts of such activities. Specifically, Section 404 of the Federal Water Pollution Control Act of 1972, Public Law 92–500, as amended by the CWA, Public Law 95–217, requires that the discharge of dredged or fill material into waters of the U.S. be permitted by the CE. EPA has the primary role in developing the environmental guidelines—the Section 404(b)(1) Guidelines (Guidelines)—in conjunction with the CE, by which permit applications must be evaluated. The Guidelines are published at 40 CFR Part 230. Fundamental to the Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

Dredged material testing is part of the larger evaluation of a proposed discharge activity to determine its compliance with the Guidelines. Sections 230.60 and 230.61 of the Guidelines provide the basis for certain contaminant-related factual determinations regarding the potential environmental effects of a proposed discharge. The draft Great Lakes Manual provides regional guidance on the testing provision of the Guidelines, supplementing the draft National Manual which was noticed for comment in the **Federal Register** on July 21, 1994 (59 FR 37234). The manuals detail the physical, chemical, and biological evaluation procedures outlined in §§ 230.60 and 230.61, including technical guidance on sampling and handling, quality assurance, chemical and physical analysis, and biological effects testing. The draft Great Lakes Manual contains more specific information for the Great Lakes system, including detailed bioassay test protocols. Conclusions reached utilizing the manuals will be used to make factual determinations of the potential environmental effects of a proposed discharge of dredged material.

The final Great Lakes Manual will be published in approximately 6 months after review and consideration of the comments received on this draft and in coordination with the development of the final National Manual.

Dated: December 7, 1994.

Valdas Adamkus,

Regional Administrator, Region 5.

[FR Doc. 94–30947 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5124–3]

Public Water System Supervision Program Revision for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300g–2, and 40 CFR part 142, Subpart B—Primary Enforcement Responsibility, that the State of Montana has revised its Public Water System Supervision (PWSS) Primacy Program. Montana's PWSS program, administered by the Drinking Water Section of the Department of Health and Environmental Sciences, has adopted regulations for total coliforms, Phase II (7 inorganic and 26 organic chemicals), Phase IIb (1 inorganic and 4 organic chemicals), Phase V (5 inorganic and 18 organic chemicals), and lead and copper that correspond to the National Primary Drinking Water Regulations (NPDWR) in 49 CFR Part 141 for total coliforms (FR Vol. 54, No. 124, June 29, 1989, Pg. 27544–27568), Phase II (FR Vol. 56, No. 20, January 30, 1991, Pg. 3526–3597), Phase IIb (FR Vol. 56, No. 126, July 1, 1991, Pg. 30266–30281), Phase V (FR Vol. 57, No. 138, July 17, 1992, Pg. 31776–31849), and for lead and copper (FR Vol. 56, No. 110, June 7, 1991, Pg. 26460–26564). The Environmental Protection Agency (EPA) has completed its review of Montana's primacy revisions and has determined that they are no less stringent than the NPDWRs. EPA therefore approves Montana's primacy revisions for Total Coliforms, Phase II, IIb, V. and Lead and Copper Rules. This determination shall become effective January 18, 1995.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before January 18, 1995. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: William P. Yellowtail, Regional Administrator, c/o Marty Swickard (8WM–DW), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity

Notice of any hearing shall be given not less than fifteen (15) days prior to the time schedule for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Montana. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Montana. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on January 18, 1995. Please bring this notice to the attention of any

persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U S. EPA Region VIII, Drinking Water Branch, 999 18th Street (4th floor), Denver, Colorado; (2) Department of Health and Environmental Sciences, Drinking Water Section, 1400 Broadway, Room A206, Helena, Montana.

FOR FURTHER INFORMATION CONTACT: Marty Swickard, Drinking Water Branch, EPA Region VIII (8WM–DW), 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1629.

Dated: December 8, 1994

Jack W. McGraw,

Regional Administrator, EPA, Region VIII

[FR Doc. 94–31109 Filed 12–16–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 9, 1994

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Section 76.987(g), New Product Tiers.

Action: New collection.

Respondents: State, local governments and businesses or other for-profit.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 33,600 responses, .5 hours average burden per response, 16,800 hours total annual burden.

Needs and Uses. On 11/10/94, the Commission adopted a Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, in MM Docket No. 93–215, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation. In this Order, we added rules establishing an additional cable programming service tier (CPST) category which we refer to a new programming tier (NPT). Section 76.987(g) requires cable operators to file with the Commission, within 30 days of offering a NPT, a copy of the new rate card that contains the following information on the BSTs (basic service tiers), CPSTs, and NPTs: 1) the names of the programming services contained on each tier; and 2) the price of each tier Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT. The information is used by FCC staff to ensure that cable operators are complying with our conditions for NPTs, i.e., that operators are not making fundamental changes to what they offer on their tiers of service, and that subscribers are given due notice of NPT introductions.

Federal Communications Commission.

William F. Caton,

Acting Secretary

[FR Doc. 94–31093 Filed 12–16–94; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 8, 1994

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0595.

Title: Updating Maximum Permitted Rates for Regulated Cable Services "Update Form"

Form Number: FCC Form 1210.

Action: Revision of a currently approved collection.

Respondents: State, local governments and businesses or other for-profit.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 33,600 responses, 11 hours average burden per response, 69,600 hours total annual burden.

Needs and Uses: On 2/22/94, the Commission adopted a Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket No. 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation. Using a more sophisticated economic model, we have recalculated the competitive differential to reflect a more accurate estimate of the difference between competitive and noncompetitive cable rates. In addition, we have improved the measure of equipment and installation revenues. On 11/10/94, the Commission adopted a Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, referred to as the "Going Forward" order. This Order further revised its rules for rate adjustments when channels are added or deleted, or new programming service tier channels are added or deleted, or new programming service tiers are established. To reflect the new rule sections adopted by the Commission, Section 76.922(e)(1) and (2), we are expanding the Instructions for FCC Form 1210, to enable cable operators to implement the revised methodology reflected in these rules. It is anticipated that these additional instructions will be used on an interim basis between January 1, 1995 and March 31, 1995, for operators who choose to use the new methodology. A revised version of the FCC Form 1210 that is being submitted to OMB for approval will become effective April 1, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary

[FR Doc. 94–31092 Filed 12–16–94 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

The Chase Manhattan 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 January 12, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Chase Manhattan Corporation, New York, New York; to acquire 100 percent of the voting shares of Chase Savings Bank, New York, New York, a *de novo* bank.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. CCB Financial Corporation, Durham, North Carolina; to merge with Security Capital Bancorp, Salisbury, North Carolina, and thereby indirectly acquire Security Capital Bank, Salisbury, North Carolina, OMNIBANK, INC., SSB, Salisbury, North Carolina, Citizens Savings, Inc., SSB, Concord, North Carolina, and Home Savings Bank, Inc., SSB, Kings Mountain, North Carolina.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Byron State, Inc., Byron, Nebraska; to become a bank holding company by acquiring 80 percent of the voting shares of Byron State Bank, Byron, Nebraska.

2 The Estes Park Bank Restated Employee Stock Ownership 401(K) Plan & Retirement Trust, Estes Park, Colorado; to acquire 47 43 percent of the voting shares of Estes Bank Corporation, Estes Park, Colorado, and thereby indirectly acquire The Estes Park Bank, Estes Park, Colorado.

Board of Governors of the Federal Reserve System, December 13, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-31074 Filed 12-16-94, 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[DKT. C-3539]

American Body Armor and Equipment, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Florida-based company from misrepresenting that its bullet-resistant garments are certified, approved, endorsed, or sanctioned by any government body or private organization. In addition, the respondent is required to contact certain past purchasers and offer to provide replacement vests at a reduced cost.

DATES: Complaint and Order issued October 21, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Lisa Kopchik or Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3139 or 326-3153.

SUPPLEMENTARY INFORMATION: On Thursday, June 6, 1991, there was published in the **Federal Register**, 56 FR 26096, a proposed consent agreement with analysis In the Matter of American Body Armor and Equipment, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721, 15 U.S C. 46 Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary

[FR Doc. 94-31122 Filed 12-16-94; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. 9207]

Coca-Cola Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the Commission's final order issued on June 13, 1994, that required the respondent, for ten years, to obtain Commission approval before acquiring certain brand-name soft drink concentrate manufacturers, by eliminating a provision which had expressly defined Coca-Cola Enterprises, Inc. as a Coca-Cola Company subsidiary or affiliate subject to this prior approval requirement.

DATES: Final Order issued June 13, 1994 Modifying Order issued December 5, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Joseph Brownman or Ronald Rowe, FTC/S-2105, Washington, D.C. 20580. (202) 326-2605 or 326-2610.

SUPPLEMENTARY INFORMATION: In the Matter of The Coca-Cola Company The prohibited trade practices and/or corrective actions as set forth at 59 FR 40031, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721, 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec 7, 38 Stat. 731, as amended; 15 U S.C. 45, 18)

Donald S. Clark,

Secretary

[FR Doc. 94-31123 Filed 12-16-94, 9:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H-130, 6th and PA. Ave., NW., Washington, DC 20580.

[File No. 922 3021]

Gateway Educational Products, Ltd., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California-based corporation and two officers from making reading and comprehension claims for their "Hooked on Phonics" reading program or any other educational program or product without possessing and relying upon competent and reliable substantiating evidence. In addition, it would prohibit them from representing that any endorsement represents the typical or ordinary experience of consumers with any educational program or product without possessing and relying upon competent and reliable substantiating evidence.

DATES: Comments must be received on or before February 17, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Toby Levin, FTC/S–4002, Washington, DC 20580. (202) 326–3153 or 326–3156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the matter of: Gateway Educational Products, Ltd., a corporation, and John Shanahan and John Herlihy, individually and as officers of said corporation. File No. 9223021.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Gateway Educational Products, Ltd., a corporation, and John Shanahan and John Herlihy, individually and as officers of said corporation ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Gateway Educational Products, Ltd., by its duly authorized officer, and John Shanahan and John Herlihy, individually and as officers of said corporation, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Gateway Educational Products, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1050 Katella Ave., Suite D, Orange, California 92667.

Proposed respondents John Shanahan and John Herlihy are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft of complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order

7 Proposed respondents have read the proposed complaint and order contemplated hereby They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order, the following definitions shall apply:

A. "HOP" means the reading program known as "Hooked on Phonics/SRA Reading Power" marketed by Gateway Educational Products, Ltd.

B. "Educational program or product" means any program of product that provides instruction in any field of study, including but not limited to any aspect of reading.

C. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered that respondents Gateway Educational Products, Ltd., a corporation, its successors and assigns, and its officers, and John Shanahan and John Herlihy, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of HOP or any other educational program or product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such program or product:

A. Can or will quickly and easily teach persons with reading problems or disabilities to read, regardless of the nature of the problem or disability;

B. Is effective for teaching persons with learning disabilities, including dyslexia and attention deficit disorders, to read;

C. Can or will cause users with reading problems or disabilities to achieve significant improvement in reading levels or classroom grades;

D. Is effective for teaching persons in a home setting to read, without the need for additional assistance such as a teacher or tutor;

E. Is effective for teaching reading comprehension skills;

F. Has helped nearly one million or any other number of students to learn to read; or

G. Provides any other educational benefits,

unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered that respondents Gateway Educational Products, Ltd., a corporation, its successors and assigns, and its officers, and John Shanahan and John Herlihy, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any educational program or product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the program or product represents the typical or ordinary experience of members of the public who use the program or product, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, the substantiates such representation.

III

It is further ordered that respondents Gateway Educational Products, Ltd., a corporation, its successors and assigns, and its officers, and John Shanahan and John Herlihy, individually and as officers of said corporation, shall for five (5) years after the date of the last dissemination to which they pertain, maintains and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. Any advertisement making any representation covered by this order;

B. All materials that were relied upon by respondents in disseminating any representation covered by this order; and

C. All reports, tests, studies, surveys, demonstrations or other evidence in any respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondents relied for such representation, including complaints from consumers.

IV

It is further ordered that respondent Gateway Educational Products, Ltd., its successors and assigns, shall:

A. Within thirty (30) days after service of this order, provide a copy of this order to each of its current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of five (5) years from the date of entry of this order, provide a copy of this order to each of its principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order within three (3) days after the person commences his or her responsibilities.

V

It is further ordered that respondent Gateway Educational Products, Ltd., its successors and assigns, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other change in the corporation that may affect compliance obligations arising out of this order.

VI

It is further ordered that respondents John Shanahan and John Herlihy shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of their present business or employment with respondent Gateway Educational Products, Ltd., or its successors and assigns, and of their affiliation with any new business or employment in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any educational program or product. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

VII

It is further ordered that respondents shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Gateway Educational Products, Ltd. ("Gateway"), and John Shanahan and John Herlihy, officers of Gateway.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw

from the agreement or make final the agreement's proposed order

This matter concerns the "Hooked on Phonics" reading program ("HOP"). The Commission's proposed complaint alleges that the respondents represented in their advertisements and promotional materials that HOP will quickly and easily teach persons with reading problems or disabilities to read, regardless of the nature of the problem or disability; is effective for teaching persons with learning disabilities, including dyslexia and attention deficit disorders, to read; will cause users with reading problems or disabilities to achieve significant improvement in reading levels and classroom grades; is effective for teaching persons in a home setting to read, without the need for additional assistance such as a teacher or tutor; is effective for teaching reading comprehension skills; has helped nearly one million students to learn to read at home; and that testimonials or endorsements appearing in the HOP advertising reflect consumers' typical or ordinary experiences using HOP The complaint alleges that the respondents falsely represented that they relied upon a reasonable basis for these representations.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. Part I requires respondents to possess adequate substantiation for the HOP efficacy claims alleged in the complaint, as well as for any claims that any educational program or product will be effective for teaching reading or provides any other educational benefit. The substantiation level required is competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part II of the proposed order prohibits the respondents, in advertising any educational program or product, from representing that any endorsement represents the typical experience of consumers who use the program or product, unless the claim is substantiated.

Parts III through VII relate to the respondents' obligations to retain substantiation materials; to notify the Commission of changes in corporate identity, or in the case of the individuals, employment; to distribute copies of the order to certain employees; and to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary

[FR Doc. 94–31128 Filed 12–16–94, 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3543]

Hayes Microcomputer Products, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission

ACTION: Consent Order

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Georgia manufacturer and distributor of computer communications products from making representations for any of its modem-related products regarding the risk of data loss or data destruction, or data transmission problems due to any escape method, unless the respondent possesses and relies upon competent and reliable substantiating evidence.

DATES: Complaint and Order issued November 28, 1994.[1]

FOR FURTHER INFORMATION CONTACT:

Linda Badger or Kerry O'Brien, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Monday, May 9, 1994, there was published in the **Federal Register**, 59 FR 23864, a proposed consent agreement with analysis In the Matter of Hayes Microcomputer Products, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW Washington, DC 20580.

(Sec. 6, 38 Stat. 721, 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, 15 U.S.C. 45)

Donald S. Clark,

Secretary

[FR Doc. 94–31124 Filed 12–16–94, 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9266]

Red Apple Companies, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require among other things, three New York-based companies and their officer to divest six supermarkets, within 12 months, to a Commission-approved acquirer or acquirers. If the respondents fail to satisfy the divestiture requirements, the proposed order would permit the Commission to appoint a trustee to divest supermarkets to satisfy the terms of the order. The consent agreement also would prohibit the respondents, for ten years, from acquiring, without prior Commission approval, any supermarket or any interest in an entity that owns or operates a supermarket in New York County south of 116th Street. In addition, the respondents, for ten years, would be prohibited from entering into or enforcing any agreement that restricts the ability of any person acquiring any supermarket owned or operated by any respondent in New York County south of 116th Street.

DATES: Comments must be received on or before February 17, 1995

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary Room 159, 6th St. and Pa. Ave., NW , Washington, DC 20580

FOR FURTHER INFORMATION CONTACT:

Ronald Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2610

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is

invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(ii)).

Agreement Containing Consent Order To Divest and to Cease and Desist

In the matter of Red Apple Companies, Inc., a corporation; John A. Catsimatidis, an individual; Supermarket Acquisition Corp., a corporation; and Designcraft Industries, Inc. (d/b/a Sloan's Supermarkets, Inc.), a corporation. Docket No. 9266.

The agreement herein, by and between Red Apple Companies, Inc. ("Red Apple"), a corporation, John A. Catsimatidis, an individual, Supermarket Acquisition Corporation ("SAC"), a corporation, and Sloan's Supermarkets, Inc. (a/k/a Designcraft Industries, Inc.) ("SSI"), a corporation, by their duly authorized officers, hereafter sometimes referred to as "respondents," and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Red Apple is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive offices located at 823 Eleventh Avenue, New York, New York 10019–3535.

2. Respondent John A. Catsimatidis is the Chairman, Chief Executive Officer, and sole shareholder of Red Apple Companies, Inc., and Chairman, Chief Executive Officer, Treasurer, and the largest shareholder of Sloan's Supermarkets, Inc., with his office and principal place of business at 823 Eleventh Avenue, New York, New York 10019–3535.

3. Respondent SAC is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive offices located at 823 Eleventh Avenue, New York, New York 10019–3535.

4. Respondent SSI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 823 Eleventh Avenue, New York, New York 10019–3535.

5. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and have filed an answer to said complaint denying said charges.

6. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

7. Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

8. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

9. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than jurisdictional facts, are true.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

11. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Commission" means the Federal Trade Commission.

B. "Red Apple" means Red Apple Companies, Inc., its parents, predecessors, subsidiaries, divisions, groups and affiliates (including Red Apple Supermarkets, Inc., Gristede's Supermarkets, Inc., and Supermarket Acquisition Corp.), and their directors, officers, employees, agents, partners, and representatives (including John A. Catsimatidis), and their respective successors or assigns.

C. "John A. Catsimatidis" means John A. Catsimatidis, an individual and Chairman and Chief Executive Officer of Red Apple Companies, Inc., and Chairman, Chief Executive Officer, and Treasurer of Sloan's Supermarkets, Inc. (a/k/a Designcraft Industries, Inc.).

D. "SAC" means Supermarket Acquisition Corp., its parents, predecessors, subsidiaries, divisions, groups and affiliates, and their directors, officers, employees, agents, partners, and representatives, and their respective successors or assigns.

E. "SSI" means Sloan's Supermarkets, Inc. (a/k/a Designcraft Industries, Inc.), its parents, predecessors, subsidiaries, divisions, groups and affiliates, and their directors, officers, employees, agents, partners, and representatives, and their respective successors or assigns.

F. "Respondents" mean Red Apple, John A. Catsimatidis, SAC, and SSI.

G. "Assets to be divested" means the assets described in Paragraphs II. A. and II. B. of this order.

H. "Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and

vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

II

It is further ordered that respondents shall divest six supermarkets in the following manner:

A. Respondents shall divest, absolutely and in good faith, within twelve months from the date this order becomes final, four of the following listed supermarkets, with one supermarket located in each of the four areas identified below within New York County, New York:

1. Upper East Side:

a. Sloan's located at 1407 Lexington Avenue (store no. 425);

b. Sloan's located at 1343–1347 Lexington Avenue (store no. 437); or

c. Gristede's located at 1356 Lexington Avenue (store no. 52).

2. Upper West Side:

a. Sloan's located at 530–34 Amsterdam Avenue (store no. 435); or

b. Gristede's located at 251 West 86th Street/2361 Broadway (store no. 56).

3. Chelsea:

a. Gristede's located at 188 Ninth Avenue (store no. 441, formerly under the Sloan's trade name) or the nearest alternate supermarket owned or operated by any respondent.

4. Greenwich Village:

a. Sloan's located at 585 Hudson Street (store no. 410) or the nearest alternate supermarket owned or operated by any respondent; or

b. Gristede's located at 25 University Place (store no. 82) or the nearest alternate supermarket west of Broadway owned or operated by any respondent.

The assets to be divested shall consist of the grocery business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations that are divested.

B. Respondents shall also divest, absolutely and in good faith, within twelve months from the date this order becomes final, two of the following listed supermarkets, with one supermarket from one area identified below within New York County, New York, and the other supermarket from a different area identified below within New York County, New York:

1. Upper East Side:

In addition to one of the three Upper East Side supermarkets listed in Paragraph II.A.1., either one other supermarket listed in Paragraph II.A.1., or one of the following:

a. Sloan's located at 1245 Park Avenue (store no. 38, formerly under the Red Apple trade name);

b. Gristede's located at 205 East 96th Street (store no. 98);

c. Gristede's located at 350 East 86th Street (store no. 50);

d. Sloan's located at 1668 Second Avenue (store no. 434);

e. Gristede's located at 1644 York Avenue (store no. 53); or

f. Sloan's located at 1637 York Avenue (store no. 507).

2. Upper West Side:

In addition to one of the two Upper West Side supermarkets listed in Paragraph II.A.2., either one other supermarket listed in Paragraph II.A.2., or the following:

a. a supermarket owned or operated by any respondent and located within four blocks of either of the two supermarkets listed in Paragraph II. A. 2.

3. Greenwich Village:

In addition to one of the four Greenwich Village supermarkets listed in Paragraph II. A. 4., either one other supermarket listed in Paragraph II. A. 4., or one of the following:

a. Gristede's located at 77 Seventh Avenue (store no. 37) or the nearest alternate supermarket owned or operated by any respondent; or

b. Gristede's located at 311 Bleecker Street (store no. 83) or the nearest alternate supermarket owned or operated by any respondent.

The assets to be divested shall consist of the grocery business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations that are divested.

C. Respondents shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the assets to be divested is to ensure the continuation of the assets to be divested as ongoing, viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisitions as alleged in the Commission's complaint.

D. Pending divestiture of such assets to be divested to comply with Paragraphs II. and III. of this order, respondents shall take such actions as are necessary to maintain the viability and marketability of such assets to be divested to comply with Paragraphs II. and III. of this order and to prevent the destruction, removal, wasting, deterioration, or impairment of such assets to be divested to comply with Paragraphs II. and III. of this order except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, such assets to be divested to comply with Paragraph II. of this order within twelve months from the date this order becomes final, the Commission may appoint a trustee to divest any of the supermarkets listed in Paragraph II. (and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations) that are owned or operated by any respondent at the time of the appointment of the trustee in order to satisfy the requirements of Paragraph II. A. and II. B. of this order. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have

consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any of the supermarkets listed in Paragraph II (and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations) that are owned or operated by any respondent at the time of the appointment of the trustee in order to comply with Paragraph II. of this order.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by Paragraph II. of this order. Such trust agreement may include a confidentiality agreement.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to any of the supermarkets listed in Paragraph II. (and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the listed locations) or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers, for any particular supermarket to be divested, from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such supermarket, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II. of this order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense or any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every ninety (90) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years commencing on the date this order becomes final, respondents shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any supermarket or leasehold interest in any supermarket located in New York County, New York, south of 116th Street, including any facility that has operated as a supermarket in this area within six (6) months of the date of the proposed acquisition; or

B. Acquire any stock, share capital, equity, or other interest in: (1) Any entity that owns any interest in or operates any supermarket located in New York County, New York, south of 116th Street, or (2) any entity that owned any interest in or operated any supermarket located in New York County, New York, south of 116th Street with six (6) months of the date of the proposed acquisitions.

Provided, however, that an acquisition otherwise covered by the requirements of this Paragraph shall be exempt from the requirements of this Paragraph if it is an acquisition by John A. Catsimatidis or by a respondent corporation from a respondent corporation or from John A. Catsimatidis.

V

It is further ordered that, for a period of ten (10) years commencing on the date this order becomes final, respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in section 1(a) of the Clayton Act, 15 U.S.C. 12(a)) acquiring any supermarket owned or operated by any respondent, any leasehold interest in any supermarket, or any interest in any retail location that formerly operated as a supermarket in New York County, New York, south of 116th Street, to operate a supermarket or retail food store.

VI

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of Paragraph II. or III. of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order.

VII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, sale resulting in the emergency of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this order, respondents shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to respondents, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of any respondent relating to any matters contained in this order; and

B. Upon five days' written notice to respondents and without restraint or interference from them, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from Red Apple Companies, Inc., John A. Catsimatidis, Supermarket Acquisition Corporation and Sloan's Supermarkets, Inc. (a/k/a Designcraft Industries, Inc.) (collectively referred to as the "Red Apple respondents") an agreement containing a proposed consent order. The Commission is placing the agreement containing a proposed consent order on the public record for sixty (60) days for receipt of comments by interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission issued a complaint in this matter on May 27, 1994, stating that it has reason to believe that the Red Apple respondents' acquisitions of Sloan's supermarkets between 1991 and 1993 in residential neighborhoods in New York County, New York, located within the Upper East Side, the Upper West Side, Chelsea, and Greenwich Village would substantially lessen competition in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the FTC Act, as amended, 15 U.S.C. 45. The agreement containing a proposed consent order would, if issued by the Commission, settle the charges alleged in the Commission's complaint.

The proposed consent order requires the Red Apple respondents to divest a combination of six supermarkets from two lists of supermarkets organized by geographic market. The listed supermarkets are all located in the Upper East Side, the Upper West Side, Chelsea, and Greenwich Village. Under the proposed consent order, the Red Apple respondents must divest one supermarket within each of the four geographic markets and two additional supermarkets in those geographic markets. The proposed consent order gives the Red Apple respondents 12 months to divest these supermarkets to an acquirer or acquirers that receive the prior approval of the Commission. Under the proposed consent order, if the Red Apple respondents fail to satisfy the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order.

The proposed consent order also prohibits the Red Apple respondents, for a ten-year period, from acquiring, without prior approval from the Commission, any supermarket (or leasehold interest in a supermarket, or stock, share capital, equity or other interest in an entity that owns or operates a supermarket) located in new York County south of 116th Street. The word "supermarket" is defined in the order.

The proposed consent order also prohibits the Red Apple respondents, for a ten-year period, from entering into or enforcing any agreement that restricts the ability of any person acquiring any supermarket owned or operated by any respondent in New York County south of 116th Street to operate a supermarket or retail food store.

Under the proposed consent order, the Red Apple respondents are required to provide to the Commission a report of compliance with the order within sixty (60) days following the date the order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

It is anticipated that the order will resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment on the proposed consent order to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed consent order, nor is it intended to modify the terms of the agreement and proposed consent order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 94–31129 Filed 12–16–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3540]

Revco D.S., Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, an Ohio-based drugstore chain to divest, within twelve months, to a Commission

approved acquirer, either the pharmacy business that it owns or the pharmacy business acquired from Hook-SupeRx, Inc. (HSI) in each of three geographic areas in Virginia. If the divestitures are not completed within twelve months, the order requires the respondent to consent to the appointment of a trustee to divest the assets. In addition, the consent order requires the respondent to obtain prior Commission approval, for ten years, before acquiring any similar business interest in any of the three specified geographic areas.

DATES: Complaint and order issued October 31, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Laura Wilkinson or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2830 or 326–2682.

SUPPLEMENTARY INFORMATION: On Wednesday, July 27, 1994, there was published in the **Federal Register**, 59 FR 38188, a proposed consent agreement with analysis In the Matter of Revco D.S., Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–31125 Filed 12–15–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3542]

Roche Holding Ltd., et al.; Prohibited Trade Practices, and Affirmative Cooperative Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires Roche to divest Syva's drugs of abuse testing (DAT) business within 12 months to a Commission-approved buyer, to operate the Syva assets separately from its own DAT business pending the divestiture, and to obtain, for ten years, prior Commission approval before acquiring assets or interests of any entity involved in the market for drugs of abuse reagent products.

DATES: Complaint and Order issued November 22, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Monday, September 12, 1994, there was published in the **Federal Register**, 59 FR 46846, a proposed consent agreement with analysis In the Matter of Roche Holding Ltd., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18).

Donald S. Clark,

Secretary.

[FR Doc. 94–31126 Filed 12–16–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9232]

Schering Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey manufacturer of the diet product, Fibre Trim, from claiming that any food, food supplement, or drug product provides any appetite suppressant, weight loss, weight control, or weight maintenance benefit without processing and relying upon competent and reliable scientific evidence to substantiate the claim.

DATES: Complaint issued September 22, 1989. Order issued October 31, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Theodore Hoppock or Susan Cohn, FTC/S–4002, Washington, DC 20580/ (202) 326–3087 or 326–3053.

SUPPLEMENTARY INFORMATION: On Tuesday, August 16, 1994, there was published in the **Federal Register**, 59 FR 42048, a proposed consent agreement with analysis in the Matter of Schering Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–31127 Filed 12–16–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capability of the specified industry

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: Construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from October 1, 1993 to September 30, 1994. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after January 1, 1995.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowzki, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceed $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16 and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 1, 2, 5, 6, 7, 9 and the National Capital Region in Group 15 and Regions 1, 3, 4, 5, 7, 10 and the National Capital Region for individual SIC code 1796) will be conducted on an unrestricted basis.

Procurements for construction services in Group 15 issued by GSA contracting activities in Regions 1, 2, 5, 6, 7, 9 and the National Capital Region, and in individual SIC Code 1796 in Regions 1, 3, 4, 5, 7, 10 and the National Capital Region will be set aside for small business when there is a reasonable expectation of obtaining competition for two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 1 encompasses the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 7 encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Region 9 for service code C219) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by GSA contracting activities in GSA Region 9 for service code C219 will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurement will be conducted on an unrestricted basis.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Non-nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: December 9, 1994.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 94–31156 Filed 12–16–94; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting of the Commission on Research Integrity

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Commission on Research Integrity, on Thursday, January 5, 1995, from 8:30 a.m. to 5 p.m., at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202. The meeting will be open to the public. The meeting is subject to availability of funds and other constraints. Therefore, interested parties are advised to call the Executive Secretary shortly before scheduled meetings to verify the date and place.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services and the Congress on the administration of Section 493 of the Public Health Service Act, as amended by and added to, by Section 161 of the NIH Revitalization Act of 1993.

The purpose of this meeting will be to continue the dialogue with professional societies on their role to ensure research integrity and to discourage research misconduct, including existing or planned codes of ethics that address such issues. The Commission will also continue its discussion on a new model assurance for institutions, a definition of research integrity, a more rigorous approach to whistleblower protection, and other issues on which the Commission is planning to make recommendations. Discussion items may include, but will not be limited to, the issues noted above.

Commission members will prepare questions to guide representatives in their presentations. The questions will be forwarded to witnesses by the Executive Secretary. More detailed statements from witnesses on the concerns of the specific society may be submitted in writing to the Executive Secretary before or at the meeting. Each

statement will be reviewed by Commission Members.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, will furnish the meeting agenda, the Committee charter, and a roster of the Committee members upon request. Members of the public wishing to make presentations should contact the Executive Secretary. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Henrietta D. Hyatt-Korr,

Executive Secretary, Commission on Research Integrity.

[FR Doc. 94–31078 Filed 12–16–94; 8:45 am]

BILLING CODE 4160–17–M

Office of Inspector General

Program Exclusions: November 1994

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 1994, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
BANDY, GRACE A., BECKLEY, WV	12/5/94
BERNARD, GERALD, BRONX, NY	12/7/94
BUENAVENTURA, ANGELINA R. VALLEJO, CA	12/4/94
DEES, MICHAEL ANTHONY, WASHINGTON, DC	12/5/94
DUVIDOVSKY, LYUDMILLA, BROOKLYN, NY	12/7/94
EAST AMBULANCE SERVICES, LTD., WEST HOMESTEAD, PA	12/5/94
HOLYWAY, CRAIG, DETROIT, MI	12/7/94
KHAWAJA, SHAHID, STATEN ISLAND, NY	12/7/94
LEE, WILLIAM B., LOMPOC, CA	12/4/94
MAHAJAN, SHYAM S., STROUDSBURG, PA	12/5/94
MCDONOUGH, JAMES JOSEPH, JR., ST LOUIS PARK, MN	12/7/94
MMK, INC., STATEN ISLAND, NY	12/7/94
MUSTAFIZ, ALI, BRONX, NY	12/7/94
PENNINGTON, SANDRA D., ST PAUL, MN	12/7/94
PETERSON, WARREN COON RAPIDS, MN	12/7/94
RICH, JAMES L., NEW YORK, NY	12/7/94
RIDLEY, MARY G., SOUTH PORTLAND, ME	12/7/94
SCHLEIFER, THEODORE III, WEST HOMESTEAD, PA	12/5/94
SILLS, KIM MCCARTER, MANSFIELD, TX	12/5/94
SIMANI, FARSHAD FRED, KEW GARDENS, NY	12/7/94
THOMAS, BARBARA, WALDORF, MD	12/5/94
TINO, PHILLIP G., GREENEVILLE, TN	12/5/94
VEREB, PATRICK R., NEW CASTLE, PA	12/5/94
WATTMAN, EDWIN Z., PROVIDENCE, RI	12/7/94
PATIENT ABUSE/NEGLECT CONVICTIONS	
BANKSTON, THELMA JOE, CARTWRIGHT, OK	12/5/94
GOULART, JEFFREY A., BRISTOL, RI	12/7/94
GREGOIRE, STUART R., BRANDON, VT	12/7/94
HARRIS, JAMES LEE, JR., KINGSLAND, AR	12/5/94
HARTMAN, EDWARD L., KEYSER, WV	12/5/94
HAVENS, CAMI M., SPOKANE, WA	12/4/94
HINDS, ROBERT S., MESA, AZ	12/4/94
HUANTE, MARTHA, SAN ANTONIO, TX	12/5/94
MCCAA, BEVERLY, BIRMINGHAM, AL	12/5/94
MEAD, HEIDI L., MONTROSE, IA	12/7/94
REMY, MARY K., FORT SMITH, AR	12/5/94
REMY, CALVIN, FORT SMITH, AR	12/5/94
RODRIGUEZ, IRENE A., CASHION, AZ	12/4/94
SEAMSTER, MARY HELEN, MINDEN, LA	12/5/94
WEBB, MARGURETTE, FORT SMITH, AR	12/5/94
WILSON, CHRISTINE, CHARLOTTE, NC	12/5/94
CONVICTION FOR HEALTH CARE FRAUD	
DEBIASE, ROBERT, BROOKLYN, NY	12/7/94
SCANNAPIECO, ANNE, PHILADELPHIA, PA	12/5/94
CONTROLLED SUBSTANCE CONVICTIONS	
KASTIGAR, BERNARD PAUL, EL SEGUNDO, CA	12/4/94
WELTMAN, HAROLD S., KINGSTON, PA	12/5/94
LICENSE REVOCATION/SUSPENSION/SURRENDER	
ALEXANDER, ZANDRINA, TAMPA, FL	12/5/94
BARTOLAZO, NAPOLEON A., SEMINOLE, FL	12/5/94
BAY SHORE PODIATRIC SVCS PC, HICKVILLE, NY	12/7/94
BIRCH, JAMES T., JR., NORFOLK, VA	12/5/94
BISLA, RANHIT S., PHOENIX, AZ	12/4/94
BLACKANN, ROBERT L., INDEPENDENCE, MO	12/7/94
BONE, KATHLEEN, WALLINGFORD, CT	12/7/94
BROADWAY MALL PODIATRIC SVCS, HICKSVILLE, NY	12/7/94
BUJNOWSKI, REGINA, NEW BRITAIN, CT	12/7/94
BUSSEY, WILLIAM J., FT COLLINS, CO	12/5/94
COOKE, FRANCIS W., GUTHRIE, OK	12/5/94
CRAWFORD, GENE OLIVER, FORT WASHINGTON, MD	12/5/94
DAVIDSON, DONNA, HARMONY, RI	12/7/94
DAVIS, ROGER W., COLORADO SPRINGS, CO	12/5/94
FARZANFAR, MOHAMMAD R., BALTIMORE, MD	12/5/94
GRANNIS, JILL F., CAYUCOS, CA	12/4/94
HICKSVILLE PODIATRIC SVCS, PC, HICKVILLE, NY	12/7/94
HILLGARD, ELSE, VIENNA, VA	12/5/94
HOBBS, WILLIAM D., MILES CITY, MT	12/5/94
KASDIN, JACK, RICHMOND, VA	12/5/94
KLINGENSTEIN, KEITH G., COLLEGE PARK, MD	12/5/94
KOSTEK, DEBORAH L., FARGO, ND	12/5/94
LEHMKUHLE, JOSEPH, GRAND JUNCTION, CO	12/5/94
MARRY, SUSAN M., READING, MA	12/7/94
MARTIN-JOHNSON, TRACIE, CONVENTRY, RI	12/7/94
MASSOUDA, ROBERT A., PROVIDENCE, RI	12/7/94

Subject, city, state	Effective date
NAMIHAS, IVAN C., TUSTIN, CA	12/4/94
NAVRKAL, HARVEY, FT COLLINS, CO	12/5/94
RANES, RAYMOND D., OCALA, FL	12/5/94
SAEED, MUHAMMAD A., LAHORE, PAKISTAN	12/7/94
SOUTH SHORE MALL PODIATRIC SVC, HICKSVILLE, NY	12/7/94
STATESCU, OVIDIU I., CARLSBAD, CA	12/4/94
SUFFOLK COUNTY PODIATRIC SVCS, HICKVILLE, NY	12/7/94
SURGICAL CARE PROVIDER, DPM, PC, HICKVILLE, NY	12/7/94
TUCKER, DAVID O., KEENE, TX	12/5/94
TUCKER, THOMAS WALTER, BIRMINGHAM, AL	12/5/94
URCIULLO, SHARON, EAST HARTFORD, CT	12/7/94
VANCE, JUDITH K., PANHANDLE, TX	12/5/94
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BELT, LANA CRABTREE, CHANUTE, KS	12/5/94
CAPUCHINO, ROSEMARIE LYNN, FORT WORTH, TX	12/5/94
QUALITY OF CARE VIOLATIONS	
VEST, T. BRUCE, ALTON, IL	12/8/94
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
CLEARWATER FAMILY SERVICES, BELLEVUE, WA	12/4/94
FRANK S. HORNG, M.D., P.C., LURAY, VA	12/5/94
LIFECARE MEDICAL SALES & RENT, GREENEVILLE, TN	12/5/94
LIFECARE MEDICAL SALES & RENT, GREENEVILLE, TN	12/5/94
VASU CLINICS, LTD, GRUNDY, VA	12/5/94
VILLAGE DRUG PHARMACY, EL SEGUNDO, CA	12/4/94
DEFAULT ON HEAL LOAN	
BETHEA-OWENS, CARROLL R., IRVING, TX	11/10/94
BLISH, JON J., MOUND, MN	12/7/94
BOULWARE, SUSAN L., SAUSALITO, CA	12/4/94
BUCKENDAHL, WILLIAM G., BUELLTON, CA	12/4/94
CABALLERO, JORGE R., LOS ANGELES, CA	12/4/94
CARRANCEJIE, MONICA, TAMPA, FL	12/5/94
CATALFO, CHRISTOPHER L., ORLANDO, FL	12/5/94
CRIDER, WALTER D., SCOTTSDALE, AZ	12/4/94
DICKEY, JERRY P., RICHARDSON, TX	12/5/94
DIFIORE, WILLIAM E., JR., SANTA ANA, CA	12/4/94
DIGIOIA, DONNA M., CAMBRIDGE, MA	12/7/94
ELOFSON, OLOF R., ISSAQUAH, WA	12/4/94
FLANAGAN, JOHN T., JR., CHICAGO, IL	12/7/94
GARCIA, JOSE E., ALTAMONTE SPRINGS, FL	12/5/94
GOLDSTEIN, DAVID W., CHERRY HILL, NJ	12/7/94
GREGORY, TODD A., SANTA MARIA, CA	12/4/94
HARDWICK, JAMES F., ALTAMONTE SPRINGS, FL	12/5/94
HASSIOTTI, LEONE L., EAST ORANGE, NJ	12/7/94
HERRON, WOODIE D., ABERDEEN, MS	12/5/94
HERZLICH, DOUGLAS B., BRONX, NY	12/7/94
HOWE, JOHN B., POMPTON LAKES, NJ	12/7/94
JENNINGS, PEGGY J., GAINESVILLE, FL	12/5/94
KERN, MARK S., FORT MYERS, FL	12/4/94
KESSINGER, ANDREW JACKSON, IV., SEYMOUR, MO	12/7/94
KUZYK, DONALD IRVIN, NEWBURY PARK, CA	12/4/94
LANDEMARE, HENRY M., MOSS BEACH, CA	12/4/94
MCGEE, BILLIE J., SIMI VALLEY, CA	12/4/94
MILLON, JEFFREY M., LITHONIA, GA	12/5/94
MURPHY, DEBORAH C., OJAI, CA	12/4/94
MURPHY, RICHARD T., HENDERSON, NV	12/4/94
OLAH, DIAN M., CLEARWATER, FL	12/5/94
OPPENHEIMER, JAHN H., ST PETERSBURG, FL	12/5/94
RAZAVI, MAHMOOD K., LOS ANGELES, CA	12/4/94
REDD, TIMOTHY J., SAN DIMAS, CA	12/4/94
RESENDIZ, MARIO G., DANBURY, CT	12/7/94
RITER, CECIL F., HONOLULU, HI	12/4/94
ROBINSON, HAROLD L., TUMWATER, WA	12/4/94
ROSHY, GARY L., LUDINGTON, MI	12/7/94
SCHUCKMAN, GARY A., WILMINGTON, NC	12/5/94
SCHWARZ, BERNARD CHARLES, CENTER LINE, MI	12/7/94
SIMOVICH, PAUL N., HUNTINGTON BEACH, CA	12/4/94
SPEER, JAMES D., CORPUS CHRISTI, TX	12/5/94
STEELE, DAVID L., TEXARKANA, TX	12/5/94
SUTANTO, SUGENG, DOWNERS GROVE, IL	12/7/94
TARVER, DONALD EUGENE, SAN FRANCISCO, CA	12/4/94
TROUTMAN, WILLIAM D., JR., ATLANTA, GA	12/5/94
WARFORD, MARK A., ROSEVILLE, CA	12/4/94
WARNER, NATHAN G., HOUSTON, MO	12/7/94
WHITTLESEY, JAMES B., NOVATO, CA	12/4/94
WILLIAMS, WILLIAM E., OAKLAND, CA	12/4/94
WOODS, DAEMON S., FT DRUM, NY	11/17/94
WRIGHT, LYNNEA S., KANSAS CITY, MO	12/7/94
SECTION 1128Aa	
ATLANTA MEDICAL EQUIPMENT, INC., ATLANTA, GA	8/31/94
ATLANTA MEDICARE EQUIPMENT, INC., ATLANTA, GA	8/31/94
BAGEL, LEE, ATLANTA, GA	8/31/94
BAGEL, SHERRY, ATLANTA, GA	8/31/94
NORTHSIDE MEDICAL EQUIPMENT, INC., ATLANTA, GA	8/31/94
PEER REVIEW ORGANIZATIONS CASES	
SPENCER, WILLIAM A., OSAGE, IA	11/9/94

Dated: December 9, 1994.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 94–31111 Filed 12–16–94; 8:45 am]

BILLING CODE 4150–04–P

Publication of OIG Special Fraud Alerts

AGENCY: Office of Inspector General, HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the 5 previously-developed Special Fraud Alerts issued directly to the health care provider community by the HHS Office of Inspector General (OIG). In keeping with the OIG's goal and intent of publicizing its concern about possible widespread and abusive health care industry practices, and seeking wider dissemination of this information to the general public, we are republishing the main content of these Special Fraud Alerts in the **Federal Register**. This notice also serves to alert the general public of our intention to publish all future OIG Special Fraud Alerts in this same manner, in addition to the current method used to distribute this material to Medicare and State health care program providers.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Legislation, Regulations and Public Affairs Staff, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

The Use of Fraud Alerts by the OIG

Over the years, the OIG has used fraud alerts as a vehicle to identify fraudulent and abusive practices within the health care industry. The majority of these fraud alerts are disseminated internally to the OIG's Office of Investigations and other agencies within the Department. However, the OIG has also developed and issued Special Fraud Alerts intended for extensive distribution directly to the health care provider community.

Special Fraud Alerts

Since 1988, the OIG has issued 5 "Special Fraud Alerts" addressing specific trends of health care fraud and certain practices of an industry-wide character. Specifically, the OIG Special Fraud Alerts have served to provide general guidance to the health care industry on violations of Federal law (including various aspects of the anti-kickback statute), as well as to provide additional insight to the Medicare carrier fraud units in identifying health care fraud schemes.

In developing these Special Fraud Alerts, the OIG relies on a number of sources, such as studies or management and program evaluations conducted by the OIG's Office of Evaluation and Inspections. In addition, the OIG may consult with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and from those in the health care industry.

The Nature of Past Special Fraud Alerts

For the most part, the OIG Special Fraud Alerts have been reserved for national trends in health care fraud and have addressed potential violations of the Medicare and State health care programs' anti-kickback statute. The Special Fraud Alerts have addressed the following topic areas that could violate the anti-kickback statute:

- Joint venture arrangements;
- Routine waiver of Medicare Part B copayments and deductibles;
- Hospital incentives to referring physicians;
- Prescription drug marketing practices;
- Arrangements for the provision of clinical laboratory services.

II. Federal Register Publication of Special Fraud Alerts

In the past, the OIG has always printed and distributed copies of these Special Fraud Alerts directly to all Medicare program providers. While the OIG Special Fraud Alerts have been designed to be available to all affected program providers, we believe it is useful to publicize these various issues and concerns involving potential abusive health care industry practices to a more widespread audience. For this reason, we are using this **Federal Register** notice as a vehicle to reprint the substance of the 5 previously-issued Special Fraud Alerts cited above. It is our intention to use this same **Federal Register** form for publishing future Special Fraud Alerts developed by the OIG.

Because each of the previously-developed Special Fraud Alerts contained a similar brief narrative as to the nature of the OIG and a description of the Medicare and Medicaid anti-kickback statute, we will first summarize and set out this material in one section, as it is germane to all 5 subject issuances. Following that will be the main body and content of each of the Special Fraud Alerts. Lastly, we have provided the general information set forth in each of these Special Fraud Alerts addressing information on how to report information on suspected violations.

The OIG Special Fraud Alerts

A. General Background

The Office of Inspector General was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in Health and Human Services programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations and inspections. To help reduce fraud in the Medicare and Medicaid programs, the OIG is actively investigating violations of the Medicare and Medicaid anti-kickback statute, 42 U.S.C. Section 1320a-7b(b).

What Is the Medicare and Medicaid Anti-Kickback Law?

Among its provisions, the anti-kickback statute penalizes anyone who knowingly and willfully solicits, receives, offers or pays remuneration in cash or in kind to induce, or in return for:

A. Referring an individual to a person for the furnishing, or arranging for the furnishing, of any item or service payable under the Medicare or Medicaid program; or

B. Purchasing, leasing or ordering , or arranging for or recommending purchasing, leasing or ordering, any goods, facility, service or item payable under the Medicare or Medicaid program.

Violators are subject to criminal penalties, or exclusion from participation in the Medicare and Medicaid programs, or both. In 1987, section 14 of the Medicare and Medicaid Patient and Program Protection Act, PL 100–93, directed this Department to promulgate "safe harbor" regulations, in order to provide health care providers a mechanism to assure them that they will not be prosecuted under the anti-kickback statute for engaging in particular practices. The Department published 11 final "safe harbor" regulations on July 29, 1991 (42 CFR 1001.952, 56 FR 35952), and two more on November 5, 1992 (42 CFR 1001.952, 57 FR 52723). The scope of the anti-kickback statute is not expanded by the "safe harbor" regulations; these regulations give those in good faith compliance with a "safe harbor" the assurance that they will not be prosecuted under the anti-kickback statute.

B. Special Fraud Alert: Joint Venture Arrangements

(Issued August 1989)

The Office of Inspector General has become aware of a proliferation of arrangements between those in a position to refer business, such as physicians, and those providing items or services for which Medicare or Medicaid pays. Some examples of the items or services provided in these arrangements include clinical diagnostic laboratory services, durable medical equipment (DME), and other diagnostic services. Sometimes these deals are called "joint ventures." A joint venture may take a variety of forms: it may be a contractual arrangement between two or more parties to cooperate in providing services, or it may involve the creation of a new legal entity by the parties, such as a limited partnership or closely held corporation, to provide such services. Of course, there may be legitimate reasons to form a joint venture, such as raising necessary investment capital. However, the Office of Inspector General believes that some of these joint ventures may violate the Medicare and Medicaid anti-kickback statute.

Under these suspect joint ventures, physicians may become investors in a newly formed joint venture entity. The

investors refer their patients to this new entity, and are paid by the entity in the form of "profit distributions." These subject joint ventures may be intended not so much to raise investment capital legitimately to start a business, but to lock up a stream of referrals from the physician investors and to compensate them indirectly for these referrals. Because physician investors can benefit financially from their referrals, unnecessary procedures and tests may be ordered or performed, resulting in unnecessary program expenditures.

The questionable features of these suspect joint ventures may be reflected in three areas:

(1) The manner in which investors are selected and retained;

(2) The nature of the business structure of the joint venture; and

(3) The financing and profit distributions.

Suspect Joint Ventures: What To Look For

To help you identify these suspect joint ventures, the following are examples of questionable features, which separately or taken together may result in a business arrangement that violates the anti-kickback statute. Please note that this is not intended as an exhaustive list, but rather gives examples of indicators of potentially unlawful activity.

Investor

- Investors are chosen because they are in a position to make referrals.
- Physicians who are expected to make a large number of referrals may be offered a greater investment opportunity in the joint venture than those anticipated to make fewer referrals.
- Physician investors may be actively encouraged to make referrals to the joint venture, and may be encouraged to divest their ownership interest if they fail to sustain an "acceptable" level of referrals.
- The joint venture tracks its sources of referrals, and distributes this information to the investors.
- Investors may be required to divest their ownership interest if they cease to practice in the service area, for example, if they move, become disabled or retire.
- Investment interests may be nontransferable.

Business Structure

- The structure of some joint ventures may be suspect. For example, one of the parties may be an ongoing entity already engaged in a particular line of business. That party may act as the reference laboratory or DME supplier for the joint venture. In some of these cases, the joint venture can be best characterized as a "shell."
- In the case of a shell laboratory joint venture, for example:

—It conducts very little testing on the premises, even though it is Medicare certified.

—The reference laboratory may do the vast bulk of the testing at its central processing laboratory, even though it also serves as the "manager" of the shell laboratory.

—Despite the location of the actual testing, the local "shell" laboratory bills Medicare directly for these tests.

- In the case of a shell DME joint venture, for example:

—It owns very little of the DME or other capital equipment; rather the ongoing entity owns them.

—The ongoing entity is responsible for all day-to-day operations of the joint venture, such as delivery of the DME and billing.

Financing and Profit Distribution

- The amount of capital invested by the physician may be disproportionately small and the returns on investment may be disproportionately large when compared to a typical investment in a new business enterprise.
- Physician investors may invest only a nominal amount, such as $500 to $1500.
- Physician investors may be permitted to "borrow" the amount of the "investment" from the entity, and pay it back through deductions from profit distributions, thus eliminating even the need to contribute cash to the partnership.
- Investors may be paid extraordinary returns on the investment in comparison with the risk involved, often well over 50 to 100 percent per year.

C. Special Fraud Alert: Routine Waiver of Copayments or Deductibles Under Medicare Part B

(Issued May 1991)

To help reduce fraud in the Medicare program, the Office of Inspector General is actively investigating health care providers, practitioners and suppliers of health care items and services who (1) are paid on the basis of charges [1] and (2) routinely waive (do not bill) Medicare deductible and copayment charges to beneficiaries for items and services covered by the Medicare program.

What Are Medicare Deductible and Copayment Charges?

The Medicare "deductible" is the amount that must be paid by a Medicare beneficiary before Medicare will pay for any items or services for that individual. Currently, the Medicare Part B deductible is $100 per year.

"Copayment" ("coinsurance") is the portion of the cost of an item or service which the Medicare beneficiary must pay. Currently, the Medicare Part B coinsurance is generally 20 percent of the reasonable charge for the item or service. Typically, if the Medicare reasonable charge for a Part B item or service is $100, the Medicare beneficiary (who has met his [or her] deductible) must pay $20 of the physician's bill, and Medicare will pay $80.

Why Is it Illegal for "Charged-Based" Providers, Practitioners and Suppliers to Routinely Waive Medicare Copayment and Deductibles?

Routine waiver of deductibles and copayments by charge-based providers, practitioners or suppliers is unlawful because it results in (1) false claims, (2) violations of the anti-kickback statute, and (3) excessive utilization of items and services paid for by Medicare.

A "charge-based" provider, practitioner or supplier is one who is paid by Medicare on the basis of the "reasonable charge" for the item or service provided. 42 U.S.C. 1395u(b)(3), 42 CFR 405.501. Medicare typically pays 80 percent of the reasonable charge. 42 U.S.C. 1395l(a)(1). The criteria for determining what charges are reasonable are contained in regulations, and include an examination of (1) the actual charge for the item or service, (2) the customary charge for the item or service, (3) the prevailing charge in the same locality for similar items or services. The Medicare reasonable charge cannot exceed the actual charge for the item or service, and may generally not exceed the customary charge or the highest prevailing charge for the item or service. In some cases, the provider, practitioner or supplier will be paid the lesser of his [or her] actual charge or an amount established by a fee schedule.

A provider, practitioner or supplier who routinely waives Medicare copayments or deductibles is misstating

[1] This fraud alert is not intended to address the routine waiver of copayments and deductibles by providers, practitioners or suppliers who are paid on the basis of costs or diagnostic related groups. The fact that these types of services are not discussed in this fraud alert should not be interpreted to legitimize routine waiver of deductibles and copayments with respect to these payment methods. Also, it does not apply to a waiver of any copayment by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act.

its actual charge. For example, if a supplier claims that its charge for a piece of equipment is $100, but routinely waives the copayment, the actual charge is $80. Medicare should be paying 80 percent of $80 (or $64), rather than 80 percent of $100 (or $80). As a result of the supplier's misrepresentation, the Medicare program is paying $16 more than it should for this item.

In certain cases, a provider, practitioner or supplier who routinely waives Medicare copayments or deductibles also could be held liable under the Medicare and Medicaid anti-kickback statute. 42 U.S.C. 1320a–7b(b). The statute makes it illegal to offer, pay, solicit or receive anything of value as an inducement to generate business payable by Medicare or Medicaid. When providers, practitioners or suppliers forgive financial obligations for reasons other than genuine financial hardship of the particular patient, they may be unlawfully inducing that patient to purchase items or services from them.

At first glance, it may appear that routine waiver of copayments and deductibles helps Medicare beneficiaries. By waiving Medicare copayments and deductibles, the provider of services may claim that the beneficiary incurs no costs. In fact, this is not true. Studies have shown that if patients are required to pay even a small portion of their care, they will be better health care consumers, and select items or services because they are medically needed, rather than simply because they are free. Ultimately, if Medicare pays more for an item or service than it should, or if it pays for unnecessary items or services, there are less Medicare funds available to pay for truly needed services.

One important exception to the prohibition against waiving copayments and deductibles is that providers, practitioners or suppliers may forgive the copayment in consideration of a particular patient's financial hardship. This hardship exception, however, must not be used routinely; it should be used occasionally to address the special financial needs of a particular patient. Except in such special cases, a good faith effort to collect deductibles and copayments must be made. Otherwise, claims submitted to Medicare mat violate the statutes discussed above and other provisions of the law.

What Penalties Can Someone Be Subject to for Routinely Waiving Medicare Copayments or Deductibles?

Whoever submits a false claim to the Medicare program (for example, a claim misrepresents an actual charge) may be subject to criminal, civil or administrative liability for making false statements and/or submitting false claims to the Government. 18 U.S.C. 287 and 1001; 31 U.S.C. 3729; 42 CFR 1320a–7a). Penalties can include imprisonment, criminal fines, civil damages and forfeitures, civil monetary penalties and exclusion from Medicare and the State health care programs.

In addition, anyone who routinely waives copayments or deductibles can be criminally prosecuted under 42 U.S.C. 1320a–7b(b), and excluded from participating in Medicare and the State health care programs under the anti-kickback statute. 42 U.S.C. 1320a–7(b)(7).

Finally, anyone who furnishes items or services to patient substantially in excess of the needs of such patients can be excluded from Medicare and the State health care programs. 42 U.S.C. 1320a–7(b)(6)(B).

Indications of Improper Waiver of Deductibles and Copayments

To help you identify charge-based providers, practitioners or suppliers who routinely waive Medicare deductibles and copayments, listed below are some suspect marketing practices. Please note that this list is not intended to be exhaustive but, rather, to highlight some indicators of potentially unlawful activity.

- Advertisements which state: "Medicare Accepted As Payment in Full," "Insurance Accepted As Payment in Full," or "No Out-Of-Pocket Expense."
- Advertisements which promise that "discounts" will be given to Medicare beneficiaries.
- Routine use of "Financial hardship" forms which state that the beneficiary is unable to pay the coinsurance/deductible (i.e., there is no good faith attempt to determine the beneficiary's actual financial condition).
- Collection of copayments and deductibles only where the beneficiary has Medicare supplemental insurance ("Medigap") coverage (i.e., the items or services are "free" to the beneficiary).
- Charges to Medicare beneficiaries which are higher than those made to other persons for similar services and items (the higher charges offset the waiver of coinsurance.)
- Failure to collect copayments or deductibles for a specific group of Medicare patients for reasons unrelated to indigency (e.g., a supplier waives coinsurance or deductible for all patients from a particular hospital, in order to get referrals).
- "Insurance programs" which cover copayments or deductibles only for items or services provided by the entity offering the insurance. The "insurance premium" paid by the beneficiary is insignificant and can be as low as $1 a month or even $1 a year. These premiums are not based upon actuarial risks, but instead are a sham used to disguise the routine waiver of copayments and deductibles.

D. Special Fraud Alert: Hospital Incentives to Physicians

(Issued May 1992)

Why Do Hospitals Provide Economic Incentives to Physicians?

As many hospitals have become more aggressive in their attempts to recruit and retain physicians and increase patient referrals, physician incentives (sometimes referred to as "practice enhancements") are becoming increasingly common. Some physicians actively solicit such incentives. These incentives may result in reductions in the physician's professional expenses or an increase in his or her revenues. In exchange, the physician is aware that he or she is often expected to refer the majority, if not all, of his or her patients, to the hospital providing the incentives.

Why Is it Illegal for Hospitals to Provide Financial Incentives to Physicians for Their Referrals?

The Office of Inspector General has become aware of a variety of hospital incentive programs used to compensate physicians (directly or indirectly) for referring patients to the hospital. These arrangements are implicated by the anti-kickback statute because they can constitute remuneration offered to induce, or in return for, the referral of business paid for by Medicare or Medicaid. In addition, they are not protected under the existing "safe harbor" regulations.

These incentive programs can interfere with the physician's judgment of what is the most appropriate care for a patient. They can inflate costs to the Medicare program by causing physicians to overuse inappropriately the services of a particular hospital. The incentives may result in the delivery of inappropriate care to Medicare beneficiaries and Medicaid recipients by inducing the physician to refer patients to the hospital providing financial incentives rather than to another hospital (or non-acute care facility) offering the best or most appropriate care for that patient.

Suspect Hospital Incentive Arrangements—What To Look For

To help identify suspect incentive arrangements, examples of practices

which are often questionable are listed [below]. Please note that this list is not intended to be exhaustive but, rather, to suggest some indicators of potentially unlawful activity.

- Payment of any sort of incentive by the hospital each time a physician refers a patient to the hospital.
- The use of free or significantly discounted office space or equipment (in facilities usually located close to the hospital).
- Provision of free or significantly discounted billing, nursing or other staff services.
- Free training for a physician's office staff in such areas as management techniques, CPT coding and laboratory techniques.
- Guarantees which provide that, if the physician's income fails to reach a predetermined level, the hospital will supplement the remainder up to a certain amount.
- Low-interest or interest-free loans, or loans which may be "forgiven" if a physician refers patients (or some number of patients) to the hospital.
- Payment of the cost of a physician's travel and expenses for conferences.
- Payment for a physician's continuing education courses.
- Coverage on hospitals' group health insurance plans at an inappropriately low cost to the physician.
- Payment for services (which may include consultations at the hospital) which require few, if any, substantive duties by the physician, or payment for services in excess of the fair market value of services rendered.

Financial incentive packages which incorporate these or similar features may be subject to prosecution under the Medicare and Medicaid anti-kickback statute, if one of the purposes of the incentive is to influence the physician's medical decision as to where to refer his or her patients for treatment.

E. Special Fraud Alert: Prescription Drug Marketing Schemes

(Issued August 1994)

How Does the Anti-Kickback Law Relate to Prescription Drug Marketing Schemes?

In recent years, prescription drug companies in the United States have increased their marketing activities among providers, patients and suppliers such as pharmacies. Many prescription drug marketing activities go far beyond traditional advertising and educational contacts. Physicians, suppliers and, increasingly, patients are being offered valuable, non-medical benefits in exchange for selecting specific prescription drug brands. Traditionally, physicians and pharmacists have been trusted to provide treatments and recommend products in the best interest of the patient. In an era of aggressive drug marketing, however, patients may now be using prescription drug items, unaware that their physician or pharmacist is being compensated for promoting the selection of a specific product. Prescription drugs supplied under one of these programs are often reimbursed under Medicaid. Among the specific activities, which the OIG has identified, are the following actual cases:

- A "product conversion" program which resulted in 96,000 brand-name conversions. In this scenario, for instance, Drug Company A offered a cash award to pharmacies for each time a drug prescription was changed from Drug Company B's product to Drug Company A's product. The pharmacies were induced to help persuade physicians, who were unaware of the pharmacies' financial interest, to change prescription.
- A "frequent flier" campaign in which physicians were given credit toward airline frequent flier mileage each time the physician completed a questionnaire for a new patient placed on the drug company's product.
- A "research grant" program in which physicians were given substantial payments for de minimis recordkeeping tasks. The physician administered the drug manufacturer's product to the patient and made brief notes, sometimes a single word, about the treatment outcome. Upon completion of a limited number of such "studies," the physician received payment from the manufacturer.

If one purpose of any of these marketing schemes is to induce the provision of a prescription drug item reimbursable by Medicaid, then the criminal anti-kickback statute is implicated. There is no statutory exception or "safe harbor" to protect such activities. Thus a physician, pharmacy or other practitioner or supplier receiving payment under these activities may be subject to criminal prosecution and exclusion from participation in the Medicare and Medicaid programs.

A marketing program that is illegal under the anti-kickback statute may pose a danger to patients because the offering or payment of remuneration may interfere with a physician's judgment in determining the most appropriate treatment for a patient. Further, where the patient is a Medicaid beneficiary, these drug marketing practices may increase the Federal government's costs of reimbursing suppliers for the products. The OIG is investigating various drug marketing schemes, and enforcing the anti-kickback laws where these practices affect the Federal health care programs.

What To Look For

Generally, a payment or gift may be considered improper under 42 U.S.C. 1320a–7b(b) if it is:

- Made to a person in a position to generate business for the paying party;
- Related to the volume of business generated; and
- More than nominal in value and/or exceeds fair market value of any legitimate service rendered to the payer, or is unrelated to any service at all other than referral of patients.

OIG investigation may be warranted where one or more of the following features is present in prescription drug marketing activities:

- Any prize, gift or cash payment, coupon or bonus (e.g., airline discounts and related travel premiums), offered to physicians and/or suppliers (including pharmacies, mail order prescription drug companies and managed care organizations) in exchange for, or based on, prescribing or providing specific prescription products. These items are particularly suspect if based on value or volume of business generated for the drug company.
- Materials which offer cash or other benefits to pharmacists (or others in a position to recommend prescription drug products) in exchange for performing marketing tasks in the course of pharmacy practice related to Medicare or Medicaid. The marketing tasks may include sales-oriented "educational" or "counseling" contacts, or physician and/or patient outreach, etc.
- Grants to physicians and clinicians for studies of prescription products when the studies are of questionable scientific value and require little or no actual scientific pursuit. The grants may nonetheless offer substantial benefits based on, or related to, use of the product.
- Any payment, including cash or other benefit, given to a patient, provider or supplier for changing a prescription, or recommending or requesting such a change, from one product to another, unless the payment is made fully consistent with a "safe harbor" regulation, 42 CFR 1001.952, or other Federal provision governing the reporting of prescription drug prices.

F. Special Fraud Alert: Arrangements for the Provision of Clinical Lab Services

(Issued October 1994)

How Does the Anti-Kickback Statute Relate to Arrangements for the Provision of Clinical Lab Services?

Many physicians and other health care providers rely on the services of outside clinical laboratories to which they may refer high volumes of patient specimens every day. The quality, timeliness and cost of these services are of obvious concern to Medicare and Medicaid patients and to the programs that finance their health care services. Since the physician, not the patient, generally selects the clinical laboratory, it is essential that the physician's decision regarding where to refer specimens is based only on the best interests of the patient.

Whenever a laboratory offers or gives to a source of referrals anything of value not paid for at fair market value, the inference may be made that the thing of value is offered to induce the referral of business. The same is true whenever a referral source solicits or receives anything of value from the laboratory By "fair market value" we mean value for general commercial purposes. However, "fair market value" must reflect an arms length transaction which has not been adjusted to include the additional value which one or both of the parties has attributed to the referral of business between them.

The office of Inspector General has become aware of a number of practices engaged in by clinical laboratories and health care providers that implicate the anti-kickback statute in this manner Below are some examples of lab services arrangements that may violate the anti-kickback statute.

Provision of Phlebotomy Services to Physicians

When permitted by State law, a laboratory may make available to a physician's office a phlebotomist who collects specimens from patients for testing by the outside laboratory. While the mere placement of a laboratory employee in the physician's office would not necessarily serve as an inducement prohibited by the anti-kickback statute, the statute is implicated when the phlebotomist performs additional tasks that are normally the responsibility of the physician's office staff. These tasks can include taking vital signs or other nursing functions, testing for the physician's office laboratory, or performing clerical services.

Where the phlebotomist performs clerical or medical functions not directly related to the collection or processing of laboratory specimens, a strong inference arises that he or she is providing a benefit in return for the physician's referrals to the laboratory In such a case, the physician, the phlebotomist, and the laboratory may have exposure under the anti-kickback statute. This analysis applies equally to the placement of phlebotomists in other health care settings, including nursing homes, clinics and hospitals.

Furthermore, the mere existence of a contract between the laboratory and the health care provider that prohibits the phlebotomist from performing services unrelated to specimen collection does not eliminate the OIG's concern, where the phlebotomist is not closely monitored by his [of her] employer or where the contractual prohibition is not rigorously enforced.

Lab Pricing at Renal Dialysis Centers

The Medicare program pays for laboratory tests provided to patients with end stage renal disease (ESRD) in two different ways. Some laboratory testing is considered routine and payment is included in the composite rate paid by Medicare to the ESRD facility which in turn pays the laboratory. Some laboratory testing required by the patient is not included in the composite rate, and these additional tests are billed by the laboratory directly to Medicare and paid at the usual laboratory fee schedule price.

The OIG is aware of cases where a laboratory offers to perform the tests encompassed by the composite rate at a price below fair market value of the tests performed. In order to offset the low charges on the composite rate tests, the ESRD facility agrees to refer all or most of its non-composite rate tests to the laboratory. This arrangement appears to be an offer of something of value (composite rate tests below fair market value) in return for the ordering of additional tests which are billed directly to the Medicare program.

If offered or accepted in return for referral of additional business, the lab's pricing scheme is illegal remuneration under the anti-kickback statute. The statutory exception and "safe harbor" for "discounts" does not apply to immunize parties to this type of transaction, since discounts on the composite rate tests are offered to induce referral of *other* tests. See 42 CFR 1001.952(h)(3)(ii).

Waiver of Charges To Managed Care Patients

Managed care plans may require a physician or other health care provider to use only the laboratory with which the plan has negotiated a fee schedule. In such situations, the plan usually will refuse to pay claims submitted by other laboratories. The provider, however, may use a different laboratory and may wish to continue to use that laboratory for non-managed care patients. In order to retain the provider as a client, the laboratory that does not have the managed care contract may agree to perform the managed care work free of charge.

The status of such agreements under the anti-kickback statute depends in part on the nature of the contractual relationship between the managed care plan and its providers. Under the terms of many managed care contracts, a provider receives a bonus or other payment if utilization of ancillary services, such as laboratory testing, is kept below a particular level. Other managed care plans impose financial penalties if the provider's utilization of services exceeds pre-established levels. When the laboratory agrees to write off charges for the physician's managed care work, the physician may realize a financial benefit from the managed care plan created by the appearance that utilization of tests has been reduced.

In cases where the provision of free services results in a benefit to the provider, the anti-kickback statute is implicated. If offered or accepted in return for the referral of Medicare or State health care plan business, both the laboratory and the physician may be violating the anti-kickback statute. There is no statutory exception or "safe harbor" to immunize any party to such a practice because the Federal programs do not realize the benefit of these "free" services. See 42 CFR 1001.952(h)(3)(iii)

Other Inducements

The following are additional examples of inducements offered by clinical laboratories which may implicate the anti-kickback statute:

- Free pick-up and disposal of bio-hazardous waste products (such as sharps) unrelated to the collection of specimens for the outside laboratory
- Provision of computers or fax machines, unless such equipment is integral to, and exclusively used for, performance of the outside laboratory's work.
- Provision of free laboratory testing for health care providers, their families and their employees.

When one purpose of these arrangements is to induce the referral of

program-reimbursed laboratory testing, both the clinical laboratory and the health care provider may be liable under the statute and may be subject to criminal prosecution and exclusion from participation in the Medicare and Medicaid programs.

G. Reporting Information

What To Do If You Have Information About Suspect Activities or Arrangements

If you have information about health care providers, practitioners, entities or other persons engaging in these types of activities or arrangements described above, contact any of the regional offices of the Office of Investigations of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Regions	States served	Telephone
Boston	MA, VT, NH, ME, RI, CT	617–565–2660
New York	NY, NJ, PR, VI	212–264–1691
Philadelphia	PA, MD, DE, WV, VA	215–596–6796
Atlanta	GA, KY, NC, SC, FL, TN, AL, MS (No. District)	404–331–2131
Chicago	IL, MN, WI, MI, IN, OH, IA, MO	312–353–2740
Dallas	TX, NM, OK, AR, LA, MS (So. District)	214–767–8406
Denver	CO, UT, WY, MT, ND, SD, NE, KS	303–844–5621
Los Angeles	AZ, NV (Clark Co.), So. CA	714–836–2372
San Francisco	No. CA, NV, AZ, HI, OR, ID, WA	415–556–8880
Washington, DC	DC and Metropolitan areas of VA and MD	202–619–1900

Dated: December 2, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94–31157 Filed 12–16–94; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3850]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information:

(1) the title of the information collection proposal;

(2) the office of the agency to collect the information;

(3) the description of the need for the information and its proposed use;

(4) the agency form number, if applicable;

(5) what members of the public will be affected by the proposal;

(6) how frequently information submissions will be required;

(7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 8, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Payments Program and Estimate of Required Annual Contributions.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Public Housing Agencies use the forms to estimate their annual contributions requirements, requisition funds, and to report actual receipt and expenditures to assure that project costs do not exceed the amount authorized in the Annual Contribution Contract.

Form Number: HUD–52663, 52672, 52673, and 52681.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52672	6,200		1		1.5		9,300
HUD–52673	6,200		1		1.5		9,300
HUD–52663	6,200		4		1.0		24,800
HUD–52681	6,200		1		3.0		18,600

Total Estimated Burden Hours: 62,000.

Status: Extension, no changes.

Contact: Elizabeth A. Lewis, HUD, (202) 708–7424; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 8, 1994.

[FR Doc. 94–31056 Filed 12–16–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–94–3617; FR–3444–N–07]

Office of Lead-Based Paint Abatement and Poisoning Prevention; Announcement of Funding Awards for the Lead-Based Paint Hazard Reduction in Priority Housing Category I and Category II Grants

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 $94,328,617 has been awarded, to nineteen Category I grantees, and thirteen 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 has published the names, addresses, and amounts of all Category I awards and eight Category II awards in the **Federal Register** on October 14, 1994 (59 FR 52184). The remaining five Category II awards, totaling $977,353 are as follows:

NOFA FOR LEAD-BASED PAINT HAZARD REDUCTION IN PRIORITY HOUSING: CATEGORY II GRANTS

State of Minnesota	$189,750
State of Virginia	200,000
State of Ohio	187,636
State of Connecticut	200,000
State of Rhode Island	199,967

Dated: December 5, 1994.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 94–31055 Filed 12–16–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Section 4(e) Conditions for the Kerr Hydroelectric Project, Montana

AGENCY: Department of the Interior.

ACTION: Extension of Public Comment Period.

SUMMARY: On November 22, 1994 (59 FR 60158), the Department of the Interior published a notice of availability and a request for comment regarding its proposed Section 4(e) conditions for the Kerr Hydroelectric Project license. In an effort to allow more time for public participation the Department is extending the comment period for an additional 45 days. Pursuant to the Federal Power Act, 16 U.S.C. 797(e), the proposed conditions provide for the adequate protection and utilization of the Flathead Indian Reservation and the Fish and Wildlife Service administered Flathead Waterfowl Production Area.

DATES: The Department will consider all comments on the proposed section 4(e) conditions received on or before February 6, 1995 in the formulation of the Secretary's final section 4(e) conditions for the Kerr Hydroelectric Project.

ADDRESSES: Comments should be sent to Anne Crichton, Department of the Interior, Office of the Solicitor, 1849 C Street, NW., Mail Stop 6456, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Janice Schneider, Department of the Interior, Office of the Solicitor, 1849 C Street, NE., Mail Stop 6456, Washington, DC 20240, 202–208–6967.

SUPPLEMENTARY INFORMATION: The November 22, 1994 (59 FR 60158) notice of availability and request for comment provided a 30 day period during which the Department would receive comments regarding its proposed Section 4(e) conditions for the Kerr Hydroelectric Project. Pursuant to the Federal Power Act, 16 U.S.C. 797(e), the proposed conditions provide for the adequate protection and utilization of the Flathead Indian Reservation and the Fish and Wildlife Service administered Flathead Waterfowl Production Area. The proposed conditions for the Flathead Indian Reservation provide for the imposition of a base load operational scenario at the Kerr Project. This operational scenario precludes the use of Kerr Dam as a load regulating or peak power generation facility, and requires minimum flows, certain restrictions on flow fluctuations (ramping rates), and a two year ramping rate study. In addition, the proposed conditions provide for non-operational measures designed to protect and provide for adequate utilization of the Flathead Indian Reservation in conjunction with operational measures. The non-operational measures include the development of a Fish and Wildlife Implementation Strategy, development of an operational rule curve, habitat acquisition, habitat development, fishery supplementation and reintroduction, development of recreational resources, and the identification and protection of cultural resources on the Flathead Indian Reservation. The proposed conditions for the Flathead WPA provide for the imposition of erosion control on the north shore of Flathead Lake and the upper Flathead River, island restoration, and habitat acquisition and development. The costs of all measures will be borne by the project licensees.

The deadline for comment on the proposed Section 4(e) conditions is extended for 45 days by this notice. The comment period, which began on November 22, 1994, therefore, consists of a total of 75 days. All comments are

due to the Department on or before February 6, 1995. In addition, the Department will be making available two technical reports that further support the proposed Section 4(e) conditions, the "Kerr Hydro-electric Project Report" by Stetson Engineers, Inc., and "An Evaluation of the Wildlife Components of the Kerr Dam Project Mitigation and Management Plan and Recommended Section 4(e) Articles" by BioSystems Analysis, Inc. The proposed conditions and the above referenced reports are available for review and copying at the Department of the Interior, 1849 C Street, NW., Washington, DC in room 6443. Copies of the proposed Section 4(e) conditions and the above referenced reports will be made available to all interested parties upon request.

Dated: December 12, 1994.

Willie R. Taylor,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–31045 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–02–M

Central Utah Project Completion Act; Notice of Intent To Contract for Hydroelectric Power Development in the Diamond Fork Area of the Central Utah Project (CUP) and the Strawberry Valley Project (SVP), UT

AGENCY: Office of the Assistant Secretary for Water and Science, Department of the Interior.

ACTION: Notice of intent to accept proposals, select a lessee, and contract for hydroelectric power development in the Diamond Fork area.

SUMMARY: Current Federal policy encourages non-Federal development of electrical power resource potential on Federal water resource projects. The Department of the Interior (Interior), in consultation with the Department of Energy, Western Area Power Administration (Western), will consider proposals for non-Federal development of hydroelectric power in the Diamond Fork area of the CUP and the SVP, Utah, consisting of the area from the outlet of the Syar Tunnel to the confluence of Diamond Fork Creek and the Spanish Fork River. Interior is considering such hydroelectric power development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. Western would have the first opportunity to purchase and/or market the power that would be generated by such development under a lease of power privilege. The CUP and the SVP are Federal Bureau of Reclamation (Reclamation) projects. This notice presents background information, proposal content guidelines, information concerning selection of a non-Federal entity(s) to develop hydroelectric power in the Diamond Fork area of the CUP and the SVP, and power purchasing and/or marketing considerations. Interested parties are invited to submit proposals.

DATES: A written proposal and seven copies must be submitted on or before May 1, 1995, to: Mr. Ronald Johnston, Program Director, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154.

A copy of the proposal should also be sent to: Mr. Kenneth G. Maxey, Area Manager, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Ronald Johnston, Program Director, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1103.

Information related to Western's purchasing and/or marketing the power may be obtained at the address and telephone number set forth below: Mr. Kenneth G. Maxey, Area Manager, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, Telephone: (801) 524–6372.

Technical data may be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1237.

Background Information

The CUP, Bonneville Unit, located in northern Utah, was authorized for construction, including hydroelectric power, by the Colorado River Storage Project (CRSP) Act of April 11, 1956, (70 Stat. 105) (CRSP Act) as a participating project, and the Central Utah Project Completion Act (Titles II through VI of Public Law 102–575, 106 Stat. 4605) (CUPCA). The United States has constructed a portion of the Bonneville Unit of the CUP (initial phase), including, among other features, Upper Stillwater Dam, Bottle Hollow Dam, Starvation Dam, Currant Creek Dam, Jordanelle Dam, Soldier Creek Dam for the enlarged Strawberry Reservoir, the Syar Tunnel, and the Sixth Water Aqueduct and Tunnel. The Central Utah Water Conservancy District (District) is constructing other features of the Bonneville Unit pursuant to CUPCA. Section 208 of the CUPCA provides that power generation facilities associated with the CUP be developed and operated in accordance with the CRSP Act, which explicitly embodies all Reclamation law except as otherwise provided in the CRSP Act. The District, under its contracts with the United States, has certain operation, maintenance, replacement, and repayment responsibilities and obligations concerning the Bonneville Unit.

The United States constructed the SVP, comprising the Strawberry Dam and Reservoir, the Strawberry Tunnel, the Upper Spanish Fork Powerplant and transmission lines, the High Line Canal, the Mapleton and Springville Lateral and related collection, diversion, conveyance, and distribution works, all of which were substantially completed in approximately the year 1915. The Strawberry Water Users Association (Association), under its contracts with the United States, has the right to lease power privileges (subject to approval by Interior) and has operation, maintenance, replacement, and repayment responsibilities and obligations concerning the SVP.

Interior, in consultation with Western, is considering only a consolidated system for hydroelectric power development in the Diamond Fork area (Project), involving both the CUP and the SVP, through a lease of power privilege. The general authority for lease of power privilege under Reclamation law includes the Town Sites and Power Development Act of 1906 (43 U.S.C. § 522) and the Reclamation Project Act of 1939 (43 U.S.C. § 485h(c)) (1939 Act).

A lease of power privilege is an alternative to Federal hydroelectric power development. The lease of power privilege would grant to a non-Federal entity(s) the right to utilize, consistent with CUP and SVP purposes, water power head or storage at and/or operationally in conjunction with the CUP and the SVP, for non-Federal electric power generation and sale by the lessee(s). Any lease of power privilege in the Diamond Fork area of the CUP and SVP must accommodate pre-existing legal rights of the District and the Association.

Interior would be the lead Federal agency for compliance with the National Environmental Policy Act (NEPA) for any lease of power privilege to develop the Project. Issuance of a lease(s) of power privilege for hydroelectric power development in the Diamond Fork area will require compliance with Federal

fish, wildlife, recreation, and environmental laws, as determined by Interior.

Western would have the first opportunity to purchase and/or market the power that would be generated by the Project under a lease(s) of power privilege. Under this process, Western would either purchase and market the power as Salt Lake City Area—Integrated Projects (SLCA–IP) power or market the power independently by first offering it to preference entities and secondly to non-preference entities.

All Project study and development costs, including compliance with Federal fish, wildlife, recreation and environmental laws, would be the expense of the lessee(s). Lease payments to the United States will be deposited in the Upper Colorado River Basin Fund.

Proposal Content Guidelines

Interested parties should submit proposals explaining in as precise detail as is practicable how the Project would be developed. Factors which a proposal(s) should consider and address include, but are not limited to, the following:

A. Provide qualifications of the proposing entity(s). Include information on preference status, type of organization, length of time in business, experience in funding and design and construction of similar projects, industry rating(s) that indicate financial soundness of the potential lessee(s), experience of key management personnel, history of any reorganizations or mergers with other companies, and any other information that demonstrates the adequacy of the proposal and financial ability to fund all studies, designs, and construction. The term "preference," as applied to a lease of power privilege, means an entity qualifying for preference to develop non-Federal hydroelectric power, under Section 9(c) of the 1939 Act, as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936.

B. Provide geographical locations and describe principal structures and other important features of the Project including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Also describe seasonal or annual generation patterns. Include estimates of the amount of electrical energy that would be produced from each facility for each month of average, dry, and wet water years. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties and the proposed approach to wheeling if required.

C. Indicate title arrangements and the ability for acquiring title to or the right to occupy and use lands necessary for the Project, including such additional lands as may be required during construction.

D. Identify water rights applicable to the proper operation of the Project, the holder of such rights, and how these rights would be acquired or perfected.

E. Explain studies necessary to adequately define impacts on the CUP and the SVP and the environment in order to facilitate the decision making process. Explain any proposed use of the Project for conservation and utilization of the available water resources in the public interest. Describe any significant environmental issues and the approach for gathering data and handling the environmental issues to protect and enhance the quality of the environment.

F. Describe anticipated contractual arrangements with the District and the Association and define how the Project would operate in harmony with the CUP and the SVP.

G. Provide a management plan to accomplish such activities as planning, NEPA compliance, design, construction, operation, and maintenance. Prepare schedules of these activities as is applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

H. Estimate Project development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, NEPA compliance, design, construction, and financing as well as the amortized annual cost of the investment; also, the annual operation, maintenance, and replacement expense for the Project and other expenses associated with the CUP and the SVP. If there are additional transmission or wheeling expenses associated with the development of the Project, these should be included. Identify proposed methods of financing the Project. An economic analysis should be presented that compares the present worth of all benefits and costs of the Project. Additionally, a financial analysis should be presented that compares monies available to the United States for use of Federal facilities and costs to the CUP and the SVP.

Selection of Lessee

Interior, in consultation with Western, will evaluate proposals received in response to this published notice. A proposal will be ruled unacceptable if it is not complete, is not consistent with both CUP and SVP purposes, and does not accommodate pre-existing legal rights of the District and the Association, as determined by Interior.

Selection of a lessee will be based on the following considerations:

A. First consideration will be given to preference entities. Interior will give added consideration to proposals that (1) are especially well-adapted to developing, conserving, and utilizing the water and natural resources; (2) are harmonious with CUP and SVP purposes; and (3) would provide significant economic benefits to the CUP, the SVP, and the United States.

B. Second consideration will be given to non-preference entities. Interior will give added consideration to proposals that (1) are especially well-adapted to developing, conserving, and utilizing the water and natural resources; (2) are harmonious with CUP and SVP purposes; and (3) would provide significant economic benefits to the CUP, the SVP, and the United States.

Power Purchasing and/or Marketing Considerations

Western would have the first opportunity to purchase and/or market the power that would be generated by the Project under a lease(s) of power privilege. Western will consult with Interior on such power purchasing and/or marketing considerations.

Western would determine its interest in purchasing the electric power from the lessee(s) as a replacement resource for its Salt Lake City Area Integrated Projects (SLCA/IP) under principles and processes being considered as part of Western's Replacement Power Process under the Grand Canyon Protection Act. Western would also apply Integrated Resource Planning principles in comparing this resource with all other potential resource purchases available to Western.

Alternatively, Western may market the power available from the Project on a stand-alone basis, first to preference entities qualified under criteria established by Western and second to non-preference entities, by developing an individual marketing plan for this power. This marketing plan would be developed through a separate subsequent public process beginning with a notice in the **Federal Register** of Western's intent to market the power. The marketing plan would include all

aspects of marketing the power, including assignment of power to qualified preference and/or non-preference entities, pricing, transmission, and delivery of power. Western would recover the costs it would incur in purchasing and/or marketing the power through the rates charged for the power. Firm power rates would be established through a public process, initiated by a notice in the Federal Register, separate from the marketing plan.

In the event Western elects to not purchase and/or market the power generated by the Project or such a decision cannot be made prior to execution of the lease of power privilege, the lessee(s) would be responsible for marketing the power generated by the Project with priority given to preference entities as heretofore defined in PROPOSAL CONTENT GUIDELINES, paragraph A.

Notification of Selection of Lessee and Negotiations for a Lease of Power Privilege

After Interior selects a lessee, Interior will notify, in writing, all entities submitting proposals of Interior's decision regarding selection of the potential lessee(s). The selected potential lessee(s) will have five years from the date of such notification to enter into a lease(s) of power privilege for the site or sites identified in the proposal. Lease of power privilege negotiation sessions will be public. If Western elects to purchase and/or market the power, such lease(s) of power privilege will state how Western will be involved in purchasing and/or marketing the power.

Any excessive delay resulting from compliance with the provisions of Federal environmental laws or administrative review by a Federal agency, pertaining to the Project, may extend the five year time period for a period equal to that of the delay. In the event of litigation related to the proposed Project, the five year time period will be extended for a period equal to that of the delay, provided such litigation was initiated by parties other than the selected potential lessee(s) or its employees, officers, agents, assigns, shareholders, customers or persons or groups served by or in privity with the potential lessee(s).

Dated: December 13, 1994.

Ronald Johnston,

CUP Program Director, Department of the Interior

[FR Doc. 94–31057 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–RK–P

Bureau of Land Management

[OR126–6332–00 G5–040]

Bal'diyaka Interpretive Center, OR; Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Scoping Meetings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Coos Bay District, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of the proposed construction of the Bal'diyaka Interpretive Center.

DATES: Written comments will be accepted until January 10, 1995. Public scoping meetings will be held from 3 to 5 and 7 to 9 p.m. on Monday, January 9, 1995, at BLM's Coos Bay Office, 1300 Airport Lane, North Bend, OR and from 3 to 5 and 7 to 9 p.m. on Tuesday, January 10, 1995, at BLM's Eugene Office, 2890 Chad Drive, Eugene, OR. Additional briefing meetings will be considered as appropriate.

ADDRESSES: Comments concerning issues to be addressed in the EIS should be addressed to: District Manager, Coos Bay District, 1300 Airport Lane, North Bend, OR 97459–2000, Attn: Bal'diyaka Project.

FOR FURTHER INFORMATION CONTACT: Daryl Albiston, Tioga Area Manager, Coos Bay District, 1300 Airport Lane, North Bend, OR 97459–2000, (503) 756–0100.

SUPPLEMENTARY INFORMATION: BLM, in cooperation with the Confederated Tribes of Coos, Lower Umpqua & Siuslaw, et al. is considering the construction of an interpretive center to be located near the Cape Arago Lighthouse on Gregory Point in Coos County, OR (T. 26 S., R. 14 W., Sec. 4, Willamette Meridian). The center will be known as the Bal'diyaka Interpretive Center and could feature the Native American history of the local tribes, as well as the historic use of this site by the U.S. Lifesaving Service and the U.S. Coast Guard. The proposed action may consist of one or more new buildings to house the interpretive displays, meeting rooms, offices, a new lighthouse, and related infrastructure needs.

Potential issues include, but may not be limited to, vehicular access and parking; social and economic values; recreation; impacts on cultural resources, traditional Native American resources, geology and mineral resources, visual resources, soil, watershed, and vegetation resources.

The project area will encompass approximately 40 acres, while the area of consideration of impacts will be much larger and include the communities of Coos Bay, Charleston, North Bend, as well as associated rural areas.

Consideration will be given to adjacent Federal and State administered lands as well as County and private lands and the affect on local land use planning.

The specific location, design and arrangement is yet to be determined Alternatives to be considered, other than the No Action Alternative, are unknown at this time.

The Bureau of Land Management's scoping process for the EIS will include (1) Identification of issues to be addressed, (2) Identification of viable alternatives; and (3) Notifying interested groups, individuals, and agencies so that additional information concerning these can be obtained.

The scoping process will consist of this Federal Register Notice; a legal notice in local newspapers announcing the scoping meetings; letters of invitation to participate in the scoping process; and a scoping meeting agenda which further clarifies the proposed action, range of alternatives and previously identified significant issues being considered, to be distributed to selected parties and available upon request.

Dated: November 29, 1994

Melvin Chase,

District Manager

[FR Doc. 94–31159 Filed 12–16–94 8 45 am]

BILLING CODE 4310–33–P–M

[MT–920–05–1310–01–P; NDM 62731]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NDM 62731

Under the provisions of P.L. 97–451 a petition for reinstatement of oil and gas lease NDM 62731, Stark County North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively Payment of a $500 administration fee has been made

Having met all the requirements for reinstatement of the lease as contained in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is

proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: December 8, 1994.

Karen J. Carroll,

Chief, Fluids Adjudication Section.

[FR Doc. 94–31160 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–DN–M

[AZ–020–05–1430–00; AZA–28350]

Notice of Intent To Prepare an Environmental Impact Statement Analyzing the Impacts of the Proposed Exchange of Approximately 5910 Acres of Public Land Near Kearny, Arizona and 640 Acres of Federal Mineral Estate Near Casa Grande, Arizona for Other Private Lands of Equal Appraised Value in Central Arizona

AGENCY: Department of Interior, Bureau of Land Management.

ACTION: Notice of intent to prepare an environmental impact statement for the exchange of public lands near Kearny and Casa Grande, Arizona.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental impact statement for the exchange of public lands near Kearny and Casa Grande, Arizona for private lands of equal value in central Arizona.

1. Identification of the geographic areas involved: The proposed land exchange involves approximately 6550 acres of public lands currently managed by the Phoenix District, Bureau of Land Management that are located near Kearny and Casa Grande, Arizona.

2. The no action alternative and alternatives that consider various combinations of selected and offered lands will be analyzed.

3. General types of issues anticipated: The proposed land exchange involves issues related to the natural resource values and uses of the public lands in question. These issues are expected to involve impacts on water resources, native vegetation, riparian areas, wildlife, recreation, socioeconomic, public access, grazing allotments, county tax base, minerals, and cultural resources.

4. Disciplines to be represented and used to prepare the environmental impact statement: Hydrology, botany, wildlife, recreation, realty, range, economics, geology, and archaeology.

DATES: The kind and extent of public participation: Public open houses/scoping meetings will be held at the following locations and times:

Mesa Open House, January 30, 1995 4–8 p.m., Mesa Community and Conference Center, 263 North Center Street, Mesa, Arizona (602) 644–2178

Kearny Open House, January 31, 1995 5–9 p.m., Constitution Hall (Senior Citizen Center), 912 East Tilbury Drive, Kearny, Arizona (602)363–5071.

Public input may be submitted during the public meeting or in writing to the address given in the section below. Public comments will be accepted until February 14, 1995.

ADDRESSES: Written comments concerning the environmental impact statement should be submitted to Bureau of Land Management, Attn: Gail Acheson, Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Bill Ruddick, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, phone (602) 780–8090.

Dated: December 13, 1994.

John R. Christensen,

Acting District Manager.

[FR Doc. 94–31059 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–32–P

[CO–076–1110–04]

Seasonal Road Closure for the Garvey Canyon Area

AGENCY: Bureau of Land Management, Department of Interior

ACTION: Order of area, road winter use restriction.

SUMMARY: This order, issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a), limits travel from December 1 to May 1 in Garvey Canyon, 15 miles north of Fruita, Colorado to non-motorized means. The length of road with this additional seasonal closure is approximately 1.5 miles, which is joined to the existing seasonal closure indicated in the Grand Junction Resource Management Plan of 1987.

The affected public land is in the Grand Junction Resource Area, Grand Junction District, and is located in T. 8 S., R. 101 W., Sections 7 and 8, and T. 8 S., R. 102 W., Sec. 12, 6th Principal Meridian; Garfield County, Colorado.

EFFECTIVE DATES: The restriction shall be effective December 15, 1994 and remain until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: The purpose of the seasonal closure is to significantly reduce human-induced stress on wintering deer and elk in an area where costs in energy loss are particularly high due to the topography and the concentration of animals. The closure affects about 1.5 miles of road in lower Garvey Canyon. A sign will be posted before the gate indicating the closure season and the reason. Information including maps of the restricted area is available in the Resource Area Office and District Office at the addresses shown below. Persons who are exempt from the restrictions include:

(1) Any Federal, State, or local officers engaged in fire, emergency, or law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized to operate motorized vehicles within the restricted area, such as natural gas well service people and permitted grazing operators.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Area Manager, Grand Junction Resource Area, 2815 H Road, Grand Junction, CO 81506; (303) 244–3000.

Mark Morse,

Grand Junction District Manager

[FR Doc. 94–31158 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–797125

Applicant: Monte Carroll McDonald, Ogden Environmental & Energy Services, Oak Ridge, Tennessee

The applicant requests a permit to include take activities for the American burying beetle (nicrophorus americanus) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–797129

Applicant: Dr. James P. Collins, Chair, Department of Zoology, Arizona State University, Tempe, Arizona

The applicant requests a permit to include take activities for various

endangered fish species that occur within waters in Arizona, New Mexico, Texas, and Oklahoma for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–797127

Lt. Col. Gary Burroughs, District Engineer, USA Corps of Engineers, Albuquerque, NM

The applicant requests a permit to include take activities for various endangered fish, birds, and plants that occur within Arizona and New Mexico for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–797128

Applicant: Dr. Paul R. Krausman, School of Renewable Natural Resources, University of Arizona, Tucson, Arizona

The applicant requests a permit to include take activities for the Sonoran pronghorn antelope (Antilocapra americana sonoriensis) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESS: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESS** above)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–31058 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Record of Decision for Bayou Sauvage National Wildlife Refuge, Master Plan/Final Environmental Impact Statement (FEIS), Orleans Parish, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice makes available to the public a summary of the Record of Decision (ROD) for the final Master Plan/FEIS for the Bayou Sauvage National Wildlife Refuge, located in Orleans Parish, Louisiana. Establishment of a 19,000-acre refuge was authorized by Congress on July 28, 1986. As of 1993, the refuge contained approximately 22,800 acres under the supervision of the Fish and Wildlife Service (Service). There is a potential for future expansion of the refuge to include a total of approximately 30,000 acres. Federal funding for design, construction, and operation of the refuge is provided through appropriations by Congress. Pursuant to the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1505.2), the Service issues this ROD upon consideration of the FEIS prepared for the Proposed Action.

A Notice of Availability of the FEIS was published by the Environmental Protection Agency in the **Federal Register** on September 9, 1994.

Factors influencing selection of the Preferred Alternative included: (1) Compliance with the purpose for which the Refuge was established, (2) adherence to the goals, objectives, and policies established for the refuge, (3) opinions of the public and commenting agencies, and (4) evaluation of the impacts of the four alternatives on the physical, biological, and socioeconomic environments. The Preferred Alternative, referred to as Alternative 2, Comprehensive Diverse Habitat Enhancement Alternative, contains a Management Program and a Facilities Program characterized by the following elements:

1. Management Program:

a. Habitat-Wildlife

* Habitat conservation for the five threatened and/or endangered species presently using the refuge.

* Support for at least 60,000 wintering waterfowl.

* Control of nuisance animals and exotic plants, as needed.

* Freshwater fisheries habitat enhancement in leveed wetlands south of Interstate 10 (I–10).

* Estuarine fisheries habitat enhancement in leveed wetlands north of I–10.

b. Environmental Management

* Acquire all lands presently leased (i.e., The Conservation Fund and the city of New Orleans property).

* Acquire additional lands from willing sellers in the refuge expansion zone.

* Tidal Wetlands Management—Uncontrolled Estuarine Habitat (Units 1 2b, 6b, 7a, 7b, 8b).

—Stabilize and enhance shore zone (Units 1, 7a, 7b)

—Stabilize and enhance bank line (Units 7a, 7b, 6b)

—Increase diversity of estuarine habitat types (brackish marsh; sand/shell beach; small, shallow waterbodies; and protected lagoons with submerged aquatics, oyster reefs)

* Leveed Wetlands Management—Controlled Fresh Habitat (Units 5, 6a, 9)

—Enhance bottomland hardwood forest (Units 3, 5, 8a, 9)

—Reestablish fresh emergent vegetation in Units 5 and 6a

—Maintain scrub/shrub habitat for rookeries in Unit 6a

—Protect refuge facilities and infrastructure from flooding

* Leveed Wetlands Management—Controlled Fresh-Intermediate Habitat (Units 3, 4)

—Enhance the quality of and maintain a maximum number of different habitats for the benefit of wildlife and the enjoyment and education of the public

—Restore and maintain fresh-intermediate marsh vegetation

—Protect refuge facilities and infrastructure from flooding

* Leveed Wetlands Management—Controlled Estuarine (Unit 2a)

—Restore estuarine nursery habitat inside protection levee

2. Facilities Program:

a. User Groups

* Public (nonconsumptive, consumptive, special use, scientific research).

—Protect and interpret archaeological sites

—Support fishing and nonconsumptive uses

* Service (administration, management, maintenance).

—Enforce refuge regulations

—Close selected portions of refuge seasonally to protect migratory waterfowl and bald eagles from human disturbances

—Protect refuge facilities and infrastructure from flooding

b. Facilities Program

* Visitor/Interpretive Center is southeast quadrant of I–10/Turtle Bayou interchange (Unit 3).

* Environmental Educational Center south of U.S. Highway No. 11 and U.S Highway No. 90 intersection (Unit 5)

* Administration/Maintenance Center near southeast quadrant of the I–

10/Michoud Boulevard interchange (Unit 9).

* Trails and Trail Heads (Units 1, 2a, 3, 4, 5a, 8b, and 9).

Three other alternatives evaluated in detail included:

(1) No Build Alternative

(2) Minimal Diverse Habitat Enhancement

(3) Comprehensive Estuarine Habitat Enhancement

These alternatives were developed by the Service with input obtained from the public and review agencies during the review and comment process. Issues raised in comments included, but are not limited to: Expansion of the refuge, hunting, trapping, commercial fishing, public access, locations of visitor center, habitat management objectives, mosquito control, and monitoring of management programs to achieve program objectives. All substantive issues raised during the public and agency review process have been addressed to the satisfaction of the Service either through revisions incorporated into the FEIS text or in responses contained in Section 9.0 of the FEIS. These responses are incorporated by reference into the ROD. One comment was received on the FEIS.

Findings and Decision: Based upon a thorough analysis and consideration of the impacts identified in the FEIS, results of the research and investigations conducted in conjunction with the Draft Environmental Impact Statement (DEIS) and FEIS, comments received in connection with the public information hearings and review of the DEIS, public review of management programs already approved for the refuge, and other relevant factors, including the purposes for which the refuge was established by Congress and statutory and regulatory guidance for funding such projects, the Service finds as follows:

(1) The preferred alternative is Alternative 2. Alternative 2 consists of the Management and Facilities Programs discussed previously.

(2) The Preferred Alternative best fulfills the Public Use Goal for environmental education, wildlife and habitat interpretation, wildlife/wildlands-oriented recreation, and scientific research.

(3) Consistent with economic, social, and other essential considerations, to the maximum extent practicable, potential adverse environmental effects identified in the FEIS will be minimized or avoided by incorporating mitigative measures as conditions of Federal funding approval and permit issuance. The potential impacts and mitigative measures are described in Section 4.0 and 5.0 of the FEIS.

(4) Only 45 acres of jurisdictional wetlands, out of the presently supervised area of approximately 22,800 acres, are estimated to be impacted by construction of facilities on the refuge. Specific details regarding mitigation plans for site-specific projects will be developed on a case-by-case basis as part of the Section 404 permit process. However, under the Preferred Alternative, habitat management measures implemented on other areas of the refuge for the purpose of increasing the quality and quantity of emergent and submergent aquatic vegetation and scrub/shrub vegetation are expected to be more than adequate to serve as mitigation for wetlands impacted by facility construction.

(5) The Preferred Alternative is designed to conserve and/or enhance existing habitat for the presently listed threatened and endangered species using the refuge. No State or federally listed endangered or threatened species or their critical habitats are known to be adversely affected by implementation of the Preferred Alternative.

(6) No historic properties listed in or eligible for listing in the National Register of Historic Places are know to be adversely affected by implementation of the Preferred Alternative. Detailed cultural resources investigations will be conducted for site-specific projects on a case-by-case basis as part of the Section 404 permit process.

(7) Statutory authority for the Service to fund and implement, and for the U.S. Army Corps of Engineers to permit, the Preferred Alternative exists.

(8) The requirements of NEPA and the implementing regulations (40 CFR Parts 1500–1508) have been satisfied.

For further information, contact:

Name: Howard Poitevant
Address: 1010 Gause Blvd., Bldg. 936, Slidell, Louisiana 70458
Phone: 504/646–7555.

Dated: December 8, 1994.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 94–31044 Filed 12–16–94; 8:45 am]
BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Proposed Great Hills Reserve Subdivision Development, Austin, Travis County, TX

AGENCYY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Americo Financial, Limited (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The Applicant has been assigned Permit Number PRT–782832. The requested permit, which is for a period not to exceed 10 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction and operation of a residential development on 294.15 acres, in two parcels, in Austin, Travis County, Texas.

The Service has prepared an Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and the EA/HCP should be received on or before January 18, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Alma Barrera, Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (9:00 to 4:30), U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see ADDRESSES above). Please refer to Permit Number PRT–782832 when submitting in comments.

FOR FURTHER INFORMATION CONTACT: Alma Barrera at the above Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a residential subdivision in northwest Austin, Travis County, Texas. An EA/HCP has been developed as mitigation of the incidental taking of the golden-cheeked warbler. The Applicant proposes to mitigate the incidental take via dedicating approximately 440 acres of occupied golden-cheeked warbler habitat as a permanent preserve, providing funding for the operation and management of the preserve lands, performing golden-cheeked warbler studies on the project lands, and avoiding construction activities within warbler territories during the breeding season. Details of the mitigation are provided in the EA/HCP for the Great Hills Reserve.

The Applicant considered five alternatives but rejected four because they were not economically viable.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–31060 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Urban Park and Recreation Recovery Program

AGENCY: National Park Service, U.S. Dept. of the Interior.

ACTION: Notice of FY–1995 Grant Round—UPARR Rehabilitation and Innovation Grants.

SUMMARY: This notice announces the availability of grant funds under the Rehabilitation and Innovation phases of the Urban Park and Recreation Recovery (UPARR) Program and provides information on the application process including eligible recipients and deadlines for submission of proposals.

FOR FURTHER INFORMATION CONTACT: "UPARR," Recreation Grants Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127; (202) 343–3700.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1995, $7,486,000 is available for the funding of Rehabilitation and Innovation projects under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95–625). NPS will consider proposals for funding projects with a dollar limit of $200,000 (Federal share of total project cost) under the Rehabilitation phase of the program and projects with a dollar limit of $50,000 (Federal share) under the Innovation phase. No more than ten percent ($748,600) of the total amount appropriated will go toward the funding of Innovation proposals. Preapplications must be received by the appropriate NPS Regional Office by no later than April 17, 1995.

Rehabilitation grants will be targeted to rehabilitate existing neighborhood recreation areas and facilities which have deteriorated to the point where health and safety are endangered or the community's range of quality recreation service is impaired. Proposals must be designed to provide recreation services for residents within a specified area identified by the applicant. Proposals may identify improvements at multiple sites or facilities, each of which must be individually addressed. Grants may be used to remodel, rebuild, expand, or develop existing outdoor or indoor recreation areas and facilities.

Innovation grants may generally cover the costs of personnel, training, facilities, recreation equipment, supplies or services associated with the development of cost-effective ideas, concepts, and approaches towards improving facility design, operations, or programming for the delivery of recreation services.

Innovation projects should contribute to a systems approach to recreation by linking recreation services with other critical community programs such as housing, transportation, health and public safety, water quality, energy conservation, crime prevention, etc. The project should demonstrate a concept that is untried, unique, and/or advances the state of the art for recreation at the national, regional or local level. Interested jurisdictions are directed to 36 CFR 72.45 for more detailed discussion of fundable elements under the Innovation phase of the UPARR program.

In response to widespread interest in programs that help prevent urban crime, 1995 grant awards will focus on, but not be limited to, youth-at-risk approaches—for example, innovation programs that combine recreation with education, counselling or mentoring activities aimed at teens and/or rehabilitation proposals that target facilities that will supply key recreation opportunities for the target youth populations. Program participants may be aware that a new category of UPARR grants, called "At-Risk-Youth" grants, was established as part of the 1994 Omnibus Crime Bill. However, funding is not authorized for such grants before 1996. Consequently, the 1995 grant round will highlight crime prevention in recreation programs, without being limited exclusively to such grants. Preparations are now underway for administration of the new UPARR grants authorized in the Crime Bill should funding for these become available in 1996 or subsequent years.

Eligible Jurisdictions: Urban jurisdictions as listed in 36 CFR part 72 appendix B will be eligible. Additional jurisdictions meeting the criteria for eligibility described in 36 CFR part 72 appendix A, and having been approved as discretionary applicants by NPS, may also compete. All applicants must have a Recovery Action Program (RAP) which has been approved by NPS within the past five years, and all projects must be in accord with the priorities outlined in the approved RAPs.

Grant Implementation and Timing: Grantees must comply with all applicable Federal laws and regulations for the UPARR program, which include completion of a final grant agreement within 120 days of a grant offer (based on NPS evaluation of preapplications submitted for consideration).

Preapplication Requirements: Local chief elected officials (mayors, etc.) applying for UPARR grants will be required to certify, in the preapplication, that the grantee will comply with all requirements of the UPARR program. Applicants must also identify the type of control they have over properties to be assisted. Additional requirements are outlined in the UPARR PREAPPLICATION HANDBOOK (updated for 1995) available from the Regional Offices of NPS.

Matching Requirements: UPARR Rehabilitation and Innovation grants are awarded on a 70/30 (Federal/local) matching basis. As an incentive for state involvement in the program, the Federal Government will match, dollar for dollar, state contributions to the local share of the total project cost, up to 15 percent of the approved grant. The Federal share is limited to no more than 85 percent of the approved grant cost and the overall dollar limitations established above for Rehabilitation and Innovation grants, respectively.

Pass-Through Funding: At the discretion of the applicant jurisdiction, grants may be transferred, in whole or in part, to independent general or special purpose local governments, private nonprofit agencies or community groups, and county or regional park authorities that provide

recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction. In such situations, the applicant jurisdiction will bear full legal responsibility and liability for passed-through funds.

Post-Completion Requirements: In accordance with Section 1010 of the UPARR Act of 1978, assisted properties may not be converted to other than public recreation use without the prior approval of NPS and the replacement of the converted site or facility with one of reasonably equivalent usefulness and location. This provision may not be applicable to funded Innovation projects depending upon the nature of the assistance provided.

FOR FURTHER INFORMATION: Interested jurisdictions should consult their NPS Regional Office for further information including grant round schedule dates and for technical assistance in applying for funding. The NPS Regional Offices are listed below:

Mid-Atlantic

Chief, Planning & Grants Assistance Division, National Park Service, 200 Chestnut Street—3rd Floor, Philadelphia, PA 19106, 215–597–7995—CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV

Mid-West

Assistant Regional Director for Recreation Assistance Programs, National Park Service, 1709 Jackson Street, Omaha, NE 68102–2571, 402–221–3201—IA, IL, IN, KS, MI, MN, MO, NE, OH, WI

Pacific Northwest

Chief, Recreation Programs Division, National Park Service, 909 First Avenue, Seattle, WA 98104–1060, 206–220–4083—AK, ID, OR, WA

Rocky Mountain

Chief, Division of National Recreation Programs, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, 303–969–2850—CO, MT, ND, SD, UT, WY

Southeast

Chief, Grants Division, National Park Service, 75 Spring Street, 10th Floor, Atlanta, GA 30303, 404–331–2610—AL, FL, GA, KY, MS, NC, PR, SC, TN, VI

Southwest

Assistant Regional Director for External Programs, National Park Service, P.O. Box 728, Santa Fe, NM 87501, 505–988–6705—AR, LA, NM, OK, TX

Western

Chief, Grants Branch, Division of Planning, Grants and Environmental Quality, National Park Service, 600 Harrison Street—Suite 600, San Francisco, CA 94107–1372, 415–744–3972—AS, AZ, CA, GU, HI, NV, CM.

(Catalog of Federal Domestic Assistance # 15.919)

(Title X, National Parks and Recreation Act of 1978, Pub.L. 95–625, 16 U.S.C. 2501–2514)

Dated: December 13, 1994.

Michael P. Rogers,

Acting Chief, Recreation Grants Division, National Park Service.

[FR Doc. 94–31042 Filed 12–16–94; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with the policy set forth in Section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), and the Department of Justice regulations at 28 C.F.R. 50.7, notice is hereby given that on December 6, 1994 a proposed consent decree in *United States* v. *The Boeing Company*, C92–5369B, was lodged with the United States District Court for the Western District of Washington. The Consent Decree resolves claims asserted by the United States, on behalf of the U.S. Environmental Protection Agency, against the Boeing Company ("Boeing") pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as well as a counterclaim by Boeing for response costs incurred in connection with the Tacoma Channel/Well 12A/Time Oil Site (the "Site") in Tacoma, Washington. The Consent Decree provides for payment of $2.3 million by Boeing and $7.7 million by the United States to the Hazardous Substance Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The Boeing Company*, DOJ Ref. #90–11–3–566.

The proposed consent decree may be examined at the Region 10 office of the Environmental Protection Agency, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, Washington 98101 and at the Consent Decree Library, 1120 G Street, N.W., 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, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.25 (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. 94–31112 Filed 12–16–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 C.F.R. 50.7 and pursuant to Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that a proposed Consent Decree in *United States* v. *Reeves Southeastern Corporation*, Civil Action No. 94–1752–CIV–T–24A, was lodged on November 2, 1994, with the United States District Court for the Middle District of Florida, Tampa Division.

This case concerns the Reeves Southeastern Galvanizing ("SEG") facility and the Reeves Southeastern Wire ("SEW") facility which are located along the north and south sides of State Road 574 in Tampa, and, together are known as the Reeves Southeastern Corporation Superfund Site (the "Site"). Pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, the Complaint in this action seeks recovery of all past and future costs incurred and to be incurred by the United States at the Site, and injunctive relief for the Site, namely, implementation of remedies selected by EPA in Records of Decision ("ROD") for Operable Unit ("OU") One, dated October 13, 1992, for OU two, dated September 9, 1993, and for OU three dated June 28, 1994. The ROD for OU One provides for excavation of contaminated soils and sediments at the SEW and SEG facilities, backfilling of those excavated areas with clean fill, solidification and stabilization of

contaminated soils and sediments, disposal of the solidified material above the water table on the SEG facility and installation of a low permeability cap over the solidified material. The ROD for OU Two requires that the surficial aquifer be monitored for at least 2½ years after the source control measures required in the Operable Unit One ROD have been completed. If, after 2½ years have expired, levels of contaminants of concern in the surficial aquifer have not been reduced to a pre-determined targeted level, the surficial aquifer will have to be actively remediated through a pump and treat system. If levels have attenuated to the target level, pump and treat will not be required at that time; however, monitoring will continue. The ROD for OU Three requires sampling and monitoring of the North Wetland.

Defendant Reeves (the "Settling Defendant") has agreed in the proposed Consent Decree to pay the United States $297,759 for past response costs incurred at the Site, as well as all future costs of overseeing the implementation of the Remedial Actions of OU One, Two and Three. The Settling Defendant has also agreed to implement the remedy selected by EPA for the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Reeves Southeastern Corporation*, DOJ Ref. #90–11–2–897C.

The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Florida, 500 Zack St. Room 410, Tampa, Florida 33602; the Office of the United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $30.00 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with attachments or a check in the amount of $21.25, for a copy of the proposed Consent Decree without those attachments.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–31113 Filed 12–16–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Judgment by Consent Pursuant to the Clear Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 29, 1994, a proposed consent decree in *United States* v. *ASARCO, Inc.*, Civil Action No. CV–94–88–H–CCL, was lodged with the United States District Court for the District of Montana, Helena Division.

The proposed consent decree will resolve the United States' claims for violations of section 113(b) of the Clear Air Act as amended, 42 U.S.C. 7413(b), and the requirements and prohibitions set forth in a permit issued to ASARCO, for its plant in East Helena, Montana, pursuant to the State of Montana's State Implementation Plan.

The Department of Justice will receive comments relating to the proposed consent decree with ASARCO, Inc., for a period of thirty (30) days from the date of this publication. Comments on the decree should be addressed to the Assistant Attorney General, Environmental & Natural Resources Division, U.S. Department of Justice, Washington DC. 20530, and should refer to *United States* v. *ASARCO, Inc.*, Civil Action No. CV–94–88–H–CCL, DOJ reference No. 90–5–2–1–1859.

A copy of the proposed consent decree may be examined at the Office of the United States Attorney, District of Montana, Federal Building, Helena, Montana; the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202; and the Consent Decree Library, 1120 G Street, NW. 4th Floor, Washington DC. 20005, (202–624–0892). A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. 20005. When requesting a copy of the proposed consent decree, please enclose a check in the amount of $1.25 (twenty-five 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. 94–31145 Filed 12–16–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation: Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation was established in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 82–463)). Pursuant to Section 10(a) of FACA, this is to announce that the Task Force will meet at the time and place shown below.

Time and Place

The meeting will be held on Tuesday, January 10, from 9 a.m. to 4 p.m. and on Wednesday, January 11, from 9 a.m. to 3 p.m. in Conference Room N–3437 B–D in the Department of Labor, 200 Constitution Avenue, NW, Washington, DC.

Agenda

At this meeting, the Task Force intends to hear testimony on and discuss the following topics: education, alternative dispute resolution, demographics of the workforce, ways of defining excellence, and workplace attitudes towards excellence, participation, and representation. The Task Force may also discuss future work plans, including the desirability of scheduling meetings of working groups of Task Force Members at various locations around the country.

Public Participation

The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact the Task Force to request appropriate accommodations. Individuals or organizations wishing to submit written statements should send 20 copies on or before January 3 to Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–2203, Washington, DC 20210. These statements will be thoroughly reviewed and become part of the record.

For the purposes of this meeting, the Task Force is primarily interested in statements that address the topics mentioned above under the heading

"Agenda." However, the Task Force continues to welcome submissions that address the questions in the mission statement and the following eight general areas: (1) Finding Models, Ingredients, and Barriers to Excellence and Labor-Management Cooperation and, as the following relate to promoting workplace cooperation and excellence; (2) Bargaining and Related Institutions and Practices; (3) Conflict Resolution Skills, Practices, and Institutions; (4) Legal and Regulatory Issues; (5) Financial Background, Financial Security, and Budget Systems; (6) Affects of Civil Service; (7) Political and Electoral Considerations and Relationships; and (8) Providing a Humane Work Environment.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, Room S–2203, Washington, DC 20210, (202) 219–6231.

Signed at Washington, DC this 14th day of December, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–31142 Filed 12–16–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR Parts 655, Subpart D, and 29 CFR Part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, D.C., this 13th day of December 1994.

John M. Robinson,

Deputy Assistant Secretary.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA REGION 1 11/7/94 TO 11/13/94		
Denise Eaton, Babcock Artificial Kidney Center, 1055 Commonwealth Avenue, Boston, MA 02215, 042474787 ..... ETA CONTROL NUMBER—1/215678 ACTION—ACCEPTED	MA	11/8/94
Consuelo Vaca, Nurse Care Registry, Inc., 25–31 30th Road, Astoria, NY 11102, 718–204–8585	NY	11/8/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—1/215687 ACTION—ACCEPTED		
ETA REGION 1 11/21/94 TO 11/27/94		
David M. Cavalier, Keystone Nursing & Rehabilitation, 44 Keystone Drive, Leominster, MA 01453, 508–537–9237 .... ETA CONTROL NUMBER—1/215812 ACTION—ACCEPTED	MA	11/22/94
Joseph O'Grady, O'Grady-Peyton, Int'l, 470 Atlantic Avenue, Boston, MA 02210, 617–482–5655 ..... ETA CONTROL NUMBER—1/215973 ACTION—ACCEPTED	MA	11/22/94
Warren E. Gager, William B. Kessler Memorial Hosp., 600 S. White Horse Pike, Hammonton, NJ 08037–2099, 609–561–6700. ETA CONTROL NUMBER—1/215841 ACTION—ACCEPTED	NJ	11/22/94
Elvie L. Labaro, Professional Health Care Agency, 31–14 Steinway St., Astoria, NY 11103, 718–454–5880 ..... ETA CONTROL NUMBER—1/215969 ACTION—ACCEPTED	NY	11/22/94
Michael Rodzenko, South Nassau Communities Hospital, 2445 Oceanside Road, Oceanside, NY 11572, 516–763–3930. ETA CONTROL NUMBER—1/215840 ACTION—ACCEPTED	NY	11/22/94
ETA REGION 10 11/7/94 TO 11/13/94		
Mattie Henderson, Downey Care Center, 13007 South Paramount Boulevard, Downey, CA 90242, 310–923–9301 ... ETA CONTROL NUMBER—10/20592 ACTION—ACCEPTED	CA	11/9/94
ETA REGION 10 11/14/94 TO 11/20/94		
Tim Howard, Community Hospital Medical Center, 6501 North 19th Avenue, Phoenix, AZ 85015, 602–844–4151 ..... ETA CONTROL NUMBER—10/205955 ACTION—ACCEPTED	AZ	11/18/94
Mario A. Juanengo, Exproserv Unlimited, 3435 Camino Del Rio South, Suite 307, San Diego, CA 92108, 619–563–5733. ETA CONTROL NUMBER—10/206017 ACTION—ACCEPTED	CA	11/16/94
David Chen, Supernurse, 1316 Wilshire Boulevard, Suite 12, Los Angeles, CA 90017, 213–483–8388 ..... ETA CONTROL NUMBER—10/205948 ACTION—ACCEPTED	CA	11/17/94
ETA REGION 10 11/28/94 TO 12/4/94		
Ann C. Seisa, Vagthol's Residential Care Inc., 6537 Fountain Avenue, Los Angeles, CA 90028, 213–464–6067 ..... ETA CONTROL NUMBER—10/205970 ACTION—ACCEPTED	CA	12/2/94
ETA REGION 5 11/7/94 TO 11/13/94		
Philip S. De Leon, Jr., Abington of Glenview (The), 3901 Glenview Road, Glenview, IL 60025, 708–729–0000 ..... ETA CONTROL NUMBER—5/232970 ACTION—ACCEPTED	IL	11/8/94
Fred Gantz, Ambassador Nursing Center, 4900 N. Bernard, Chicago, IL 60625, 312–583–7130 ..... ETA CONTROL NUMBER—5/232978 ACTION—ACCEPTED	IL	11/8/94
Marvin Mermelstein, Balmoral Nursing Centre, Inc., 2055 West Balmoral Avenue, Chicago, IL 60625, 312–561–8661 ETA CONTROL NUMBER—5/232975 ACTION—ACCEPTED	IL	11/8/94
Nicholas A. Vangel, Butterfield Health Care, Inc., d/b/a Meadowbrook Manor 431 W., Remington Blvd., Bolingbrook, IL 60440, 708–759–1112. ETA CONTROL NUMBER—5/232980 ACTION—ACCEPTED	IL	11/8/94
Jody Swearingen, Carle Foundation Hospital, 611 West Park, Urbana, IL 61801, 217–383–3311 ..... ETA CONTROL NUMBER—5/232971 ACTION—ACCEPTED	IL	11/8/94
Amy Saltzman, Continental Care Center, 5336 N. Western, Chicago, IL 60625, 312–271–5600 ..... ETA CONTROL NUMBER—5/232985 ACTION—ACCEPTED	IL	11/8/94
Jack Endeley, Danville Manor, ATTN: Don 1215 Holiday Drive, Danville, IL 61832, 217–443–4123 ..... ETA CONTROL NUMBER—5/232981 ACTION—ACCEPTED	IL	11/8/94
Connie J. Hoselton, Heitage Manor Nursing Home, 900 N. Rutledge Street, Springfield, IL 62702, 217–789–0930 .... ETA CONTROL NUMBER—5/232966 ACTION—ACCEPTED	IL	11/8/94
Delores Prostek, LifeLink Corporation, 331 South York Road, Besenville, IL 60106, 708–766–3570 ..... ETA CONTROL NUMBER—5/232987 ACTION—ACCEPTED	IL	11/8/94
Lourdes Cervantes, Methodist Hospital of Chicago, 5025 N. Paulina, Chicago, IL 60640, 312–271–9040 ..... ETA CONTROL NUMBER—5/232983 ACTION—ACCEPTED	IL	11/8/94
Blaine Fox, Villas of Shannon, 418 South Ridge P.O. Box 86, Shannon, IL 64078, 815–864–2425 ..... ETA CONTROL NUMBER—5/232977 ACTION—ACCEPTED	IL	11/8/94
Gary T. Johnson, Washington and Jane Smith Home, 2340 West 113th Place, Chicago, IL 60643, 312–779–8010 ... ETA CONTROL NUMBER—5/232967 ACTION—ACCEPTED	IL	11/8/94
Grace Smith, Seton Hill Manor, Inc., 501 West Franklin Street, Baltimore, MD 21201, 410–837–4990 ..... ETA CONTROL NUMBER—5/232986 ACTION—ACCEPTED	MD	11/8/94
Heather A. Millar, Great Lakes Rehabilitation Hosp., 22401 Foster Winter Drive, Southfield, MI 48075, 810–569–1500.	MI	11/8/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/232965 ACTION—ACCEPTED		
Noreen Trout, Home Care Network, Inc., 812 B East Franklin Street, Centerville, OH 45459, 800–538–4218	OH	11/8/94
ETA CONTROL NUMBER—5/232969 ACTION—ACCEPTED		
ETA REGION 5 11/14/94 TO 11/20/94		
Edwin Zechman, Jr., Children's Hospital, 111 Michigan Avenue, N.W., Washington, DC 20010–2970, 202–884–5000	DC	11/15/94
ETA CONTROL NUMBER—5/233271 ACTION—ACCEPTED		
Karen Cook, Hays Medical Center, 2220 Canterbury Drive, Hays, KS 67601, 913–628–7403	KS	11/16/94
ETA CONTROL NUMBER—5/233353 ACTION—ACCEPTED		
Aaron R. Jade, Bloomfield Hills Care Center, Inc., 50 W. Square Lake Rd., Bloomfield Hills, MI 48322, 810–338–0345.	MI	11/17/94
ETA CONTROL NUMBER—5/233360 ACTION—ACCEPTED		
Betty Stone, Chippenham Medical Center, 7101 Jahnke Road, Richmond, VA 23225, 804–320–3911	VA	11/17/94
ETA CONTROL NUMBER—5/233367 ACTION—ACCEPTED		
Mariano C. Evangelista, Metro Employment & Immig. Services, 3717 Columbia Pike, Suite 201, Arlington, VA 22204, 703–979–6253.	VA	11/15/94
ETA CONTROL NUMBER—5/233272 ACTION—ACCEPTED		
Leah Rama, Premier Quality Care Services, Inc., 101 South Whiting St., Suite 113, Alexandria, VA 22304, 703–370–6900.	VA	11/16/94
ETA CONTROL NUMBER—5/233349 ACTION—ACCEPTED		
Armida Evangelista, Southern Medical Services, Inc., 3717 Columbia Pike, Suite 201, Arlington, VA 22204, 703–979–6253.	VA	11/16/94
ETA CONTROL NUMBER—5/233350 ACTION—ACCEPTED		
ETA REGION 5 11/28/94 TO 12/4/94		
Joseph O'Grady, O'Grady-Peyton International USA, 470 Atlantic Avenue, Boston, MA 02210, 617–482–5655	MA	11/21/94
ETA CONTROL NUMBER—5/233554 ACTION—ACCEPTED		
ETA REGION 5 11/21/94 TO 11/27/94		
Carl Baker, King Bruwaert House, 6101 S. County Line Road, Burr Ridge, IL 60251, 708–323–2250	IL	12/1/94
ETA CONTROL NUMBER—5/234068 ACTION—ACCEPTED		
Barbara Baxter, Medi-Search International, P.O. Box 60631–0882 240 East Lake Street, Suite #206, Chicago, IL 60631–0882, 708–941–8341.	IL	12/1/94
ETA CONTROL NUMBER—5/234072 ACTION—ACCEPTED		
Elaine Yarling, Mt. Sinai Hospital Medical Center, California Avenue at 15th St., Chicago, IL 60608, 312–257–6653	IL	12/1/94
ETA CONTROL NUMBER—5/234014 ACTION—ACCEPTED		
William C. Langschied, Mariner Health Care of Fort Wayne, 4430 Elsdale Drive, Fort Wayne, IN 46835, 219–485–8157.	IN	12/1/94
ETA CONTROL NUMBER—5/234065 ACTION—ACCEPTED		
Thomas G. Rau, Four Chaplains Convalescent Center, 28349 Joy Road, Westland, MI 48185, 313–261–9500	MI	12/1/94
ETA CONTROL NUMBER—5/234067 ACTION—ACCEPTED		
ETA REGION 6 11/7/94 TO 11/13/94		
Mr. Isaac Mizrahi, El Ponce De Leon Convalescent Ctr., 335 SW 12 Avenue, Miami, FL 33130, 305–545–5417	FL	11/7/94
ETA CONTROL NUMBER—6/222591 ACTION—ACCEPTED		
Mr. Denton Crockett, Independent Home Health Services, 1020 Lakeview Road, Suite 200, Clearwater, FL 34616, 813–461–4481.	FL	11/10/94
ETA CONTROL NUMBER—6/222659 ACTION—ACCEPTED		
Mr. Isaac Mizrahi, Jackson Manor Nursing Home, Inc., 1861 NW 8 Avenue, Miami, FL 33136, 303–324–0280	FL	11/7/94
ETA CONTROL NUMBER—6/222590 ACTION—ACCEPTED		
Mr. Isaac Mizrah, Snapper Creek Nursing Home, 9200 SW 87 Avenue, Miami, FL 33157, 305–271–1313	FL	11/7/94
ETA CONTROL NUMBER—6/222592 ACTION—ACCEPTED		
Mr. John P. Whitley, Louisiana State Penitentiary, Angola, LA 70712, 504–655–4411	LA	11/10/94
ETA CONTROL NUMBER—6/222728 ACTION—ACCEPTED		
Ms. Peggy L. Miller, Bermuda Village Retirement Center, 163 Stratford Ct., Suite 205, Winston-Salem, NC 27103, 910–998–6112.	NC	11/10/94
ETA CONTROL NUMBER—6/222663 ACTION—ACCEPTED		
Mr. Robert Hill, Jr., Britthaven of Chapel Hill, 1716 Legion Road, Chapel Hill, NC 27514, 919–942–2280	NC	11/7/94
ETA CONTROL NUMBER—6/222657 ACTION—ACCEPTED		
Mr. Robert Hill, Jr., Britthaven of Kernersville, 728 Piney Grove Road, Kernersville, NC 27284, 910–556–4038	NC	11/7/94
ETA CONTROL NUMBER—6/222656 ACTION—ACCEPTED		
Mr. Randy L. Beaman, Carolina Retirement Services, Inc., 163 Stratford Court, Winston-Salem, NC 27103, 919–823–2799.	NC	11/7/94
ETA CONTROL NUMBER—6/222486 ACTION—ACCEPTED		
Ms. Karen S. Daniel, Integrated Health Serv. of Raleigh, 3830 Blue Ridge Road, Raleigh, NC 27612, 919–781–4900	NC	11/7/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/222479 ACTION—ACCEPTED		
Ms. Jody Barnes, Orlando Memorial, 163 Stratford Court, Ste. 205, 407–423–1612	NC	11/7/94
ETA CONTROL NUMBER—6/222589 ACTION—ACCEPTED		
Ms. Linda Ghaffari, Buenavista Retirement Center, 1501 West 7th Street, Clovis, NM 88101, 505–763–5335	NM	11/10/94
ETA CONTROL NUMBER—6/222662 ACTION—ACCEPTED		
Mr. James Jewell, Edinburg Colonial Manor, 1401 South 2nd Street, Edinburg, TX 78539, 210–383–4978	TX	11/7/94
ETA CONTROL NUMBER—6/222481 ACTION—ACCEPTED		
Mr. Dean Fleet, Monahans Care Center, 1200 W. 15th St., Monahans, TX 79756, 915–943–3063	TX	11/7/94
ETA CONTROL NUMBER—6/222487 ACTION—ACCEPTED		
Mr. James Jewell, Pharr Nursing Home, Inc., 204 South Casa Road, Pharr, TX 78577, 210–787–2735	TX	11/7/94
ETA CONTROL NUMBER—6/222482 ACTION—ACCEPTED		
Mr. Ben M. Durr, Uvalde Memorial Hospital, 1025 Garner Field Road, Uvalde, TX 78801, 210–278–6251	TX	11/7/94
ETA CONTROL NUMBER—6/222485 ACTION—ACCEPTED		
Ms. Georgia Holmes, Wright Nursing Home, 328 West Mayfield, San Antonio, TX 78221, 210–924–5533	TX	11/7/94
ETA CONTROL NUMBER—6/222480 ACTION—ACCEPTED		
ETA REGION 6 11/14/94 TO 11/20/94		
Mr. Lawrence J. Centella, REN Centers of Alabama, Inc., 216 Marengo Street #1, Florence, AL 35630, 205–764–5050.	AL	11/17/94
ETA CONTROL NUMBER—6/222821 ACTION—ACCEPTED		
Mr. Issac Mizrah, Arch Creek Nursing Home, Inc., 12505 N.E. 16 Avenue, North Miami, FL 33161, 305–891–1710	FL	11/17/94
ETA CONTROL NUMBER—6/222744 ACTION—ACCEPTED		
Ms. Marie McLucas, Fountainhead Nsg. & Convalescent, 390 NE 135th Street, North Miami, FL 33161 305–893–0660.	FL	11/17/94
ETA CONTROL NUMBER—6/222823 ACTION—ACCEPTED		
Mr. C. Scott Campbell, Highlands Regional Medical Center, 3600 S. Highlands Avenue P.O. Drawer 2066, Sebring, FL 33871, 813–385–6101.	FL	11/18/94
ETA CONTROL NUMBER—6/222824 ACTION—ACCEPTED		
Ms. Maxcine Darville, Okeechobee Council on Aging, Inc., 230 South Barfield Highway, Pahokee, FL 33476–1867, 407–924–5561.	FL	11/17/94
ETA CONTROL NUMBER—6/222745 ACTION—ACCEPTED		
Carlos Milanes, Palm Springs General Hospital, 1475 W. 49th Street, Hialeah, FL 33012, 305–558–2500	FL	11/17/94
ETA CONTROL NUMBER—6/222747 ACTION—ACCEPTED		
Mr. Isaac Mizrah, Palmetto Extended Care Center, Inc., 7600 S.W. 8 Street, Miami, FL 33144, 305–324–0280	FL	11/17/94
ETA CONTROL NUMBER—6/222743 ACTION—ACCEPTED		
Mr. William Patterson, Palms of Pasadena Hospital, 1501 Pasadena Ave. South, St. Petersburg, FL 33707, 813–381–1000.	FL	11/16/94
ETA CONTROL NUMBER—6/223328 ACTION—ACCEPTED		
Mr. David Catlin, Parkway Regional Medical Center, 160 N.W. 170th Street, N. Miami bEACH, FL 33169, 305–651–1100.	FL	11/17/94
ETA CONTROL NUMBER—6/222748 ACTION—ACCEPTED		
W.E. Steiger, Miss. Dept. of Corrections Medical, P.O. Box E Highway 49–W, Parchman, MS 38738 601–745–6611	MS	11/17/94
ETA CONTROL NUMBER—6/222746 ACTION—ACCEPTED		
Mr. John T. Carlisle, Cumberland Co. Hospital System, Inc., 1638 Owen Drive P.O. Box 2000, Fayetteville, NC 28302–2000, 910–609–6646.	NC	11/18/94
ETA CONTROL NUMBER—6/222825 ACTION—ACCEPTED		
Mr. Leo Redding, Hillhaven Rehab Center-Cape Coral, 163 Stratford Ct. Suite 205, Winston-Salem, NC 27103, 813–574–4434.	NC	11/18/94
ETA CONTROL NUMBER—6/222826 ACTION—ACCEPTED		
Mr. Ralph E. Beaty, Huntsville Memorial Hospital, 3000 I–45 P.O. Box 4001, Huntsville, TX 77340, 409–291–4521	TX	11/17/94
ETA CONTROL NUMBER—6/222872 ACTION—ACCEPTED		
ETA REGION 6 11/21/94 to 11/27/94		
Mr. Roger Kirk, Bethesda Memorial Hospital, 2815 S. Seacrest Blvd., Boynton Beach, FL 33435, 407–737–7733	FL	11/22/94
ETA CONTROL NUMBER—6/222975 ACTION—ACCEPTED		
Mr. Ronald A. Cass, Hospital Staffing Services, Inc., 6245 N. Federal Highway, Suite 500, Ft. Lauderdale, FL 33308, 305–771–0500.	FL	11/22/94
ETA CONTROL NUMBER—6/223019 ACTION—ACCEPTED		
Mr. Richard Lockaby, Madison Nursing Center, Rte. 3, Box 2310, Madison, FL 32340, 904–973–4880	FL	11/22/94
ETA CONTROL NUMBER—6/222847 ACTION—ACCEPTED		
Mr. Emil P. Miller, Pinellas Community Hospital, 7950 66th Street, North, Pinellas Park, FL 34665, 813–545–7300	FL	11/22/94
ETA CONTROL NUMBER—6/222910 ACTION—ACCEPTED		
Mr. Derek Carissimi, Piedmont Hospital, 1968 Peachtree Road, NW., Atlanta, GA 30309, 404–605–5000	GA	11/22/94
ETA CONTROL NUMBER—6/222909 ACTION—ACCEPTED		
Mr. Fred E. Calcote, Jr., East Louisiana State Hospital, P.O. Box 498 Highway 10, Jackson, LA 70748, 504–634–2651.	LA	11/22/94

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/222848 ACTION—ACCEPTED		
Mr. Dudley Romero, Our Lady of Lourdes Reg. Med. Ctr., 611 St. Landry Street, Lafayette, LA 70506, 318–231–2104.	LA	11/22/94
ETA CONTROL NUMBER—6/222881 ACTION—ACCEPTED		
Mr. G. Wayne Shuler, Madison General Hospital, Highway 16 East, Canton, MS 39046, 601–859–1331	MS	11/22/94
ETA CONTROL NUMBER—6/222845 ACTION—ACCEPTED		
Ms. Ronnette Cox, Convalescent Center of Halifax, 101 Carolina Ave., P.O. Drawer 432, Weldon, NC 27890, 919–536–4817.	NC	11/22/94
ETA CONTROL NUMBER—6/222880 ACTION—ACCEPTED		
Mr. Richard Powell, Dallas Nephrology Associates, 3601 Swiss Avenue, Dallas, TX 75204, 214–956–8200	TX	11/22/94
ETA CONTROL NUMBER—6/222908 ACTION—ACCEPTED		
Rene Gaviola, Midwest Rehab Center, 4919 Shadowdale Drive, Houston, TX 77041, 713–937–3515	TX	11/22/94
ETA CONTROL NUMBER—6/222907 ACTION—ACCEPTED		
ETA REGION 6 11/28/94 to 12/04/94		
Ms. Judi L. Buxo, Harbour's Edge, 401 East Linton Blvd., Delray Beach, FL 33483, 407–272–7979	FL	12/1/94
ETA CONTROL NUMBER—6/223190 ACTION—ACCEPTED		
Mr. Bryan Batulis, Heritage Manor of Napoleonville, 252 Highway 402, P.O. Box 669, Napoleonville, LA 70390, 504–369–6011.	LA	12/1/94
ETA CONTROL NUMBER—6/223521 ACTION—ACCEPTED		
Ms. Alivia Mitchell, Hacienda de Salud, 3514 Leslie Road, Silver City, NM 88061, 505–388–3127	NM	12/1/94
ETA CONTROL NUMBER—6/223155 ACTION—ACCEPTED		
Mr. David Parmer, Baptist Hospital of Southeast TX, College & 11th Street, Beaumont, TX 77704, 409–835–3187	TX	12/1/94
ETA CONTROL NUMBER—6/223191 ACTION—ACCEPTED		
Mr. Nedro G. Parker, Health Network International, Inc., 4506 LaBranch, Houston, TX 77004–4925, 713–522–2443	TX	12/1/94
ETA CONTROL NUMBER—6/223073 ACTION—ACCEPTED		
Ms. Donna Wong, Total Life Care, 105 Drew, Houston, TX 77006, 713–529–8922	TX	12/1/94
ETA CONTROL NUMBER—6/223074 ACTION—ACCEPTED		

[FR Doc. 94–31137 Filed 12–16–94; 8:45 am]
BILLING CODE 4510–30–P

Pension and Welfare Benefits Administration

[Application No. D–9834, et al.]

Proposed Exemptions; Alucobond Technologies, Incorporated Employees' Savings Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons

are referred to the applications on file with the Department for a complete statement of the facts and representations.

Alucobond Technologies, Incorporated Employees' Savings Plan (the Plan) Located in St. Louis, Missouri; Proposed Exemption

[Application No. D–9834]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed interest-free loan to the Plan (the Loan) by Alucobond Technologies, Incorporated (the Employer), a party in interest with respect to the Plan, and (2) the Plan's potential repayment of the Loan upon the receipt by the Plan of payments under Guaranteed Investment Contract No. CG01285A3A (the GIC) issued by Executive Life Insurance Company (Executive Life); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(B) The Loan will be repaid only out of amounts paid to the Plan by Executive Life, its successors, or any other responsible third party; and

(C) Repayment of the Loan is waived with respect to the amount by which the Loan exceeds GIC proceeds.

Summary of Facts and Representations

1. The Employer is a diversified manufacturer of aluminum composite panels, rigid foam P.V.C. panels and polystyrene foamcore boards. The Employer has offices and/or production sites in St. Louis, Missouri; Benton, Kentucky and Richmond, Indiana. The Plan is a profit sharing plan which includes a cash or deferred arrangement under section 401(k) of the Code. As of December 31, 1993, the Plan had 93 participants and total assets of approximately $1,098,635. Participants are currently entitled to direct the investment of their account balances among seven investment funds which are managed by Scudder Investor Services, Inc. On February 12, 1988, prior to the implementation of participant direction, The Boatmen's National Bank of St. Louis (the Bank),[1] as trustee for the Plan, made the decision to invest a portion of the Plan's assets in a collective investment fund maintained by the Bank and invested primarily in guaranteed investment contracts. The GIC is held as the sole asset of sub-fund G–11 of the the collective investment fund. The GIC provided a rate of return of 8.65% per annum and a maturity date of March 1, 1993.

2. On April 11, 1991, Executive Life was placed into conservatorship by the Insurance Commissioner of the State of California. The Employer represents that, pursuant to the conservatorship, payouts under the terms of Executive Life's GICs were suspended.[2] In February, 1994, Boatmen's, in its capacity as Plan trustee, elected to participate in the rehabilitation plan for Executive Life. Although, through the rehabilitation process, the Plan has received $147,386.00 from Executive Life, the amount of any additional payments to be received over the next several years is undetermined. Consequently, Boatmen's has frozen that portion of participants' accounts which is attributable to the GIC. This freeze has prevented Plan participants from exercising the rights they would normally have under the Plan to request distributions and investment transfers with respect to amounts currently invested in the GIC.[3] The Employer represents that the Loan would preserve the Plan's rights with respect to the GIC, give participants and beneficiaries the ability to exercise their right to request investment transfers, and provide immediate liquidity which would facilitate benefit distributions. The proposed Loan will be made in one lump-sum payment in the amount of the maturity value[4] of the GIC, plus post-maturity interest through the date of the Loan, credited at the rate paid on the Collective Employee Benefit Trust Fund "S";[5], less any amounts previously received pursuant to the rehabilitation process and the total amount of periodic advances already made to the Plan. The Employer represents that the Loan is non-interest bearing and the Plan will not incur any expenses in connection with the transaction.

3. Repayment of the Loan is limited to payments made to the Plan by or on behalf of Executive Life, or its successor, or any other responsible third parties. No other assets of the Plan will be available for repayment of the Loan. If the payments by or on behalf of Executive Life are not sufficient to fully repay the Loan, the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. In the event that GIC proceeds exceed the amount necessary to repay the Loan, the excess will be distributed to the Plan for the benefit of participants and their beneficiaries. The Employer represents that it will maintain records of the proposed Loan for a period of seven years, and such records will be open for inspection at all times by the Department or any Plan participant.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The transaction will preserve the Plan's ability to allow participant-directed investment re-allocations; (2) The Plan will not incur

[1] Boatmen's Trust Company (Boatmen's) succeeded The Boatmen's National Bank of St. Louis as the Plan's trustee in 1990.

[2] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC issued by Executive Life.

[3] Following the cessation of payments by Executive Life with respect to the GIC, the Employer made the decision to make periodic advances to the Plan to permit the Plan to make distributions to participants and beneficiaries entitled to distributions as a consequence of termination of employment. The applicant represents that, as of November, 1994, the periodic advances to the Plan totaled approximately $50,618.00. The applicant also represents that the terms of those periodic advances satisfy the conditions of PTE 80–26 (45 FR 28545, April 29, 1980). This conditional class exemption permits a party in interest to make an interest-free loan to an employee benefit plan, and the repayment of such loan. Specifically, the exemption states, in relevant part, that effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money from a party in interest to an employee benefit plan, nor to the repayment of such loan in accordance with its terms, if no interest or other fee is charged to the plan, the loan is unsecured, and the loan proceeds are used only for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan.

In this proposed exemption the Department expresses no opinion as to whether the periodic advances satisfy the provisions of PTE 80–26.

[4] The maturity value is defined as the total amount deposited under the GIC, plus interest at the guaranteed interest rate, through the date of maturity. The applicant represents that the maturity value is $297,210.76.

[5] The Employer represents that the annualized rate of return on the Collective Employee Benefit Trust Fund "S" for the period from October 1, 1993 through September 30, 1994 was 4.0%. It is represented that, this fund, an investment vehicle offered by Boatmen's Trust Company, invests in a diversified portfolio of money market instruments, such as U.S. Treasury Bills, certificates of deposit, commercial paper, and demand notes, as well as other fixed-rate and variable-rate fixed income securities.

any expenses with respect to the transaction; (3) Repayment of the Loan will be made only from amounts paid to the Plan by Executive Life, its successor, or any other third party; (4) If the payments by or on behalf of Executive Life are not sufficient to fully repay the Loan, the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount; and (5) Repayment of the Loan will be waived with respect to the amount by which the Loan exceeds the amount the Plan receives from GIC proceeds.

For Further Information Contact: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Regency Marketing Corporation Restated Employees Profit Sharing Plan and Trust (the Plan) Located in West Bloomfield, Michigan; Proposed Exemption

[Application No. D–9763]

The Department is considering granting an exemption under section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) of $84,667 by the Plan to Frankenmuth Brewing Company (Frankenmuth), a disqualified person with respect to the Plan.[6]

This proposed exemption is conditioned upon the following requirements:

(a) the terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) the Loan does not exceed twenty-five percent of the assets of the Plan at any time during the duration of the Loan;

(c) the Loan is secured by a first deed of trust on certain real property (the Property) which has been appraised by an independent, qualified appraiser to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loan;

(d) the fair market value of the Property remains at least equal to 150 percent of the outstanding balance of the Loan throughout the duration of the Loan;

(e) the Plan trustees determine on behalf of the Plan that the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; and

(f) the Plan trustees monitor compliance with the terms and conditions of the Loan throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.

Summary of Facts and Representations

1. Regency Marketing Corporation (Regency) established the Plan on July 1, 1976. On February 1, 1986, the Plan was frozen due to the dissolution of Regency. Regency was a Michigan corporation engaged as a broker of dairy and other related products. As of June 30, 1993, the Plan had total assets of $1,892,429. Randall Heine and his wife, Paula Heine, are the only participants in the Plan. Mr. and Mrs. Heine are the trustees of the Plan (the Trustees) and have sole investment discretion with regard to the Plan's assets. The Trustees represent that there will be no new participants in the Plan.

Mr. Heine is the majority shareholder of Frankenmuth, a Michigan corporation with its principal place of business in Frankenmuth, Michigan. Frankenmuth manufactures beer and ale both under its own labels as well as under private labels.

2. The Trustees request an administrative exemption from the Department to permit the Loan to Frankenmuth under the terms and conditions described herein. Frankenmuth proposes to use the loan proceeds towards purchasing the Property which will be used for Frankenmuth's administrative offices.

3. The Loan will be in a principal amount of $84,667. The applicant states that at no time will the amount of the Loan represent more than twenty-five percent of the Plan's total assets. The Loan will be secured by a first deed of trust on the Property, which consists of a 1,250 square foot improved commercial building and the underlying land. The Property is located at 435 South Main Street, Frankenmuth, Michigan. The deed of trust will be duly recorded in Saginaw County to reflect the Plan's security interest in the Property. In addition, Frankenmuth will insure the Property against casualty loss and designate the Plan as the loss payee of such insurance.

4. The Loan will have a ten-year term and will be evidenced by a promissory note (the Note). The Note will require Frankenmuth to make monthly payments of principal and interest which will be fully amortized over the ten-year term. Interest will accrue on the Loan at 11.5 percent per annum. The Plan will not be required to pay any commissions, fees or other expenses in connection with the Loan.

As a condition of the proposed exemption, the terms and conditions of the Loan must be at least as favorable to the Plan as those which the Plan could obtain in dealing at arm's length with an unrelated party. In this regard, NBD Bank, N.A. (NBD), an unrelated entity in Troy, Michigan, states in a letter, dated September 22, 1994, that NBD would make a secured loan of $84,667 for an initial term of five years with a fifteen-year amortization schedule allowing for a balloon payment at the end of the fifth year. At the end of the first five years, NBD would approve a new five-year note with a ten-year amortization schedule. At the end of the tenth year, NBD would then approve a five-year note with a five-year amortization schedule. Interest would accrue within a range of 9.25 percent to 11.5 percent per annum, fixed or floating. In addition, NBD states that it would charge Frankenmuth a loan fee of one percent or $846. Accordingly, the applicants represent that Frankenmuth will pay a loan fee of $846 to the Plan at the inception of the Loan.

5. The Property was appraised by Lewis H. Weiss of Weiss Appraisal Service (Weiss), an appraisal firm located in Frankenmuth, Michigan. Mr. Weiss is a licensed real estate appraiser in Michigan and has ten years of experience appraising all types of property. Mr. Weiss represents that both he and Weiss are independent of, and unrelated to, Frankenmuth and the Trustees.

Mr. Weiss placed a fair market value of $127,000 as of August 23, 1994. Mr. Weiss utilized the market data approach of valuation by using comparable sales of commercial buildings located on the same street as the Property.

6. The Trustees state that the terms of the Loan compare favorably with the terms of similar transactions between untreated parties and would be a better than arm's length transaction as evidenced by the terms offered by NBD (see Item #5 above). The Trustees represent, that from the Plan's perspective, the terms of the Loan are better than the terms offered by NBD because the Loan allows the Plan to receive higher monthly payments at an interest rate of 11.5 percent over a ten-year period rather than at a fixed or floating rate between 9.25 and 11.5 percent over a fifteen-year period. The

[6] Since Randall Heine and his wife, Paula Heine, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Trustees represent that they believe that the Loan is in the best interests of the Plan and its participants and beneficiaries as an investment for the Plan's portfolio. The Trustees further represent that they will monitor the Loan throughout its entire duration and will take any appropriate action necessary to protect the interests of the Plan and its participants and beneficiaries, including a foreclosure on the Property in the event of default. The Trustees will monitor the Property to ensure that the Loan remains secured by collateral worth at least 150 percent of the Loan at all times.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the terms of the Loan will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) the Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the Loan;

(c) the Loan will be secured by a first deed of trust on certain real property (the Property) which has been appraised by an independent, qualified appraiser to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loan;

(d) the fair market value of the Property will remain at least equal to 150 percent of the outstanding balance of the Loan throughout the duration of the Loan;

(e) the Trustees have determined on behalf of the Plan that the Loan is in the best interest of the Plan and protective of the Plan's participants and beneficiaries; and

(f) the Trustees will monitor compliance with the terms and conditions of the Loan throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.

Notice to Interested Persons

Since Mr. and Mrs. Heine are the only participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments are due within thirty days after publication of this notice in the **Federal Register**.

For Further Information Contact: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number).

Clarence E. Coker, Jr. and the Clarendon Family Practice, PA Employee Retirement Plan (the Plan) Located in Manning, South Carolina; Proposed Exemption

[Application No. D–9736]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of approximately eight acres of unimproved land (the Land) by the Plan to Dr. Clarence E. Coker, Jr., (Dr. Coker), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Plan will receive the higher of: (1) the original acquisition cost[7]; or (2) the current fair market value plus a certain premium related to the adjacency of the Land to other real property owned by Dr. Coker, established at the time of the sale by an independent qualified appraiser; and

(c) the Plan will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan that was established January 1, 1974. The Plan has 13 participants, and as of December 31, 1993, the Plan's total assets were $755,525.96. The sponsor of the Plan is Clarendon Family Practice, PA (the Employer), which is a South Carolina subchapter "C" corporation engaged in family practice medicine. The Plan's trustee is Dr. Coker who is also the sole shareholder of the Employer.

2. On May 18, 1982, the Plan purchased the Land for $41,700 from Marian K. Thames, an unrelated third party in a one-time cash transaction. The applicant represents that at the time of initial acquisition, the Land represented 19.9% of the Plan's total assets. The Land consists of 8.34 acres of vacant land and is located adjacent to other property owned by Dr. Coker, individually. The applicant represents that since 1982 the Land has been rented for approximately $400 a year to W. D. Harrington, a neighboring farmer who is unrelated to the Plan and the Employer, as grazing land for animals. The aggregate rental income received by the Plan for the period 1982–1994 is $5,200. It is represented that the Land has not been used by a party in interest since it was originally acquired by the Plan. Furthermore, the Land is not encumbered by any debt.

3. Dr. Coker in his trustee capacity, upon the advise of a certain certified public accountant, made the original decision to acquire the Land as a long-term Plan investment.[8] With respect to the Land, the aggregate real estate taxes for the period 1983–1993 were $153.45. In this regard, the original acquisition cost (the Original Acquisition Cost) to the Plan for the Land is $36,653.45. The Original Acquisition Cost was determined as follows $41,700 (original purchase price) + $153.45 (aggregate real estate taxes) − $5,200 (aggregate rental income) = $36,653.45.

4. The Land was appraised on February 11, 1994 (the Appraisal) by W. Burke Watson, Jr., an independent real estate appraiser certified in the State of South Carolina (Mr. Watson). Mr. Watson relied on the direct sales comparison method and estimated that as of February 11, 1994, the fair market value of the Land was $12,500. On July 28, 1994, in an update to the Appraisal, Mr. Burke stated that adjacency of the Land to other property owned by Dr. Coker merits a premium (the Premium) above the fair market value of approximately $500 per acre, which yields a new purchase price of $17,680 to Dr. Coker in this transaction.

5. Dr. Coker proposes to purchase the Land from the Plan in a one-time cash transaction. It is represented that as of December 31, 1993, the Land represented 1.7 percent of the Plan's assets. The applicant represents that the Land has been depreciating steadily over the years, but that this depreciation became evident to Dr. Coker in 1987. As such, after conferring with the Plan's consultants and administrators in 1991, Dr. Coker decided that he should sell the Land because of its steady depreciation and because of its illiquidity. Accordingly, the Land has been listed for sale with an independent real estate broker from October 1991 to January 1992, but there was no willing buyer. Therefore, it is represented that the proposed transaction is in the best interest and protective of the Plan

[7] The original acquisition cost is determined as follows: (original purchase price + aggregate real estate taxes) − aggregate rental income = original acquisition cost.

[8] The Department expresses no opinion as to whether the Plan's acquisition and holding of the Land violated any provision of part 4 of title I of the Act.

because the transaction will divest the Plan of an asset that has greatly depreciated in value since original acquisition, and will enable the Plan to invest in vehicles with a higher return. The transaction is protective of the Plan because as a result of the sale the Plan will receive the higher of: a) the Original Acquisition Cost; or b) the current fair market value plus the Premium as established at the time of the sale by an independent qualified appraiser. Furthermore, the applicant represents that any amounts received by the Plan as a result of the proposed transaction, which are in excess of the fair market value of the Land will be treated as a contribution to the Plan, but that this contribution will not exceed limitations of section 415 of the Internal Revenue Code.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

(b) the Plan will receive the higher of: 1) the Original Acquisition Cost; or 2) the current fair market value plus the Premium as established at the time of the sale by an independent qualified appraiser; and

(c) the Plan will pay no expenses associated with the sale.

Tax Consequences of Transaction

The Department of Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or an affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

American Express Incentive Savings Plan (the Plan) Located in New York, New York; Proposed Exemption

[Application No. D–9813]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extensions of credit (the Loans) to the Plan by American Express Company (the Employer), the sponsor of the Plan with respect to two guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest and/or expenses are paid by the Plan in connection with the transactions;

(C) The proceeds of the Loans are used solely in lieu of payments due from Confederation with respect to the GICs;

(D) Repayment of the Loans will be restricted to the GIC Proceeds, defined as the cash proceeds obtained by the Plan from or on behalf of Confederation with respect to the GICs;

(E) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(F) In any sale of the GICs to the Employer, the Plan will receive a purchase price which is no less than the fair market value of the GICs as of the sale date, and no less than the GICs' accumulated book value, defined as the total principal deposits plus accrued interest at the rates guaranteed by the GICs, less previous withdrawals and any Loans made pursuant to this exemption, as of the sale date.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) plan which provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. The Plan is sponsored by American Express Company (the Employer), a New York public corporation engaged in diversified travel and financial services. The trustee of the Plan is the IDS Trust Company (the Trustee), a wholly-owned subsidiary of IDS Financial Corporation, which is wholly owned by the Employer. The Accounts are invested at the directions of individual Plan participants among nine investment funds, one of which is the ISP Income Fund (the Income Fund), which invests in, among other things, guaranteed investment contracts issued by insurance companies.

2. Among the assets in the Income Fund are two guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation), a Canadian corporation doing business in the United States through branches in Michigan and Georgia. Contract #62516 was issued to the Plan by Confederation effective June 28, 1991, upon an initial principal deposit of $10 million, and it provides for simple annual interest at the rate of 8.72 percent, with a maturity date of June 27, 1996. Contract #62764 was issued effective June 1, 1993 upon an initial principal deposit of $5 million and it provides for simple annual interest at the rate of 6.06 percent, with a maturity date of June 30, 1998. Both GICs are single-deposit non-participating contracts which allow the Plan to make benefit-responsive withdrawals (the Withdrawals) to fund benefit payments, investment fund transfers, hardship withdrawals and participant loans (collectively, the Withdrawal Events). The terms of the GICs provide that interest at the interest rates guaranteed by each GIC (the Contract Rates) will be credited to the Plan daily, and if the amount of interest earned exceeds the amount of Withdrawals, the difference will be paid annually (the Interest Payments) on the anniversary of a date specified by each GIC for such Interest Payments. Conversely, if the amount of Withdrawals exceeds the amount of interest earned during the year, no anniversary Interest Payment is made. Upon each GIC's maturity date, Confederation is obligated to make a final cash payment to the Plan (the Maturity Payment) in the amount of the GIC's principal plus interest at the Contract Rate, less previous Withdrawals (the Maturity Value).

3. The Employer represents that on August 11, 1994, the Canadian insurance regulatory authorities placed Confederation into a liquidation and winding-up process, and on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the U.S. operations of Confederation into a rehabilitation proceeding. As a result of these actions, the Withdrawals and Interest Payments with respect to the GICs have been suspended.[9] The Employer represents

[9] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief

Continued

that it cannot be determined accurately whether, to what extent, or at what time the Withdrawals and Interest Payments will be resumed. The Employer desires to alleviate the Plan's participants of the risks associated with continued investment in the GICs, to prevent any losses of the Income Fund's investments in the GIC, and to provide the Plan with the cash which otherwise would have been provided by the Withdrawals and Interest Payments. Accordingly, the Employer proposes to make the Loans to the Plan from time to time in the amounts due the Plan under the GICs as Withdrawals and Interest Payments. Upon the stated maturity date of each GIC, the Employer intends either (1) to purchase each GIC from the Plan (the Sale), or, alternatively, (2) to make a Loan to the Plan in the amount of the GIC's Maturity Value, depending upon the circumstances prevailing at such time. The Employer is requesting an exemption to permit these transactions under the terms and conditions described herein.

3. The Loans and their repayment, and any potential sale of the GICs to the Employer will be made pursuant to a written agreement (the Agreement) between the Trustee and the Employer.

The Loans: Under the Agreement, the Employer agrees to make the Loans over the remaining terms of the GICs at such times and in such amounts as required to enable the Income Fund to fully fund the Withdrawal Events and to fully realize the Interest Payments, in lieu of the same amounts which otherwise would be paid to the Plan by Confederation as Withdrawals and Interest Payments. Accordingly, the amount of each Loan will be determined on the basis of the GIC's principal plus interest at the Contract Rate, less previous Withdrawals, as of the date of the Loan. Each Loan will also be reduced by any amounts actually received by the Plan, with respect to the particular Withdrawal Event or Interest Payment due, from Confederation or any other party making payment with respect to Confederation's obligations under the GICs. In addition to the Loans in lieu of Withdrawals and Interest Payments, the Agreement authorizes the Employer, as an alternative to purchasing the GICs (as described below in section 4) to make a final Loan with respect to each GIC upon the GIC's Maturity Date in the amount of the GIC's Maturity Value. Any final Loan upon the maturity of each GIC will be made within thirty days of the Maturity Date in the amount of the GIC's Maturity Value plus post-maturity interest as described in section 4 below. The Employer will receive no interest or fees for any of the Loans, and the Plan will incur no expenses related to the Loans.

The Repayments: The Agreement provides that the repayments of the Loans (the Repayments) with respect to each GIC are restricted to the cash amounts, if any, which the Plan receives with respect to the GIC from Confederation, any state insurance guaranty funds, any successor to Confederation, or any other third party making payments with respect to Confederation's obligations under the GICs (collectively, the GIC Proceeds). The GIC Proceeds available to make the Repayments also include, in the event of any purchase of either GIC, as described below, the purchase price of the GIC (the Purchase Price). In this regard, in the event of any such sale of a GIC, Repayments of Loans with respect to that GIC will be accomplished by crediting the total amount of outstanding Loans against the Purchase Price. In any event, to the extent the Loans exceed total GIC Proceeds, the Repayments will be waived.

4. With respect to the maturity of each GIC, the Agreement enables the Employer to retain the flexibility to decide upon each GIC's maturity whether to make a final Loan in the amount of the Maturity Value, if not paid when due by or on behalf of Confederation, or to purchase the GIC from the Plan. The Employer represents that it is unclear under current conditions whether the purchase of the two GICs by the Employer would jeopardize the ability of the Plan and/or the Employer to successfully assert rights to protection under the insurance guaranty fund laws of the various states. The Employer is concerned that, if the two GICs are transferred from the Plan prior to resolution of issues related to guaranty fund protection, various state guaranty fund associations may deny the full range of protection which would have been conferred on the Plan and its participants through such insurance guaranty laws. For these reasons, the Employer would like to wait until the maturity date of each GIC to determine whether to purchase the GIC from the Plan or to make a Loan to the Plan in the amount of the GIC's Maturity Value. The Agreement requires the Employer to make its decision with respect to the maturity of each GIC, and to consummate the Loan or purchase transaction, within thirty business days after the maturity date of each GIC, during which the GIC's Maturity Value will earn interest (Post-Maturity Interest) at the prevailing 30-day U.S Treasury bill rate, from the date of maturity to the date of the loan or purchase In the event the Employer chooses to purchase either of the GICs, the purchase price will be cash in the amount of the GIC's Maturity Value plus Post-Maturity Interest. The Plan will not incur any expenses related to any sale of the GICs. In the event the Employer chooses to make a final Loan upon the Maturity of each GIC, each Loan will be in the amount of the GIC's Maturity Value plus Post-Maturity Interest.

5. In summary, the Employer represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons:

(1) The transactions will enable the Plan to recover all amounts due with respect to the GICs;

(2) The Loans will enable the Plan to resume the ability to fund benefit payments, participant loans, hardship withdrawals, and investment fund transfers within the Plan;

(3) Repayment of the Loans will be restricted to the GIC Proceeds;

(4) The Repayments will be waived to the extent the Loans exceed the GIC Proceeds; and

(5) No interest and/or expenses will be incurred by the Plan with respect to any of the transactions

For further information contact: Ron Willett of the Department, telephone (202) 219–8881 (This is not a toll-free number.)

Bermo, Inc. Profit Sharing Plan and Trust (the Plan), Located in Circle Pines, Minnesota; Proposed Exemption

[Application No D–9826]

The Department is considering granting an exemption under the authority of section 408(a) of the Act, and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed series of loans (the Loans), originated within a five year period, by the Plan to Bermo Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met

(a) The total amount of outstanding Loans shall not exceed 25 percent of the Plan's total assets at any time during the transaction;

(b) All terms and conditions of the Loans are at least as favorable to the

for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs.

Plan as those which the Plan could obtain in an arm's length transaction with an unrelated third party;

(c) Each Loan will be: (1) for a maximum term of forty-eight months fully amortized and payable in equal monthly installments of principal and interest, (2) the Loan proceeds shall be used exclusively by the Employer to purchase new equipment (the Equipment) used by the Employer in the course of its business, (3) collateralized by the Equipment and other assets owned by the Employer such that at all times each Loan will be collateralized in an amount equal to at least 200% of the outstanding balance of such Loan, (4) equal to no more than 80% of the purchase price of the Equipment financed, and (5) guaranteed personally by Fred Berdass, the principal shareholder of the Employer.

(d) The value of the collateral offered by the Employer will be determined by a qualified independent appraiser;

(e) Prior to the granting of each Loan, an independent qualified fiduciary determines, on behalf of the Plan, that each Loan is feasible and in the best interests of the Plan and protective of the Plan and its participants and beneficiaries;

(f) The independent fiduciary will conduct a review of the terms and conditions of the exemption and the Loans, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 25 percent of the Plan asset maximum total Loan amount prior to approving each disbursement under the Loan agreement;

(g) The independent fiduciary will monitor the terms and conditions of the exemption and the loans; and

(h) The independent fiduciary is authorized to take whatever action is appropriate to protect the Plan's rights throughout the duration of the exemption and throughout the duration of any Loan granted pursuant to this exemption.

Temporary Nature of Exemption

The exemption, if granted, is temporary and will expire five years from the date of the publication in the **Federal Register** of the Final Grant of the proposed exemption. Subsequent to the expiration of this exemption, the Plan may hold any Loans originated during this five year period until the Loans are repaid or otherwise terminated.

Summary of Facts and Representations

1 The Plan is defined contribution plan having 63 participants and total assets of $4,621,936 as of September 39, 1995. Richfield Bank & Trust Company of Richfield, Minnesota serves as the Plan's trustee (the Trustee).

2. The Employer is a closely held corporation engaged in the metal-stamping business. The shareholders of the Employer are Fred P. Berdass and members of his family. In the regular course of its business, the Employer purchases equipment for its operations. The Employer maintains its principal place of business in Circle Pines, Minnesota.

3. The Department granted two previous exemptions (Prohibited Transaction Exemption (PTE) 82–9, 47 FR 2431, January 15, 1982 and PTE 87–77, 52 FR 29905, August 12, 1987) to permit loans (the Exempt Loans) by the Plan to the Employer. Under the terms of the exemption, the Plan could make loans on a recurring basis to the Employer for a period of five years. The proceeds from the Exempt Loans were used by the Employer for the purchases of machinery and equipment. Each Exempt Loan was collateralized by specific equipment and assets owned by the Employer. The maximum length of any Exempt Loan was 48 months, and the interest rate was one percent above the prime rate. The balance on total Exempt Loans did not exceed 25 percent of the fair market value of the Plan's assets. An independent fiduciary acted on behalf of the Plan and certified that each Exempt Loan was an appropriate investment for the Plan.

The Trustee has confirmed that all payments of principal Loans were received by the Trustee on a timely basis and each Exempt Loan was paid in full in accordance with the terms of PTE 82–9 and PTE 87–77.

4. The Plan now proposes to make a series of Loans over a five year period to the Employer. The proceeds from the Loans will be used by the Employer to purchase the Equipment. Each Loan will be collateralized by a promissory note and security agreement which provide the Plan with a first lien on the Equipment. In addition, the Loan will be collateralized by specific equipment or assets which are owned by the Employer. At all times each Loan will be collateralized in an amount at least equal to 200 percent of the outstanding balance of such loan. The amount of each Loan will not exceed 80% of the purchase price of the Equipment excluding tax and transportation. In addition, Mr. Berdass will personally guarantee each Loan.

The maximum length of any Loan will be 48 months and will have an interest rate of at least one percent above the prevailing prime rate of interest of the Trustee which is the prevailing interest rate earned on similar loans made by the Trustee to unrelated third parties. The outstanding Loan balance will not exceed 25 percent of the market value of the assets of the Plan. The Employer will adequately insure the Equipment and all other collateral against fire and all other relevant hazards with the Plan being named beneficiary of the insurance.

4. Lake Elmo Bank, of Lake Elmo, Minnesota (the Bank) will serve as the independent fiduciary with respect to the proposed Loans. The Bank represents that it is qualified to act as an independent fiduciary with respect to the Loan transactions and that is understands that its responsibility as an ERISA fiduciary In addition, the Bank represents that it has no pre-existing relationship with the Employer nor with Mr. Berdass, and that the income derived from the Employer and related parties, including the income derived from serving in the capacity of independent fiduciary will not exceed 1% of the Bank's gross income.

5. In its capacity as independent fiduciary, the Bank represents that it will determine the appropriateness and suitability of each Loan prior to the consummation of each Loan transaction. In this regard, the Bank will review the independent appraisals of the Equipment and the assets pledged to secure the Loans and confirm the sufficiency of such appraisals. The Bank states that the Loans are appropriate investments for the Plan and are in the best interests of the Plan's participants and beneficiaries and are protective of their interests. The Bank further states that the terms of the Loans are at least equal to terms available between the Plan and an unrelated third party The Bank represents that it will enforce the terms of the Loan including, but not limited to, making demand for timely payment, bringing suit or other appropriate process against the Employer in the event of default and monitoring the performance of each Loan. In addition, the Bank has examined Mr. Berdass's personal financial statements and is assured that as guarantor of the Loans, Mr. Berdass will continue to have the financial stability to personally assure the repayment of all Loans granted pursuant to the proposed exemption.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) the rate of return to the Plan on the Loans will equal the prevailing rate earned on similar loans made by the Trustee; (b) the Plan's interests with respect to the Loans will

be represented by an independent fiduciary who will monitor the Loans as well as the conditions of the exemption, and will take all appropriate actions necessary to safeguard the best interests of the Plan; (c) the Plan's independent fiduciary has reviewed the terms and conditions of the proposed exemption and has determined that the Loans are in the best interest of the Plan's participants and beneficiaries; (d) The independent fiduciary will review and approve each Loan prior to making any disbursements; (e) the Loans will at all times be secured by the Equipment and other assets of the Employer which will be valued at not less than 200% of the Loan; (f) the aggregate balance of the outstanding loans will not exceed 25% of the value of the Plan's assets; and (g) the proposed exemption will be of a temporary nature, not to exceed five years.

For Further Information Contact: Allison K. Padams of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of December, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor

[FR Doc. 94–31086 Filed 12–16–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–84; Exemption Application No. D–9801, et al.]

Grant of Individual Exemptions; Alex. Brown & Sons, Incorporated, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Alex. Brown & Sons, Incorporated (ABS) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 94–84, Exemption Application No. D–9801]

Exemption

I. Transactions

A. Effective August 12, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice

with respect to the assets of that Excluded Plan.[1]

B. Effective August 12, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective August 12, 1994, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective August 12, 1994, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer,

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates, the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which ABS or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) ABS;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with ABS; or

(3) any member of an underwriting syndicate or selling group of which ABS or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer

T "Qualified Equipment Note Secured By A Lease" means an equipment note.

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) the trust holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 25, 1994 at 59 FR 53674.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after August 12, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Masters, Mates and Pilots Pension Plan (The Pension Plan) and Individual Retirement Account Plan (the IRAP; together, the Plans) Located in Linthicum Heights, Maryland

[Prohibited Transaction Exemption 94–85; Exemption Application Nos. D–9618 and D–9619]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continued holding by the Plans of their shares of stock (the Stock) in American Heavy Lift Shipping Company, provided that: (a) the Plans' independent fiduciary has determined that the Plans' holding of the Stock is appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and (b) the Plans' independent fiduciary continues to monitor the Plans' holding of the Stock and determines at all times that such transaction remains in the best interests of the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 25, 1994 at 59 FR 53682.

TEMPORARY NATURE OF EXEMPTION: This exemption is effective until the later of: (1) December 31, 1995, or (2) December 31, 1996 provided another application for exemption is filed with the Department prior to December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Bank of California, N.A.; Located in San Francisco, California

[Prohibited Transaction Exemption 94–86; Exemption Application No. D–9240]

Exemption

Section I—Exemption for In-Kind Transfer of Assets

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (F) shall not apply, effective November 12, 1993, to the in-kind transfer to any diversified open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 to which the Bank of California, N.A. or any of its affiliates (collectively, the Bank) serves as investment adviser and may provide other services of the assets of various employee benefit plans (the Plan or Plans) that are either held in certain collective investment funds (the CIF or CIFs) maintained by the Bank or otherwise held by the Bank as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds; provided that the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of section III below, receives advance written notice of the in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (g) of section II below;

(b) On the basis of the information described in paragraph (g) of section II

below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of the Plans in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by the Bank in connection with its services to the Fund. Such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(c) No sales commissions are paid by the Plans in connection with the in-kind transfers of asset of the Plans or the CIFs in exchange for shares of the Funds;

(d) All or a *pro rata* portion of the assets of the Plans held in the CIFs or all or a *pro rata* portion of the assets of the Plans held by the Bank in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds,

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer;

(f) The current market value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the Investment Company Act of 1940, as amended from time to time or any successor rule, regulation, or similar pronouncement, and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank;

(g) Not later than thirty (30) days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of section III below, a written confirmation that contains the following information:

(1) the identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the Investment Company Act of 1940;

(2) the price of each of the assets involved in the transaction; and

(3) the identity of each pricing service or market maker consulted in determining the value of such assets; and

(h) For all conversion transactions that occur after the date of this exemption, the Bank, no later than ninety (90) days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, will send by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of section III below, a written confirmation that contains the following information:

(1) the number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value or the aggregate dollar value of the units transferred); and

(2) the number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value or the aggregate dollar value of the shares received).

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), (q) and (r) of section II below are satisfied;

Section II—Exemption for Receipt of Fees From Funds

If the exemption is granted, effective November 12, 1993, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code shall not apply to the receipt of fees by the Bank from the Funds for acting as the investment adviser, custodian, sub-administrator, and other service provider for the Funds in connection with the investment in the Funds by the Plans for which the Bank acts as a fiduciary provided that:

(a) No sales commissions are paid by the Plans in connection with purchases or sales of shares of the Funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds;

(b) The price paid or received by the Plans for shares in the Funds is the net asset value per share, as defined in paragraph (e) of section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time;

(c) The Bank, its affiliates, and officers or directors have not and will not purchase from or sell to any of the Plans shares of any of the Funds;

(d) The combined total of all fees received by the Bank for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 12b–1 Fees) in connection with the transactions;

(f) The Plans are not sponsored by the Bank;

(g) A Second Fiduciary who is acting on behalf of a Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of section III below, receives in advance of the investment by a Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund including, but not limited to:

(1) a current prospectus for each portfolio of each of the Funds in which such Plan is considering investing,

(2) a statement describing the fees for investment management, investment advisory, or other similar services, any fees for secondary services (Secondary Services), as defined in paragraph (h) of section III below, and all other fees to be charged to or paid by the Plan and by such Funds to the Bank, including the nature and extent of any differential between the rates of such fees,

(3) the reasons why the Bank may consider such investment to be appropriate for the Plan,

(4) a statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Plan may be invested in the Funds, and, if so, the nature of such limitations; and

(5) upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption.

(h) On the basis of the information described in paragraph (g) of this section II, the Second Fiduciary authorizes in writing: (1) The investment of assets of the Plans in shares of the Fund, in connection with the transaction set forth in section II; (2) the investment portfolios of the Funds in which the assets of the Plans may be invested; and (3) the fees received by the Bank in connection with its services to the Funds; such authorization by the

Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(i) The authorization, described in paragraph (h) of this section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by the Bank selling the shares of the Fund held by the affected Plan within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale;

(j) Plans do not pay any plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 or other agreement between the Bank and the Funds;

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (h) of this section II, the Bank will, at least thirty (30) days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of section III below;

(l) In the event of an addition of a Secondary Service, as defined in paragraph (h) of section III below, provided by the Bank to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to the Bank for any Secondary Service, as defined in paragraph (h) of section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (h) of this section II, the Bank will at least thirty (30) days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of section III below.

(m) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (n) of this section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this section II, with instructions regarding the use of such Termination Form including statements that:

(1) the authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by the Bank selling the shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale of shares of such Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale; and

(2) failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this section II, and will result in the continuation of the authorization, as described in paragraph (h) of this section II, of the Bank to engage in the transactions on behalf of such Plan;

(n) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (n) of this section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (k) and (l) of this section II, except to the extent required by said paragraphs (k) and (l) of this section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees;

(o)(1) With respect to each of the Funds in which a Plan invests, the Bank will provide the Second Fiduciary of such Plan:

(A) at least annually with a copy of an updated prospectus of such Fund;

(B) upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to the Bank; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) the total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund;

(B) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank;

(C) the average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and

(D) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank;

(p) All dealings between the Plans and any of the Funds are on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans;

(q) The Bank maintains for a period of six (6) years the records necessary to enable the persons, as described in paragraph (r) of section II below, to

determine whether the conditions of this exemption have been met, except that:

(1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six (6) year period, and

(2) no party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of section II below;

(r)(1) Except as provided in paragraph (r)(2) of this section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) of section II above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (r)(1)(ii) and (r)(1)(iii) of section II shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption,

(a) The term "Bank" means The Bank of California, N.A. and any affiliate of the Bank, as defined in paragraph (b) of this section III.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The term "Fund or Funds" means any diversified open-end investment company or companies registered under the Investment Company Act of 1940 for which the Bank serves as investment adviser, and may also provide custodial or other services as approved by such Funds;

(e) The term, "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term, "relative," means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term, "Second Fiduciary," means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of the Bank (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in sections I and II above, then paragraph (g)(2) of section III above, shall not apply.

(h) The term, "Secondary Service," means a service, other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(i) The term, "Termination Form," means the form supplied to the Second Fiduciary, at the times specified in paragraphs (k), (l), and (n) of section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (h) of section II. Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify the Bank in writing to effect such termination by selling the shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: The exemption is effective retroactively, as of November 12, 1993.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within sixty (60) days of the date of the publication of the Notice in the **Federal Register** on August 17, 1994. All comments and requests for hearing were due by October 17, 1994.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from the applicant, dated October 17, 1994. The comment from the applicant requested certain modifications and clarifications of the conditions of the exemption and certain corrections of the language of the Summary of Facts and Representation in the Notice. The applicant's comments are as follows:

First, the Bank requests modification of the language in Section I(f). This section provides in relevant part that,

The value of the assets of the Plans or the CIFs to be transferred in-kind *and the net asset value of the Funds receiving those assets* in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the Investment

Company Act of 1940, as amended from time to time or any successor rule, regulation, or similar pronouncement. (Emphasis added). In this regard, the Bank indicated that the valuation procedures described in Rule 17a–7 were used to value the CIF securities transferred to the Funds in the "conversion" transaction that occurred on November 12, 1993, for which retroactive relief has been requested. Further, in connection with the determination of the net asset value of the Funds' shares to be transferred to the CIFs in that transaction, the trustees of the HighMark Group (HighMark) decided to use Rule 17a–7 procedures to value certain securities held in the portfolios of the Funds in cases where those securities were the same as the securities being transferred to the Funds by the CIFs. However, it is represented that Rule 17a–7 procedures were not used to determine the value of other securities held in the Fund portfolios where those securities were not the same as those held by the CIFs. The values of such other Fund securities were instead determined pursuant to procedures permitted under the Investment Company Act and normally followed by HighMark in determining net asset value. The Bank maintains that it did not intend as a condition of the exemption that Rule 17a–7 valuation procedures be used to determine the value of all of the Fund's assets for purposes of ascertaining the number of shares to be issued in connection with a conversion. The Bank believes that the best approach is to require both parties to a conversion (e.g., a CIF and a Fund) to use the same procedures to value any securities that are held by both parties, but that compliance with the valuation requirements of Rule 17a–7 should be required only with respect to securities held by a party (such as a CIF) that is not a registered investment company In the opinion of the Bank, this would provide assurance that assets transferred in a conversion transaction are priced appropriately without interfering with the procedures normally employed by a registered investment company in determining its net asset value.

In this regard, the Department believes that the most important consideration is that the value of the securities transferred by the Plan or the CIF into the Fund equal the value of the units of the Fund received in exchange for such securities by the Plan. Accordingly, we believe that the securities transferred must be valued under the same procedures by both the transferee and transferor entity (e.g. a CIF and a Fund). In response to the comment, the Department has reviewed its policies concerning valuation in these types of transactions and has decided to implement the following changes. The word, "are," before the word, "value," should be deleted and the language of Section I(e) amended to read as follows: "The Plans or the CIFs receive shares of the Funds that *have a total net asset* value equal in value to the assets of the Plans or the CIFs exchanged for such shares *on the date of transfer*." (The New language is italicized).

The Department concurs with the applicant's request that Section I(f) be amended by deleting the phrase, "and the net asset value of the Funds receiving those assets," from the language quoted above to provide that Rule 17a–7 procedures are required to value only assets being transferred to a Fund, and not the assets of the Fund itself. In this connection, the Department has amended the language of Section I(f) to read as follows: "The *current market* value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, *using independent sources* in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the Investment Company Act of 1940, as amended from time to time or any successor rule, regulation, or similar pronouncement, *and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.* (The new language is italicized).

The Bank in another comment requests a modification of the language of Section II(i) and the parallel language in Section II(m)(1) and Section III(i). The language in these sections requires the Bank to sell Fund shares within one business day after receipt by the Bank, either by mail, hand delivery, facsimile, or other available means of the Termination Form or any other written notice from the Second Fiduciary terminating its authorization of investments in the Fund. The language of these sections provides that if due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale. The Bank believes that the circumstances that may prevent the Bank from completing a sale within one business day (e.g., natural disaster) may, as a practical matter, also prevent completion of such sale by the second day. Accordingly, the Bank suggests that the language be amended to make clear that a prohibited transaction will not be considered to have occurred in such circumstances, if the Bank, due to circumstances that could not be reasonably foreseen by the Bank, is further prevented from completing the sale by the end of the additional business day.

The Department believes that the two business day requirement provides ample opportunity for the Bank to execute sales of shares in the Funds, even in the event circumstances arise which could not reasonably have been foreseen by the Bank. Accordingly, the Department does not believe that the modification proposed by the Bank would be in the interest of the Plans, and has determined not to revise the exemption in this manner.

The Bank also requested a clarification of the scope of relief provided by Section II of the proposed exemption. In this regard, the language of Section II, as published in the Notice, provides relief from "the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (D) through (F) of the Code." The Bank believes that the reference to section 4975(c)(1)(D) is a typographical error and requests that the exemption be corrected to include relief from section 4975(c)(1) (A) through (F) of the Code in order to conform with the scope of relief provided to other applicants for substantially similar transactions. The Department concurs and has amended the exemption accordingly

The Bank also commented on section I wherein it is stated that the Plans involved in the transaction are Plans for which the Bank serves as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plan, and on section II wherein it is stated that the Plans involved in the transaction are Plans for which the Bank serves as fiduciary. The Bank states that although its original application referred to Plans for which it exercised investment discretion, it wishes to note for the record that it also serves Plans in other fiduciary capacities that do not involve the exercise of investment

responsibility. In this regard, in addition to the representations contained in paragraph 2 of the Notice, as of the time of the application, the Bank had custody of approximately $2.5 billion in assets from approximately 1,500 plans for which the Bank does not exercise investment responsibility.

In response to this comment, the Department acknowledges this additional information. However, the Department wishes to reiterate that it is not granting relief for transactions afforded relief by Section 404(c) of the Act nor relief for transactions involving any plan sponsored by the Bank or its affiliates.

The Bank in its comment letter also requests further modifications and updates to the language of the Summary of Facts and Representations, as published in the **Federal Register**. Specifically, the Bank requests that representations at pages 42293 through 42294 in Notice be changed to reflect the fact that HighMark now has eleven (11) portfolios, having established in November 1993, four (4) new non-money market portfolios, namely the Growth Fund, the Income & Growth Fund, the Balanced Fund, and the Government Bond Fund, and having merged the Special Growth Equity and Growth Funds in May 1994. It is further represented that the Bank continues to serve as investment adviser, sub-administrator, sub-transfer agent and custodian, but does not serve as sub-accountant to HighMark. The Department notes that this additional information will be included in the record of the exemption.

The Bank also requests clarification of the language of the fourth sentence of paragraph 3 of the Summary of Facts and Representation, as published in the **Federal Register**. In this regard, the Bank wishes to confirm that the exemption does not preclude the Bank from relying on any other available exemption (e.g., Prohibited Transaction Class Exemption 84–24 or Prohibited Transaction Class Exemption 77–4), if the terms and conditions of such exemptions are satisfied and if the Bank deems it appropriate to do so in a given situation. The Department concurs in this comment, but expresses no opinion regarding the availability of those exemptions.

The Bank also comments that the first sentence of paragraph 5 of the Summary of Facts and Representations in the Notice could be read to suggest that the Bank believes that in-kind transfers of the type covered by Section I of the exemption are not covered by Prohibited Transaction Class Exemption 77–4. While the Bank represents that it intends to follow the requirements of Section I of the exemption in connection with such in-kind transfers, the Bank reiterates that its position was and is that such transfers also are within the scope of Prohibited Transaction Class Exemption 77–4. The Department notes that it has formally expressed its view on this issue. Specifically, the Department has concluded that the relief provided by Prohibited Transaction Class Exemption 77–4 is unavailable for the purchase of shares in mutual funds other than for cash. (See footnote 3 in Advisory Opinion 94–35A, dated November 3, 1994).

Finally, the Bank wishes to update in three particulars the description of the Bank's automated "sweep" service described in the Summary of Facts and Representations, as published in the **Federal Register**. In this regard, language in the first paragraph in paragraph 14 of the Notice indicates that purchases and sales of shares in any of the Funds by the Plans may also occur in connection with daily automated cash "sweep" arrangements, but that agreement to such an arrangement is not a condition for the Plan otherwise choosing to invest in shares of the Fund, nor will the reverse be required. The Bank maintains that the meaning of the phrase, "nor will the reverse be required" is unclear. It is the Bank's position that, in the exercise of its business judgment regarding the structure and characteristics of any sweep services it may wish to offer, it may choose to limit investment vehicles made available under any sweep program to shares of a designated Fund. The Department notes that the sentence in which the phrase, "nor will the reverse be required," appeared was intended to mean that Plans may participate in automated cash "sweep" arrangements involving the Funds without being required to invest other plan assets in shares of the Funds and that Plans may invest in the Funds without being required also to participate in automated cash "sweep" arrangements offered by the Bank.

Second, the Bank wishes to correct a representation in the second paragraph of paragraph 14 of the Notice which states, in part, that "all of the Plans served by the Bank had elected to participate in automated cash "sweep" arrangements with HighMark." According to the Bank, this representation should read that "substantially all" of the Plans served by the Bank had elected to participate in automated cash "sweep" arrangements with HighMark. The Department concurs and incorporates this information into the exemption.

Third, the Bank seeks clarification of the second sentence of the third paragraph of paragraph 14 of the Notice. In the opinion of the Bank, the sentence could be read to suggest that the "sweep" program for a given Plan may involve investments in more than one of the HighMark money market portfolios at the same time. The Bank represents that while a Plan may choose from among several such portfolios of HighMark, the "sweep" arrangement for a given Plan involves automatic investments in shares of only one such portfolio at a time. The Department concurs and incorporates the information on the "sweep" program into the exemption.

After giving full consideration to the entire record, including the written comment from the Bank, the Department has decided to grant the exemption, as described and concurred in above. In this regard, the comment letter submitted by the Bank to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Wednesday, August 17, 1994, at 59 FR 42289.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 14th day of December, 1994.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–31087 Filed 12–16–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–102)]

Fiscal Year 1994 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the NASA advisory committees that held closed or partially closed meetings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NAC NASA/NIH Advisory Committee on Biomedical and Behavioral Research; NAC Space Science Advisory Committee; NAC Life and Microgravity Sciences and Applications Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mechthild E. Peterson, Code JMC, National Aeronautics and Space Administration, Washington, DC 20546 (202–358–1306).

Dated: December 13, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer National Aeronautics and Space Administration.

[FR Doc. 94–31073 Filed 12–16–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern States Power Company; Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northern States Power Company (the licensee) to withdraw its July 13, 1992, application for proposed amendments to Facility Operating License Nos. DPR–42 and DPR–60 for the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, respectively, located in Goodhue County, Minnesota.

The proposed amendments would have revised the facility technical specifications to clarify the applicability of the requirements for containment closure during refueling and to clarify the requirements for operability and load testing of the fuel handling cranes. The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on August 5, 1992 (57 FR 34588). However, by letter dated July 5, 1994, the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendment dated July 13, 1992, and the licensee's letter dated July 5, 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, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 54401

Dated at Rockville, Maryland, this 7th day of December 1994.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Project Manager, Project Directorate III–I, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–31072 Filed 12–16–94; 8:45 am]

BILLING CODE 7590–01–M

[IA 94–035]

In the Matter of Rex Allen Werts (Also Known As: Michael Allen Hunter); Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effective Immediately)

I

Mr. Rex Allen Werts (Also Known As. Michael Allen Hunter) was employed by Power Plant Maintenance, Inc., (PPM) a contractor of the Carolina Power and Light Company (CP&L or Licensee), from March 24, 1993 until his unescorted access was revoked on July 26, 1993. Licensee is the holder of License Nos. DPR–62 and DPR–71 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on December 27, 1974 and November 12, 1976, respectively. The licenses authorize the operation of the Brunswick Nuclear Plant in accordance with the conditions specified therein. The facility is located on the Licensee's site in Southport, North Carolina.

II

On March 24, 1993, Mr. Werts was granted unescorted access to the Brunswick Nuclear Plant, based in part on representations he made on an access authorization application, dated March 11, 1993, which he submitted to Power Plant Maintenance, Inc., (PPM), a contractor of the Licensee: In the application, Mr. Werts falsely represented himself as Michael Allen Hunter and stated that he had not been arrested or convicted of any criminal offense. In addition, Mr. Werts failed to correct that information after he was granted unescorted access and continued to hold that status on the basis of his false identity. The Licensee submitted fingerprint cards completed by Mr. Werts to the Federal Bureau of Investigation (FBI) and subsequently was informed that Mr. Werts (alias Mr Hunter) had a record of arrests, convictions, and imprisonments prior to 1990.

III

Based on the above, Mr. Werts engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2) which prohibits any employee of a licensee or licensee contractor from deliberately submitting to the licensee or licensee's contractor information the employee knows to be incomplete or inaccurate in some respect material to the NRC. Information concerning an individual's true identity and criminal history is material in that it is used by the Licensee to make determinations

relative to the grant or denial access authorization. If the Licensee has been given accurate information regarding Mr. Werts' criminal record the Licensee would not have granted unescorted access to Mr. Werts.

The NRC must be able to rely on the Licensee, its contractors, and licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Werts' actions have raised serious concerns as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC or NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that nuclear safety activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Werts were permitted at this time to be involved in the performance of licensed activities or were permitted unescorted access to protected or vital areas of NRC-licensed facilities. Therefore, the public health, safety and interest require that Mr. Werts be prohibited from being involved in the performance of activities licensed by the NRC and be prohibited from obtaining unescorted access for a period of three years from the date of this Order. For a period of five years from the date of this Order, Mr. Werts is required to inform the NRC of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the deliberate misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, It is hereby ordered, effective immediately, that:

A. For a three-year period from the date of this Order, Mr. Rex Allen Werts is prohibited from engaging in activities licensed by the NRC and is prohibited from obtaining unescorted access to protected and vital areas of facilities licensed by the NRC. For the purposes of this Order, licensed activities include the activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the Licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.

B. For a five-year period from the date of this Order, Mr. Werts is required to provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Werts of good cause.

V

In accordance with 10 CFR 2.202, Mr. Werts must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Werts or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta St. NW., Atlanta, Georgia 30323, and to Mr. Werts, if the answer or hearing request is by a person other than Mr. Werts. If a person other than Mr. Werts requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Werts or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Werts, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 12th day of December 1994.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 94–31070 Filed 12–16–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on January 10, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss General Electric Nuclear Energy (GENE) proprietary information pursuant to [5 U.S.C. 552b(c)(4)].

The agenda for the subject meeting shall be as follows:

Tuesday, January 10, 1995—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the NRC staff Safety Evaluation Report pertaining to the adequacy of the technical approach to the GENE Test and Analysis Programs being conducted in support of the Simplified Boiling Water Reactor (SBWR) design certification. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions

of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GENE, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: December 13, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–31068 Filed 12–16–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Westinghouse Standard Plant Designs; Meeting

The ACRS Subcommittee on Westinghouse Standard Plant Designs will hold a meeting on January 11, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 11, 1995—8:30 a.m. Until the Conclusion of Business

The Subcommittee will begin review of the NRC staff Draft Safety Evaluation Report (DSER) for the Westinghouse AP600 design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: December 13, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–31067 Filed 12–16–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 11, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, January 11, 1995—2:00 p.m. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss status of the appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 13, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–31066 Filed 12–16–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Final Sequestration Report

AGENCY: Office of Management and Budget.

ACTION: Notice of Transmittal of Final Sequestration Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Ellen Balis, Budget Analysis Branch—202/395–4574.

Dated: December 6, 1994.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 94–30750 Filed 12–16–94; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Cavalier Homes, Inc., Common Stock, $.10 Par Value) File No. 1–9792

December 13, 1993.

Cavalier Homes, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex.").

The reasons alleged in the application for withdrawing the security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 5, 1994 and concurrently therewith such securities were suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its security.

Any interested person may, on or before January 5, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–31101 Filed 12–16–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Advanced Environmental Recycling Technologies, Inc., Class A Common Stock, $.01 Par Value) File No. 1–10367

December 13, 1994.

Advanced Environmental Recycling Technologies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

Due to the limited number of transactions in the Company's stock on the BSE, the Company can no longer justify the time and expense required to continue listing its securities on that exchange.

Any interested person may, on or before January 5, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–31100 Filed 12–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20764; File No. 812–9116]

Federal Kemper Life Assurance Company, et al.

December 12, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Federal Kemper Life Assurance Company ("FKLA"), FKLA Variable Separate Account (the "Separate Account"), any other separate account established in the future ("Future Accounts") by FKLA or an affiliated life insurance company to support certain scheduled premium, single premium, or flexible premium variable life insurance contracts issued by FKLA or an affiliated life insurance company (the "Contracts"), and Kemper Financial Services, Inc. ("KFS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rules 6e-2(c)(4)(v) and 6e-3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applications seek an order to permit them to deduct from premiums received under the Contracts an amount that is reasonable in relation to the increased federal income tax burden resulting from the receipt of such premiums in connection with the Contracts.

FILING DATE: The application was filed on July 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or my mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 6, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the 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, D.C. 20549. Applicants, 1 Kemper Drive, Long Grove, Illinois 60049.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. FKLA, a stock life insurance company organized under the laws of Illinois, is the depositor of the Separate Account. FKLA offers life insurance and annuity products and is admitted to do business in the District of Columbia and in all states except New York.

2. The Separate Account was established under Illinois law as a separate account of FKLA. The Separate Account, registered under the 1940 Act as a unit investment trust, will fund the Contracts issued by FKLA. The Contracts will be registered under the Securities Act of 1933. The Kemper Investors Fund (the "Fund"), a registered open-end management investment company, will serve as the underlying investment medium for the Separate Account.

3. KFS, a registered broker-dealer under the Securities Exchange Act of 1934, is the principal underwriter for the Contracts, and will be the principal underwriter of any other variable life insurance policies funded through the Separate Account or any Future Account ("Future Contracts").

4. The Contracts are flexible premium individual variable life insurance policies. Applicants represent that the Contracts will be issued in reliance on Rule 6e–3(T)(b)(13)(i)(B) under the 1940 Act.

5. FLKA will deduct a charge of 1.00% of each premium payment under the Contracts to cover a portion of FKLA's estimated cost for higher federal corporate income tax liability resulting from changes made to the Internal Revenue Code of 1986 ("Code") by the Omnibus Budget Reconciliation Act of 1990 ("OBRA"), affecting the treatment of deferred acquisition costs. The requested order also would permit the deduction of up to 1.25% of each premium payment under Future Contracts.

6. OBRA amended the Code by, among other things, enacting Section 848 thereof. Section 848 changed how a life insurance company must compute its itemized deductions from gross income for federal income tax purposes. Section 848 requires an insurance company to capitalize and amortize, over a period of ten years, part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income.

7. The amount of deductions that must be capitalized and amortized over ten years, rather than deducted in the year incurred, is based on "net premiums" received in connection with certain types of insurance contracts. Section 848 of the Code defines "net premium" for a type of contract as gross premiums received by the insurance company on the contracts minus return premiums and premiums paid by the insurance company for reinsurance of its obligations under such contracts. Applicants state that the effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that Section, and, accordingly, the payment of taxes on the income generated by those contracts.

8. The amount of general deductions that must be capitalized depends upon the type of contract to which the premiums received relate and varies according to a schedule set forth in Section 848. Applicants represent that the Contracts are "specified insurance contracts" that fall into the category of life insurance contracts, and, under Section 848, 7.7% of the year's net premiums received must be capitalized and amortized.

9. Applicants represent that the increased tax burden resulting from Section 848 may be quantified as follows. For each $10,000 of net premiums received under the Contracts in a given year, Section 848 requires FKLA to capitalize $770 (7.7% of $10,000) and $38.50 of this $770 may be deducted in the current year. This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35% which results in FKLA owing $256.03 (.35 × $731.50) more in taxes for the current year than would have been owed prior to OBRA. This current increase in federal income tax will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth year).

10. In FKLA's business judgment, a discount rate of 8% is appropriate for use in calculating the present value of the increased future tax deductions resulting from the amortization described above. Applicants state that FKLA seeks an after tax rate of return on the investment of its capital in excess of 15%. To the extent that capital must be used by FKLA to meets its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available to FKLA for investment. Thus, Applicants argue, the cost of capital used to satisfy FKLA's increased federal income tax burden under Section 848 is, in essence, FKLA's after tax rate of return on capital; and, accordingly, the rate of return on capital is appropriate for use in this present value calculation. To the extent that the 8% discount rate is lower than FKLA's actual targeted rate of return, Applicants submit that a measure of comfort is provided that the calculation of FKLA's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to FKLA is reduced, or its targeted rate of return is lowered.

11. In determining the after tax rate of return used in arriving at this discount rate, Applicants state that a number of factors were considered, including: market interest rates; FKLA's anticipated long term growth rate; the risk level for this type of business; inflation; and available information about the rates of return obtained by other life insurance companies. FKLA represents that such factors are appropriate factors to consider in determining FKLA's cost of capital. Applicants state that FKLA first projects its future growth rate based on the anticipated sales, the current interest rates, the inflation rate, acceptable risk levels, the amount of capital that FKLA can provide to support such growth, and industry practice. FKLA then uses the anticipated growth rate and the other factors enumerated above to set a rate of return on capital that equals or exceeds this rate of growth. Of these other factors, market interest rates, the acceptable risk levels and the inflation rate receive significantly more weight than information about the rates of return obtained by other companies.

12. Applicants state that FKLA seeks to maintain a ratio of capital to assets that is established based on its judgment of the risks represented by various components of its assets and liabilities. Applicants state that maintaining the ratio of capital to assets is critical to offering competitively priced products

and, as to FKLA, to maintaining a competitive rating from various rating agencies. Consequently, Applicants state that FKLA's capital should grow at least at the same rate as do its assets.

13. Using a corporate federal income tax rate of 35% and assuming a discount rate of 8%, the present value of the federal income tax effect of the increased deductions allowable in the following 10 years, which partially offsets the increased federal income tax burden, comes to $174.60. The effect of Section 848 on the Contracts is, therefore, an increased federal income tax burden with a present value of $81.43 for each $10,000 of net premiums, i.e., $256.03 minus $174.60.

14. State premium taxes are deductible in computing federal income taxes. Thus, FKLA does not incur incremental federal income tax when it passes on state premium taxes to owners of the Contracts. Conversely, federal income taxes are not deductible in computing FKLA's federal income taxes. To compensate FKLA fully for the impact of Section 848, therefore, it would be necessary to allow FKLA to impose an additional charge that would make it whole not only for the $81.43 additional federal income tax burden attributable to Section 848 but also for the federal income tax on the additional $81.43 itself. This federal income tax can be determined by dividing $81.43 by the complement of the 35% federal corporate income tax rate, i.e., 65%, resulting in an additional charge of $125.28 for each $10,000 of net premiums, or 1.25%. However, FKLA currently intends to deduct 1.00% of each premium payment under the Contracts, which is less than its increased federal corporate income tax burden. FKLA reserves the rights to increase the charge and to deduct up to 1.25% of each premium payment of Future Contracts.

15. Based on prior experience, FKLA expects that all of its current and future deductions will be fully taken. Applicants represent that the maximum 1.25% charge, and the current 1.00% charge, to be deducted pursuant to the relief requested, are reasonably related to their increased federal income tax burden under Section 848, taking into account the capitalization and amortization permitted by Section 848, and the use by FKLA of a discount rate of 8% in computing the future deductions resulting from such capitalization and amortization, such rate being lower than, but assumed for these purposes to be the equivalent of, FKLA's cost of capital.

16. While the application states that FKLA believes that a charge of 1.00% of premium payments would reimburse it for the impact of Section 848 (as currently written) on FKLA's federal income tax liabilities, the application also states, however, that FKLA believes that it will have to increase this charge if any future change in, or interpretation of Section 848, or any successor provision, results in an increased federal income tax burden due to the receipt of premiums. Such an increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, a change in the categorization of specified insurance contracts, or a change in the amortization period.

Applicants' Legal Analysis

1. Applicants request an order to the Commission pursuant to Section 6(c) exempting them from the provisions of Section 27(c)(2) of the 1940 Act, and Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) thereunder, to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to the increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rules 6e–2(c)(4) and 6e–3(T)(c)(4) under the 1940 Act to premit the proposed deductions to be treated as other than "sales load" for the purposes of Section 27 of the 1940 and the exemptions from various provisions of that Section found in Rules 6e–2 and 6e–3(T).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Certain provisions of Rules 6e–2 and 6e–3(T) provide a range of exemptive relief for the offering of variable life insurance policies such as the Contracts.

4. Rule 6e–2(c)(4)(v) defines "sales load" charged on any payment as the excess of the payment over certain specified charges and adjustments, including "a deduction approximately equal to state premium taxes". Rule 6e–3(T)(c)(4)(v) defines "sales load" charged during a contract period as the excess of any payments made during the period over the sum of certain specified charges and adjustments, including "a deduction for and approximately equal to state premium taxes."

5. Applicants submit that the deduction for federal income tax charges, proposed to be deducted in connection with the Contracts, should be treated as other than sales load, as is a state premium tax charge, for purposes of the 1940 Act.

6. Applicants argue that the requested exemptions from Rules 6e–2(c)(4) and 6e–3(c)(4) are necessary in connection with Applicant's reliance on certain provisions of Rules 6e–2(b)(13) and 6e–3(T)(b)(13), which provide exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may only rely on Rules 6e–2(b)(13)(i) or 6e–3(T)(b)(13)(i) if they meet the respective Rule's alternative limitations on sales load as defined in Rule 6e–2(c)(4) or Rule 6e–3(T)(c)(4). Applicants state that, depending upon the load structure of a particular Contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of "sales load" in Rules 6e–2(c)(4) and 6e–3(T)(c)(4), Applicants state that they have found no public policy reason for including them in "sales load."

7. The public policy that underlies Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in Rules 6e–2(c)(4) and 6e–3(T)(c)(4).

8. Applicants assert that the source for the definition of "sales load" found in the Rules supports this analysis. Applicants state that the Commission's

intent in adopting such provisions was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of "sales load" in Section 2(a)(35) for their efficacy, the percentage limits in Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i) depend on Rules 6e–2(c)(4) and 6e–3(T)(c)(4), respectively, which do not depart, in principle, from Section 2(a)(35).

9. Section 2(a)(35) excludes deductions from premiums for "issue taxes" from the definition of "sales load" under the 1940 Act. Applicants submit that this suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of "sales load" in Rules 6e–2 and 6e–3(T) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are "not properly chargeable to sales or promotional activities." Applicants argue that this suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate FKLA for its increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, this language in Section 2(a)(35) is another indication that not treating such deductions as "sales load" is consistent with the policies of the 1940 Act.

10. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Separate Account or through Future Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each Future Contract. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

11. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek repeated exemptive relief would impair the ability of Applicants to take advantage fully of business opportunities as those opportunities arise. Additionally, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Applicants were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for Applicants.

Conditions for Relief

1. Applicants represent that FKLA will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

2. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will : (i) Disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to the increased federal income tax burden under Section 848 of the Code resulting from the receipt of premiums.

3. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will contain as an exhibit an actuarial opinion as to: (i) The reasonableness of the charge in relation to the increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account in determining the after tax rate of return.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Section 27(c)(2) of the 1940 Act, and Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) thereunder, to permit the deduction of up to 1.25% of premium payments under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31041 Filed 12–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20765; File No. 812–9110]

Providentmutual Life and Annuity Company of America

December 12, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Providentmutual Life and Annuity Company of America ("Providentmutual"), Providentmutual Variable Life Separate Account (the "Account"), and PML Securities Company ("PML"). (Providentmutual, the Account, and PML shall be referred to herein collectively as "Applicants.")

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them and other separate accounts that Providentmutual may establish in the future to support flexible premium variable life insurance contracts (the "future accounts") to deduct from premium payments received an amount that is reasonable in relation to Providentmutual's increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATE: July 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission order a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on January 6, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the 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, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

Applicants, Providentmutual Life and Annuity Company of America, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Providentmutual, a stock life insurance company incorporated under the name of Washington Square Life Insurance Company in the Commonwealth of Pennsylvania in 1958 and redomiciled as a Delaware insurance company in December 1992, is a wholly-owned subsidiary of Provident Mutual Life Insurance Company of Philadelphia ("Provident Mutual Life"), a mutual insurance company chartered by the Commonwealth of Pennsylvania in 1865. Providentmutual currently is licensed to transact life insurance business in 48 states and the District of Columbia.

2. For purposes of the 1940 Act, Providentmutual is depositor and sponsor of the Account (and would be the depositor and sponsor of any future accounts) as those terms have been interpreted by the Commission with respect to variable life insurance company separate accounts.

3. Providentmutual currently is developing a new flexible premium adjustable variable life insurance contract (the "Contract") which includes the "tax burden charge" identified above and as explained more fully below. Providentmutual also anticipates that it would include such a charge in future flexible premium variable life insurance contracts ("future contracts") that it may develop.

4. The Contract and any future contracts issued by Providentmutual may be supported by the Account or any future accounts.

5. The Account was established by Providentmutual as a separate investment account under Delaware law on June 30, 1994, as a funding vehicle for variable life insurance contracts. The Account will be registered under the 1940 Act as a unit investment trust. The Account will be divided into subaccounts, each of which will invest exclusively in the shares of a designated investment portfolio of a specified open-end management investment company registered under the 1940 Act.

6. Under Delaware law, amounts allocated to the Account are owned by Providentmutual. To the extent provided under the Contract, however, that portion of the assets of the Account equal to the reserves and other Contract liabilities pertaining to the Account shall not be chargeable with liabilities arising out of any other business Providentmutual may conduct. The income, gains and losses, realized and unrealized, from the assets allocated to the Account are credited to or charged against the Account without regard to other income, gains or losses of Providentmutual. The Account is, and any future account will be, a "separate account," as defined by Rule 0–1(e) under the 1940 Act.

7. PML is an indirect wholly-owned subsidiary of Provident Mutual Life Insurance Company of Philadelphia. PML acts as principal underwriter, as defined in the 1940 Act, of the variable life insurance contracts supported by the Account. PML is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc. Applications for the Contracts and future contracts will be solicited by registered representatives of PML, or other broker-dealers having selling agreements will PML, who are licensed by applicable state insurance authorities to sell flexible premium variable life insurance contracts.

8. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Internal Revenue Code of 1986 (the "Code") by, among other things, enacting Section 848 thereof. Section 848 changed the federal income taxation of life insurance companies by requiring them to capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

9. The amount of expenses that must be capitalized and amortized under Section 848 is generally determined with reference to premiums for certain categories of life insurance and other contracts ("specified contracts"). Thus, for each specified contract, an amount of expenses must be capitalized and amortized equal to a percentage of the current year's net premiums (i.e., gross premiums minus return premiums and reinsurance premiums) for that contract. The percentage varies, depending on the type of specified contract in question, according to a schedule set forth in Section 848(c)(1).

10. Although framed in terms of requiring a portion of a life insurance company's general expenses to be capitalized and amortized, Section 848 in effect accelerates the realization of income from specified contracts for federal income tax purposes and, therefore, the payment of taxes on the income generated by those contracts. When the time value of money is taken into account, this has the economic consequence of increasing the tax burden borne by the insurance company that is attributable to such contracts. Because the amount of general deductions that must be capitalized and amortized is measured by premiums paid for specified contracts, an increased tax burden results from the receipt of those premiums. In this respect, the impact of Section 848 can be compared with that of a state premium tax.

11. The Contract and any future contracts to which the "tax burden charge" will be applied are among the specified contracts. They fall into the category of life insurance contracts for which the percentage of net premiums that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized with respect to such contracts is 7.7 percent.

12. The increased tax burden resulting from the applicability of Section 848 to every $10,000 of net premiums received may be quantified as follows. In the year when the premiums are received, Providentmutual's general deductions are reduced by $731.50—i.e., an amount equal to (a) 7.7 percent of $10,000, or $770, minus (b) one-half year's portion of the ten-year amortization, or $38.50. Using a 35 percent corporate tax rate, this works out to an increase in tax for the current year of $256.03. This reduction will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770—$77 in each of the following nine years, and $38.50 in the tenth year.

13. To the extent and capital must be used by Providentmutual to satisfy its increased federal tax burden under Section 848 resulting from the receipt of premiums, such profits are not available to Providentmutual for investment. Accordingly Providentmutual submits that its targeted rate of return is appropriate for use in this present value calculation. Because it seeks an after tax rate of return of 9.3 percent on its invested capital[1] Providentmutual

[1] In determining its cost of capital, Providentmutual considered a number of factors. Providentmutual first projected its future growth rate based on sales projects, current interest rates, the inflation rate, and the amount of capital that it can provide to support such growth. Providentmutual then used the anticipated growth rate and other factors (such as market interest rates,

submits that a discount rate of at least 9.3 percent is appropriate for use in calculating the present value of its future tax deductions resulting from the amortization described above.

14. Using a corporate tax rate of 35 percent, and assuming a discount rate of 9.3 percent, the present value of the tax effect of the increased deductions allowable in the following ten years comes to $165.16. Because this amount partially offsets the increased tax burden, applying Section 848 to the specified contracts imposes an increased tax burden on Providentmutual equal to a present value of $90.87 (i.e., $256.03 minus $165.16) for each $10,000 of net premiums.

15. Because state premium taxes are deductible when computing federal income taxes, Providentmutual does not incur incremental income tax when it passes on state premium taxes to contract owners. In contrast, federal income taxes are *not* tax-deductible when computing Providentmutual's federal income taxes. Therefore, to offset fully the impact of Section 848, Providentmutual must impose an additional charge that would make it whole not only for the $90.87 additional tax burden attributable to Section 848, but also for the tax on the additional $90.87 itself. This additional charge can be computed by dividing $90.87 by the complement of the 35 percent federal corporate income taxe rate (*i.e.*, 65 percent), resulting in an additional charge of $139.80 for each $10,000 of net premiums, or 1.40 percent of net premiums.

16. Tax deductions are of value to Providentmutual only to the extent that it has sufficient gross income to fully utilize the deductions. Based on its prior experience, Providentmutual submits that it can reasonably expect to have sufficient taxable income in future years to utilize all deferred acquisition cost deductions.

17. Providentmutual submits that a charge of 1.25 percent of premium payments would reimburse it for the impact of Section 848 (as currently written) on its federal tax liabilities. Providentmutual represents that a 1.25 percent charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to Providentmutual of the amortization permitted by Section 848, and the use by Providentmutual of a 9.3 percent discount rate in computing the future deductions resulting from such amortization, such rate being the equivalent of Providentmutual's cost of capital.

18. Providentmutual asserts that it would have to increase the 1.25 percent charge if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden resulting from the receipt of premiums. Such an increase could result from a change in the corporate tax rate, a change in the 7.7 percent figure, or a change in the amortization period. The Contract and any future contracts issued by Providentmutual will reserve the right to increase or decrease the 1.25 percent charge in response to future changes in, or interpretations of, Section 848 or any successor provision that increase or decrease Providentmutual's tax burden.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act provides, in relevant part, that the Commission, by order upon application, may exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from provisions of the 1940 Act or any rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act, exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to the extent necessary to permit Applicants to deduct from premium payments received in connection with the Contracts and any future contracts an amount that is reasonable in relation to Providentmutual's increased federal tax burden created by its receipt of such premium payments. The deduction would not be treated as sales load.

A. Relief From Provisions of Section 27(c)(2) and Rule 6e–3(T)(c)(4)(v)

1. Section 2(a)(35) of the 1940 Act defines "sales load" as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustees's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

2. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load. Sections 27(a) (1) and 27(h)(1) of the 1940 Act, in effect, limit sales loads on periodic payment plan certificates to 9 percent of total payments.

3. Paragraph (a) of Rule 6e–3(T) requires that a separate account (such as the Account or any future accounts) that issues flexible premium variable life insurance contracts, its principal underwriter and its depositor, comply with all provisions of the 1940 Act and rules thereunder applicable to a registered investment company issuing periodic payment plan certificates.

4. Paragraph (b) of Rule 6e–3(T) provides numerous limited conditional exemptions from most such provisions and rules in connection with the offer, sale and administration of flexible premium variable life insurance contracts. For example, among other things, Rule 6e–3(T)(b)(13)(iii)(E) provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including "[t]he deduction of premium or other taxes imposed by any state or other governmental entity." Applicants request the relief from Section 27(c)(2) sought in this application only to preclude the possibility that a charge related to the increased burden resulting from Section 848 of the Code is not covered by the exemption provided by Rule 6e–3(T)(b)(13)(iii)(E). Applicants submit that the public policy reasons underlying Rule 6e–3(T)(b)(13)(iii)(E) provide support for the exemption from Section 27(c)(2) requested herein. In this regard, Applicants note that the Commission previously has issued orders granting substantially similar

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Providentmutual's anticipated long-term growth rate, the risk level for this type of business that is acceptable to Providentmutual, inflation and available information about the rates of return obtained by other insurance companies) to set a rate of return on capital that equals or exceeds this rate of growth. (Of these other factors, market interest rates, the acceptable risk level and the inflation rate receive significantly more weight than information about the rates of return obtained by other insurance companies.) Providentmutual represents that these are appropriate factors for Providentmutual tc consider in determining its cost of capital.

Providentmutual also took into account the ratio of surplus to assets that it seeks to maintain. Providentmutual represents that maintaining the ratio of surplus to assets is critical to maintaining a competitive rating from various rating agencies and to offering competitively priced products (i.e., sufficient dividends on outstanding contracts and competitive pricing on newly offered contracts). Consequently, Providentmutual asserts that its surplus must grow at least at the same rate as its assets.

relief to that requested by Applicants, including an order to Providentmutual's corporate parent under nearly identical circumstances.[2]

5. Applicants represent that the requested exemption is necessary if they are to rely on Rule 6e–3(T)(b)(13)(i) under the 1940 Act, which provides critical exemptions from Sections 27(a)(1) and 27(h)(1) thereof. Applicants note that issuers and their affiliates may rely on Rule 6e–3(T)(b)(13)(i) only if they meet its alternative limits that apply to "sales load," as defined in rule 6e–3(T)(c)(4). Rule 6e–3(T)(c)(4) defines "sales load" during a contract period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for and approximately equal to state premium taxes. Applicants represent that a "tax burden charge" such as the one Providentmutual proposes to deduct does not fall squarely into any of the itemized categories of charges or adjustments. Applicants note that a literal reading of Rule 6e–3(T)(c)(4) arguably does not exclude such a "tax burden charge" from sales load.

6. Applicants maintain, however, that there is no public policy reason why a "tax burden charge" designed to cover the expense of federal taxes should be treated as sales load or otherwise be subject to the sales load limits of Rule 6e–3(T). Applicants also assert that nothing in the administrative history of Rule 6e–3(T) (or, for that matter, in the administrative history of Rule 6e–2, its predecessor rule) suggests that the Commission intended to treat tax charges as sales load.

7. Applicants assert that the public policy that underlies Rule 6e–3T(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a "tax burden charge" attributable to the receipt of purchase payments as sales load would in no way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses.

8. Applicants assert that the genesis of Rule 6e–3T(c)(4) supports this analysis. in this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the Commission's intent in adopting Rule 6e–3T(c)(4) was to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance contracts in order, among other things, to facilitate verification by the Commission of compliance with the sales load limits set forth in Rule 6e–3T(b)(13)(i). Applicants submit that Rule 6e–3T(c)(4) does not depart, in principal, from Section 2(a)(35), and that both Section 2(a)(35) and Rule 6e–3T(c)(4) define "sales load" derivatively.

9. Applicants further assert that Section 2(a)(35) clearly excludes from the definition of "sales load" under the 1940 Act deductions from purchase payments for "issue taxes." Applicants submit that the exclusion of charges for expenses attributable to federal taxes from sales load (as defined in Section 2(a)(35)) is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act. By extension, Applicants submit, it is equally consistent to exclude such charges, including the "tax burden charge" described above, from the definition of "sales load" in Rule 6e–3T(c)(4).

10. Applicants submit that the reference in Section 2(a)(35) to administrative expenses or fees that are "not properly chargeable to sales or promotional activities" suggests that the only charges or deductions intended to fall within the definition of "sales load" are those that *are* properly chargeable to such activities. Because the proposed "tax burden charge" will be used to pay costs attributable to Providentmutual's federal tax liabilities, and such costs are not properly chargeable to sales or promotional activities, Applicants assert that the language of Section 2(a)(35) is another indication that not treating the proposed "tax burden charge" as sales load is consistent with the purposes intended by the policies and provisions of the 1940 Act.

11. Applicants state that the specification of only state premium taxes in Rule 6e–3T(c)(4)(v) probably is an historical accident, related to the fact that the Section 848 tax burden attributable to the receipt of premiums did not exist when Rule 6e–3T was initially adopted in 1984 and amended in 1987. Applicants note that nothing in the administrative history of Rule 6e–3(T) suggests that the exclusion from the definition of "sales load" of deductions for tax liabilities attributable to the amount of premium payments received was tried to the type of government entity imposing such taxes.

12. For these reasons, Applicants assert that deducting a charge from variable life insurance contract premium payments for an insurer's tax burdens attributable to its receipt of such payments and excluding that charge from sales load is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants submit that this is because such a charge is for a legitimate expense of the insurer and is not designed to cover sales and distribution expenses. Applicants note that, in adopting Rule 6e–3(T) and its analog, Rule 63–2, which applies to schedule premium variable life insurance contracts, the Commission considered similar deductions for tax burdens in respect of premium taxes. In each case, the Commission permitted deductions for such taxes to be made and to be treated as other than sales load. Applicants submit that the propriety of a charge for an insurer's tax burden attributable to premium payments received is the same whether such burden arises under state or federal law.

B. Request for "Class Relief"

1. Applicants note that the relief sought herein applies to existing Accounts as well as to future accounts that Providentmutual may establish to support flexible premium variable life insurance contracts. Such future accounts may be established as additional investment options under previously issued contracts. Such future accounts may be established as additional investment options under previously issued contracts that have a "tax burden charge" or as investment options for new contracts that may have a "tax burden charge."

2. Applicants submit that because the terms of any exemption sought for the future accounts to permit the deduction of a "tax burden charge" would be substantially identical to those in this application, any additional requests for exemptive relief for the future accounts would present no issues under the 1940 Act that have not already been addressed in this application. Applicants note, however, that unless the "class relief" requested herein is granted, Providentmutual would have to request and obtain exemptive relief for each future account to the extent required. For the reasons set forth below, Applicants assert that the requested exemptions are appropriate in the public interest and are consistent with the protection of investors and the purposes intended by the policy and provisions of the 1940 Act.

[2] Provident Mutual Life Insurance Company, Investment Company Act Release Nos. 19552 (July 1, 1993) and 19519 (June 4, 1993).

3. Applicants submit that the requested "class relief" would promote competitiveness in the variable life insurance market by eliminating the need for Providentmutual to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Applicants submit that the delay and expense involved in having repeatedly to seek the same exemptions would impair Providentmutual's ability to effectively take advantage of business opportunities as they arise.

4. Applicants further submit that owners of Contracts and future contracts would receive no benefit or additional protection if Providentmutual were required repeatedly to seek Commission orders with respect to the same issues addressed in this application; indeed, they might be disadvantaged as a result of Providentmutual's increased overhead expenses.

Conditions for Relief

1. Applicants agree to comply with the following conditions for relief:

a. Providentmutual will monitor the reasonableness of the 1.25 percent charge.

b. The registration statement for the Contract and for any future contracts under which the 1.25 percent charge is deducted will include: (i) disclosure of the charge; (ii) disclosure explaining the purpose of the charge; and (iii) a statement that the charge is reasonable in relation to Providentmutual's increased tax burden as a result of applying Section 848 of the Code.

c. Providentmutual also will include an exhibit to the registration statement for the Contract and for any other variable life insurance contract under which the 1.25 percent charge is deducted an actuarial opinion as to: (i) the reasonableness of the charge in relation to Providentmutual's increased tax burden as a result of Section 848 of the Code; (ii) the reasonableness of the after tax rate of return used in calculating the charge; and (iii) the appropriateness of the factors taken into account by Providentmutual in determining the after tax rate of return.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the requested exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to permit the deduction of 1.25 percent of premium payments under the Contracts and any future contracts meet the standards of Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the requested relief would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31102 Filed 12–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35084; International Series Release No. 756; File No. SR–Amex–94–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Options on the Amex Airline Index

December 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 trade options on The Amex Airline Index ("Index"), a new stock index developed by the Amex based on airline industry stocks (or ADRs thereon) which are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or are national market system ("Nasdaq/NMS") securities traded through Nasdaq. In addition, the Amex proposes to amend Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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 Amex has developed a new industry-specific index called The Amex Airline Index, based entirely on shares of widely-held airline industry stocks or American Depository Receipts ("ADRs") which are exchange listed or are Nasdaq/NMS securities.[1] It is intended that the Amex list standardized option contracts on the newly developed Index. The Exchange is filing this proposal pursuant to Rule 901C, Commentary .02, which provides for the commencement of trading of options on the Index thirty days after the filing date, *i.e.*, 30 days after December 7, 1994. The Exchange represents that the proposal satisfies all the criteria set forth in Commentary .02 to Rule 901C and the Commission's order approving that rule as outlined below.[2]

Eligibility Standards for Index Components

Pursuant to Commentary .02 to Amex Rule 901C, the Amex represents that all of the component securities of the Index are listed on the NYSE or are Nasdaq/NMS securities, each of the component securities has a minimum market capitalization of at least $75 million,[3] and each has a monthly trading volume of at least one million shares per month over each of the six months preceding the filing of this proposal. In addition, all of the component securities in the Index have standardized options traded on them and thus have met the initial eligibility criteria for standardized options trading set forth in Amex Rule 915. One component (USAir Group)

[1] The component securities of the Index are AMR Corp., British Airways PLC (ADR), Southwest Airlines; UAL Corporation, Delta Air Lines Inc., KLM Royal Dutch Air, Alaska Airgroup Inc., Continental Airlines Inc. (Class B), Northwest Airlines Corporation, and USAir Group

[2] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) ("Generic Index Approval Order").

however, has traded below $5 during two of the last six months. While it is not known at this point whether options on USAir Group will eventually be delisted, the Index would still satisfy the criteria set forth in Commentary .02 to Rule 901C because as a result of each quarterly rebalancing, at least 90% of the value of the Index and at least 80% of the total number of components will meet the standards set forth in Rule 915.

As a result of the "equal dollar-weighting" calculation methodology,[4] no individual component stock in the Index represents more than 25% of the weight of the Index following each quarterly rebalancing. Additionally, the top five highest weighted stocks in the Index do not constitute more than 60% of the weight of the Index. Finally, because the sole ADR component of the Index (British Airways PLC) has standardized options trading on it, the Index also satisfies the criteria that no more than 20% of the weight of the Index can be composed of non-options eligible foreign securities (including ADRs).

Maintenance of the Index

The Exchange will maintain the Index so that (1) the total number of component securities will not increase or decrease by more than 33⅓% from the number of components in the proposed Index (*i.e.*, 10) and in no event will the Index have less than nine components; (2) component stocks constituting the top 90% of the Index by weight, must have a minimum market capitalization of $75 million and the component stocks constituting the bottom 10% of the Index, by weight, must have a minimum market capitalization of $50 million; (3) the monthly trading volume of each component security shall be at least 500,000 shares, provided, however, that components accounting in aggregate for no more than 10% of the Index, by weight, shall have a monthly trading volume of at least 400,000 shares; and (4) the Index shall satisfy the criteria that no single component will represent more than 25% of the weight of the Index and that the five highest weighted component shall represent no more than 60% of the weight of the Index, as of each quarterly rebalancing.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

Index Calculation

The Index is calculated using an "equal dollar-weighting" methodology designed to ensure that each of the component securities is represented in an approximately "equal" dollar amount in the Index. The Exchange believes that this method of calculation is important since even among the largest companies in the airline industry there is great disparity in market value. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the airline industry, the five most highly capitalized companies in the airline industry currently represent approximately 80% of the aggregate market value of the Index. It has been the Exchange's experience that options on market value weighted indexes dominated by relatively few component stocks are less useful to investors because the index will tend to represent those few components and not the broader target sector that the index is designed to represent.

The following is a description of how the equal dollar-weighting calculation method works. As of the market close on October 21, 1994, a portfolio of airline securities was established representing an investment of $10,000 in the stock (or ADR) (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the securities in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 200.00 at the close of trading on October 21, 1994. Each quarter thereafter, following the close of trading on the third Friday of January, April, July, and October, the Index portfolio will be adjusted by changing the number of whole shares of each component security so that each company is again represented in "equal" dollar amounts. The Exchange has chosen to rebalance following the close of trading on the quarterly expiration cycle because it allows an option contract to be held for up to three months without a change in the Index portfolio while at the same time, maintaining the equal dollar-weighting feature of the Index. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

As noted above, the number of shares of each component security in the Index portfolio remains fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. In a merger or consolidation of an issuer of a component security, if the stock or ADR remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock or ADR replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the security of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

The Amex will calculate and maintain the Index, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute securities, or adjust the number of securities included in the Index based on changing conditions in the airline industry. In the event, however, that the Exchange determines to increase the number of Index components to greater than thirteen or to reduce the number of components to fewer than nine, the Exchange will submit a 19b–4 filing to the Commission. In selecting securities to be included in the Index, the Exchange will be guided by a number of factors including market value of outstanding shares, trading activity, and adherence to Rule 901C, Commentary .02. Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index are European-style,[5] and cash-settled. The Exchange's standard option trading hours (9:30 a.m. to 4:10 p.m. Eastern Standard Time) will apply to Index options. The options on the Index will expire on the Saturday following the third Friday of the expiration month

[3] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[4] See discussion of Index calculation, *infra*

[5] European-style options may only be exercised during a specified time period immediately prior to expiration.

("Expiration Friday"). The last trading day in an Index option series will normally be the second to last business day preceding the Saturday following Expiration Friday (normally a Thursday). Trading in expiring Index options will cease at the close of trading on the last trading day.

The Exchange plans to list Index options series with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options based on the full-value of the Index, the Exchange may instead list long-term, reduced-value put and call options based on one tenth (1/10th) of the Index's full value. In either event, the interval between expiration months for either a full-value of reduced-value long-term Index option will not be less than six months. The trading of any long-term Index options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and floor trading procedures. Position limits on reduced-value long-term Index options will be equivalent to the position limits for regular (full-value) Index options and would be aggregated with such options. For example, if the position limit for the full-value options on the Index is 10,500 contracts on the same side of the market, then the position limit for the reduced-value options will be 105,000 contracts on the same side of the market and positions in reduced-value Index options will be aggregated with positions in full-value Index options.

The exercise settlement value for all of the expiring Index options will be calculated based upon the primary exchange regular way opening sale prices for the component securities. In the case of Nasdaq/NMS securities, the first reported sale price will be used. If any component security does not open for trading on its primary market on the last day before expiration, then the prior day's last sale price will be used in the exercise settlement value calculation.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, strike prices within ten points above or below the current Index value) option series on the Index at 2½ intervals only when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c) will result in a position limit of 10,500 contracts with respect to options on this Index.

The Amex represents that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it will permit trading in options based on the Amex Airline Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change complies with the standards set forth in the Generic Index Approval Order, it has become effective pursuant to Section 19(b)(3)(A) of the Act. Pursuant to the Generic Index Approval Order,[7] the Exchange may not list Amex Airline Index options for trading prior to 30 days after December 7, 1994, the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Section, 450 Fifth Street, N W , Washington, D.C. 20549 All submissions should refer to File No SR–Amex–94–54 and should be submitted by January 9, 1995

For the Commission, by the Division of Market Regulation, pursuant to delegated authority [8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31039 Filed 12–16–94, 8:45 am]

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[6] 15 U.S.C. § 78f(b)(5) (1988).

[7] *See supra* note 2.

[8] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–35079; File No. SR–MSRB–94–13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Relating to Depository Eligibility of New Issue Municipal Securities

December 9, 1994.

On August 17, 1994, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSRB–94–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published on September 6, 1994, in the **Federal Register** to solicit comments on the proposed rule change.[2] Eleven comment letters were received.[3] For

[1] 15 U.S.C. 78s(b)(1), 1988).

[2] Securities Exchange Act Release No 34607 (August 26, 1994), 59 FR 46075

[3] Ten of the comment letters were received by the MSRB prior to publication of the notice. Letters

Continued

reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends MSRB Rule G–34 to require generally that dealers acquiring new issue municipal securities apply for depository eligibility. This amendment is designed to facilitate the movement of municipal securities to a three business day ("T+3") settlement time frame.[4] Because interdealer and institutional customer transactions are settled on a delivery vs. payment or receipt vs. payment ("DVP/RVP") basis, it is critical that the delivery of securities be made in a timely manner on the settlement date. The physical delivery of securities certificates, however, is relatively time-consuming and inefficient as compared to book-entry delivery through a securities depository. A shortened settlement cycle will provide dealers, institutional customers, and their clearing agents with less time to deal with the processing requirements and inevitable problems that arise in connection with transportation, delivery, and acceptance of physical securities certificates.

MSRB Rules G–12(f)(ii) and G–15(d)(iii) require essentially all interdealer and institutional customer transactions be settled by book-entry when the securities involved in the transactions are listed as eligible for deposit in a depository. The proposed rule change facilitates book-entry settlement of transactions in municipal securities by requiring, with limited exceptions, that dealers that acquire new issue municipal securities apply for depository eligibility.

Under the proposed rule change, brokers, dealers, and municipal securities dealers are required to apply for depository eligibility within one business day of the date of sale of a new issue municipal security.[5] The proposed rule change exempts (1) issues not meeting the eligibility criteria of all depositories that accept municipal securities for deposit and (2) issues maturing in sixty days or less. The proposed rule change also provides an exemption until July 1, 1996, for issues under $1 million in par value.

MSRB has asked that the proposed rule change become effective sixty days from the date of approval. Therefore, the proposed rule change will be effective on February 7, 1995.

II. Comments

In March 1994, MSRB requested comment on a draft of the amendment to Rule G–34 ("Draft Amendment"). The Draft Amendment included exemptions for issues not meeting the criteria set by depositories for eligibility and for new issues under $1 million in par value. MSRB received eleven comment letters in response to the draft amendments.[6] The comments generally supported the MSRB's proposal. Five commenters felt that the proposed rule change could facilitate T+3 settlement.[7] Two commenters noted that settlement through a depository was more efficient and provided greater cost savings than settlement with physical certificates.[8] Some commenters, however, suggested modifications to the draft amendments. In response to these comments, the MSRB amended their proposal prior to filing the proposed rule change with the Commission.[9]

A. Exemption Until July 1, 1996, for Issues Under $1 Million in Par Value

The Draft Amendment included exemptive language for issues under $1 million in par value.[10] Nine commenters urged the MSRB to include issues under $1 million in par value within the scope of the rule with most citing the need for increased settlement efficiencies offered by book-entry when T+3 becomes effective.[11] Two commenters noted that ultimately all issues should be included within the scope of the rule but suggested a temporary exemption for small issues because of their belief that some underwriters of small issues may need time to adjust their procedures for book-entry distribution.[12] Only the Summers letter stated that a permanent exemption for small issues should be included. In response to these comments, the MSRB amended its proposal prior to filing with the Commission to include issues under $1 million in par value but to provide a temporary exemption for such issues until July 1, 1996.[13]

B. Other Suggested Exemptions

The Summers letter suggested exempting municipal leases municipal notes, and municipal bonds sold to nondepository participants. The MSRB rejected this suggestion, stating that it was not aware of any reason that these types of securities should be treated differently than other municipal securities.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

from Gregory P. Vitt, Vice President, Cashier Department, A.G. Edwards & Sons, Inc., to Judith A. Somerville, MSRB (May 1, 1994) ("A.G. Edwards letter"); Walter J. Roesch, President, The Cashiers' Association of Wall Street, Inc., to Judith Somerville, MSRB (June 2, 1994) ("Cashiers letter"); John J. Flynn, Senior Vice President, Fleet Securities, to Judith Somerville, Uniform Practice Specialist ("Specialist"), MSRB (June 23, 1994) ("Fleet letter"); Edward C. Brisotti, Vice President, Operations Division, Goldman, Sachs & Co., to Judith Somerville, Specialist, MSRB (May 18, 1994) ("Goldman letter"); Jill M. Considine, President, New York Clearing House, to Judith Somerville, Specialist, MSRB (May 27, 1994) ("NYCH letter"); George Brakatselos, Vice President, Public Securities Association, to Judith Somerville, Specialist, MSRB (July 5, 1994) ("PSA letter"); Bruce L. Vernon, President, and Thomas Sargant, Vice President, The Regional Municipal Operations Association, to Judith Somerville, MSRB (May 23, 1994, and September 23, 1994) ("RMOA letters"); Marc E. Lackritz, President, Securities Industry Association, to Judith Somerville, Uniform Practice Specialist, MSRB (June 16, 1994) ("SIA letter"); Duane H. Thieme, Treasurer, Summers & Company, Inc., to Judith Somerville, Specialist, MSRB (May 20, 1994) ("Summers letter"); and Nicholas M. Ricciardi, Assistant Vice President, Dean Witter Discover and Co., Dean Witter Reynolds, Inc., to Judith Somerville, Specialist, MSRB (May 27, 1994) ("Dean Witter letter").

[4] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement timeframe for most broker-dealer transactions. The rule becomes effective June 7, 1995. Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 and 34952 (November 9, 1994), 59 FR 59137. Although municipal securities were not included within the scope of Rule 15c6–1, the Commission did request that MSRB provide a plan for implementing T+3 settlement in the municipal securities market. In response, MSRB submitted to the Commission its *Report of the Municipal Securities Rulemaking Board on T+3 Settlement for the Municipal Securities Market (March 17, 1994)* ("T+3 Report"). The T+3 Report detailed changes in operational practices and regulatory actions that will be needed in the municipal securities market in a T+3 environment. The T+3 Report discussed the need to increase the number of securities made depository eligible in order to minimize the use of physical securities certificates to settle interdealer and institutional customer transactions.

[5] For competitively sold issues, the date of award from the issuer is considered the date of sale. For negotiated issues, the date of execution of the contract to purchase the securities from the issuer is considered the date of sale.

[6] Comment letters are set forth *supra* note 3.

[7] Dean Witter letter, Cashiers letter, NYCH letter, PSA letter, and SIA letter.

[8] Cashiers letter and Goldman letter.

[9] The MSRB amended the proposed rule to require that the application to a depository be made within one business day of the date of sale of the issue instead of ten days prior to closing. The MSRB also added the exemption for issues maturing in sixty days or less.

[10] This exemption was included because some dealers believed physical settlements should be permissible for small issues with limited distribution.

[11] A.G. Edwards letter, Cashiers letter, Dean Witter letter, Fleet letter, Goldman letter, NYCH letter, PSA letter, RMOA letters, and SIA letter.

[12] Dean Witter and NYCH letters.

[13] Four commenters suggested that a reduction in depository application fees would reduce the need for an exemption for small issues. A.G. Edwards letter, RMOA letters, Summers letter, and NYCH letter.

rules and regulations thereunder and particularly with the requirements of Section 15B(b)(2)(C).[14] Section 15B(b)(2)(C) requires that the rules of the MSRB be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and facilitating transactions in municipal securities. The proposed rule change meets this requirement by creating a more efficient, safe, and cohesive environment for the transfer of municipal securities.

By requiring dealers acquiring new issue municipal securities to apply for depository eligibility, the proposal will help to ensure that the great majority of new issue municipal securities are made depository eligible. As a result, the number of interdealer and institutional customer transactions that must be settled by book-entry under MSRB Rules G–12(f)(ii) and G–15(d)(iii) should increase greatly. By increasing the number of book-entry settlements and by limiting the number of physical deliveries that occur, the rule will enhance the efficiency of the clearance and settlement of municipal securities. As a consequence, a safer environment in which to facilitate transactions in municipal securities will exist. The proposed rule change also facilitates the conversion to T+3 settlement of municipal securities and thus promotes cooperation and coordination with persons engaged in regulating, clearing, and settling municipal securities.

The Commission believes that the limited exemption for issues under $1 million in par value adequately addresses the concerns of the commenters. The PSA noted that almost 20% of the new issues in 1992 would have been eligible for the small issue exemption. The Commission believes that it is important that the vast majority of securities be made depository eligible. There are concerns, however, that underwriters of smaller issues may not be prepared for book-entry distribution. The Commission believes that the temporary exemption will give underwriters of smaller issues an opportunity to adapt to book-entry distribution while establishing a definite date by which smaller issues must be made depository eligible.

The Commission also agrees with the MSRB's determination not to exempt municipal leases, municipal notes, and municipal bonds sold to nondepository participants. The Commission believes that every effort should be made to make as many types of municipal securities depository eligible as practicable.

[14] 15 U.S.C. 78o–4(b)(2)(C) (1988).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MSRB–94–13) be, and hereby is, approved and will become effective February 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31040 Filed 12–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35089; File No. SR–Phlx–94–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to its Rule 229 Governing Execution of PACE Orders

December 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 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 December 12, 1994, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[1] 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 Philadelphia Stock Exchange, Inc., pursuant to Rule 19b–4 of the Act, proposes to amend the Supplementary Material section to its Rule 229 respecting the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

[15] 17 CFR 200.30–3(a)(12) (1994).

[1] *See* letter from William W. Uchimoto, Vice President and General Counsel, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated December 12, 1994. Amendment No. 1 made certain clarifying changes to the proposed rule change.

Rule 229

* * * Supplementary Material

* * * Execution of Market Orders

.05 *Subject to Supplementary Material Section .07,* all round-lot market orders up to 500 shares *and PRL market orders up to 599 shares*[2] will be [executed automatically upon entry into the system; provided, however,] *stopped at the PACE Quote*[3] *at the time of entry into the system ("Stop Price") and be subject to a delay of up to 15 seconds from being executed in order to receive an opportunity for price improvement. If such market order is not executed within the 15 second window, the order will be automatically executed at the Stop Price. If the PACE Quote at the time of order entry into the system reflects a 1/8 point spread between the best bid and offer, that order will be executed immediately without the 15 second delay. Subject to these procedures,* the specialist may voluntarily agree to execute round-lot [and PRL] market orders of a size greater than 500 shares *and PRL market orders of a size greater than 599 shares* [automatically] upon entry into the system.

* * * * *

.07(a) Member organizations which enter market orders (round-lots up to 500 shares and PRL's up to 599 shares) after the opening may elect to have such orders executed (i) [automatically on the PACE Quote] *in accordance with the procedures set forth in Supplementary Material Section .05* or, (ii) if such execution price would be outside the New York market high-low range for the day manually at or within the New York market high-low range of the day

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.

[2] The term "PRL" means a combined round-lot and odd-lot order *See* Phlx Rule 229

[3] The term "Pace Quote" means the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, or Philadelphia stock exchanges, or the Intermarket Trading System/Computer Assisted Execution System quote, as appropriate. *See* Phlx Rule 229.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide for an enhancement to PACE by providing Phlx specialists the opportunity to effect price improvement for market orders in securities sent through PACE when the spread between the PACE Quote, which reflects the consolidated national best bid and offer, exceeds ⅛ point in any PACE eligible security. The proposed rule change provides for an automatic stop of such orders and a fifteen second execution delay, allowing a Phlx specialist to manually provide for price improvement equal to or better than the stock price.[4] Specifically, all round-lot market orders of up to 500 shares and all combined round-lot and odd-lot orders of up to 599 shares will be stopped at the PACE Quote at the time of entry into PACE (stopped at the best bid for sell orders; at the best ask for buy orders) and shall be subject to a delay of up to fifteen seconds from being executed in order to provide an opportunity for price improvement by the Phlx specialist. If a particular market order is not executed within fifteen seconds, the order will be automatically executed by the system at the stop price. If the PACE Quote at the time of order entry reflects a spread between the best bid and offer of ⅛ point, PACE market orders shall be system executed immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general and Section 6(b)(5) in particular in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to protect investors and the public interest. Additionally, the proposed system enhancement and rule change are consistent with the mandate of Section 11A(a)(1)(C)(iv) of the Act respecting "[t]he practicability of brokers executing investors' orders in the best market."

[4] Accordingly to the Phlx, the proposed rule change does not apply to limit orders, including marketable limit orders, because such orders are executed manually and, therefore, already have an opportunity for price improvement. Telephone conversation between William W. Uchimoto, Vice President and General Counsel, Phlx, and Glen Barrentine, Senior Counsel, SEC, on December 9, 1994

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copy at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–58 and should be submitted by January 9, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31103 Filed 12–16–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2132]

Renewal of the Overseas Schools Advisory Council

The Department of State is renewing the Overseas Schools Advisory Council to provide a formal channel for regular consultation and advice from U.S. corporations and foundations regarding American-sponsored overseas schools. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Members of the committee will be appointed by the Assistant Secretary for Administration. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552(b) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, contact Dr. Ernest N. Mannino, Executive Secretary of the committee at 703–875–7800.

Dated: December 7, 1994.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 94–31115 Filed 12–16–94; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2134]

Renewal of the Advisory Committee on Private International Law

The Department is renewing the Charter of the Secretary of State's Advisory Committee on Private International Law for two years. The Committee advises the Department on matters concerning the harmonization of private law at the international level. Private law harmonization is normally achieved by preparation of conventions, model national laws, legal guides and other materials. This work is undertaken by organizations such as the United Nations Commission on International Trade Law (UNCITRAL), the Hague Conference on Private International

Law, the International Institute for the Unification of Private Law (UNIDROIT), the Specialized Conference on Private International Law of the Organization of American States (OAS), the International Chamber of Commerce and others. The Committee reviews projects under way by the above-referenced organizations or others that may be involved. When appropriate, specialized Study Groups of the Committee are formed to provide technical advice on particular topics. The Under Secretary for Management has determined that continuation of the Committee is necessary and in the public interest.

Members of the Committee are appointed by the Legal Adviser, who serves as Chair of the Committee, on the basis of nominations by national legal organizations. Participation in the work of the Committee and its Study Groups is open to any interested and qualified person or organization. The Committee follows the procedures of the Federal Advisory Committee Act, its meetings are open to the public, and notice of each meeting will be provided in the **Federal Register** and to any individual or organization requesting such notice.

For further information on the Committee or the private international law projects that it currently reviews, contact Harold Burman, Committee Executive Director at (202) 653–9852, fax (202) 653–9854, or by writing to the Office of the Legal Adviser (L/PIL), 2100 K Street, NW—Suite 501, Washington, DC 20037–7180.

Dated: December 8, 1994.

Peter H. Pfund,

Assistant Legal Adviser

[FR Doc. 94–31116 Filed 12–16–94; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 2135]

Renewal of the Shipping Coordinating Committee

The Department of State is renewing the Shipping Coordinating Committee to solicit the view of interested members of the public and government agencies on maritime policy issues, for the guidance of U.S. delegations to international meetings on these matters. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Membership includes representatives from the maritime industry, labor unions, environmental groups and government bureaus and agencies. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552(b) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, contact Marie Murray, Executive Secretary of the Committee or Stephen Miller at (202) 647–6961.

Dated: December 8, 1994.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–31117 Filed 12–16–94; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2128]

Shipping Coordinating Committee, Subcommittee on Ship Design and Equipment and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee (SCC) will conduct an open meeting at 9:30 AM on Friday, January 6, 1995, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Thirty-eighth session of the Subcommittee on Ship Design and Equipment (DE 38) and associated bodies of the International Maritime Organization (IMO) which is scheduled for January 23–27, 1995, at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U.S. positions for DE 38.

Among other things, the items of particular interest are:

a. Safety of passenger submersible craft;

b. Development of safety standards for combined pusher tug-barges;

c. Guidelines for safe ocean towing;

d. Guidelines for the design and operation of passenger ships to the needs of elderly and disabled persons;

e. Use of compressed air systems for buoyancy;

f. Ventilation of vehicle decks during loading and unloading;

g. Matters related to the prevention of oil pollution;

h. Matters relating to ship structures, including hull stress monitoring devices, corrosion protection for ballast tanks, and access to tank and ballast space structures;

i. Structural aspects of the on board use of composite materials;

j. Requirements for ships intended for polar waters;

k. Revision of the Code of Safety for Diving Systems;

l. Review of existing ships' safety standards; and

m. Guidelines on standard calculation methods for anchor positioning systems for Mobile Offshore Drilling Units (MODUs).

The IMO Subcommittees work to develop international agreements, guidelines, and standards for the marine industry In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. Safety of Life at Sea (SOLAS) Working Group supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards, and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers, and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR Jim Stamm, U.S. Coast Guard Headquarters, Commandant (G–MTH), Room 1218, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: November 30, 1994.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–31118 Filed 12–16–94; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2129]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on January 12, 1995, 9:30 AM in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C.

The purpose of this meeting will be to report on the thirty-sixth session of the Marine Environment Protection Committee (MEPC 36) of the International Maritime Organization

(IMO) held from October 31–November 4, 1994. The Coast Guard has held similar meetings prior to MEPC sessions. To facilitate public involvement and provide additional time for the public to review issues addressed at MEPC sessions, the Coast Guard feels an additional public meeting shortly after an MEPC session is needed. The U.S. delegation to MEPC 36 will report on the activities of the session.

The major items for discussion will be the following:

a. Prevention of oil pollution. Work progress on the guidelines for implementation of Regulations 13F and 13G to Annex I of The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This includes guidelines for structural and operational requirements for existing ships, equivalencies for double-hulls for new ships, and guidelines for enhanced inspections.

b. Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC). An IMO working group addressed topics such as guidelines for the use and application of dispersants and the redraft of the contingency planning portion of the IMO Oil Pollution Manual.

c. Follow-up action to the United Nations Conference on Environment and Development (UNCED). An MEPC working group examined IMO's role in implementation of UNCED and discussed the results of a correspondence group on use of the precautionary principle.

d. Unwanted aquatic organisms in ballast water. A working group discussed a possible technical annex to MARPOL 73/78 to prevent the introduction of exotic species through discharge of ballast water.

e. Enforcement of Pollution Conventions. A working group considered refuse recordkeeping amendments to Annex V of MARPOL 73/78 proposed by the United States.

f. The future work program of the U.S. in preparation for MEPC 37 scheduled for September, 1995.

Members of the public may attend the meeting up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MEP–3), 2100 Second Street, S.W., Washington, D.C. 20593–0001, Telephone: (202) 267–0423.

Dated: November 29, 1994.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–31119 Filed 12–16–94; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2130]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Notice of Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 AM on Thursday, January 12, and Thursday, February 16, 1995. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC 20950. The purpose of these meetings is to discuss the papers received and the draft U.S. positions in preparation for the 41st Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for early 1996, at the IMO headquarters in London, England.

Among other things, the item of particular interest is:

—The implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G-TTM), Room 6311, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–1389.

Dated: November 29, 1994.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–31120 Filed 12–16–94; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Notice of Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 94–10–8, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning December 1, 1994, we have projected non-fuel costs based on the year ended September 30, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94–12–16 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.1665
Western Hemisphere	1 1136
Pacific	1.3878

For further information contact: Keith A. Shangraw (202) 366- 2439.

By the Department of Transportation: December 13, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–31097 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–62–P

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 94–10–7 established the currently effective two-month SFFL applicable through November 30, 1994.

In establishing the SFFL for the two-month period beginning December 1, 1994, we have projected non-fuel costs based on the year ended September 30, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94–12–15 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3877
Latin America	1.4122
Pacific	1.7834
Canada	1.4994

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.
Dated: December 13, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–31098 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular 21–20B; Supplier Surveillance Procedures

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–20B, Supplier Surveillance Procedures, for review and comments. The proposed AC 21–20B provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) Part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–20B File Number A–230–94–018, and be received by March 21, 1995.

ADDRESSES: Copies of the proposed AC 21–20B can be obtained from and comments may be returned to the following: Department of Transportation, Federal Aviation Administration, Aircraft Certification Service, Production and Airworthiness Certification Division, Policy and Procedures Branch, AIR–230, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Randy Courtney, Federal Aviation Administration, Production and Airworthiness Certification Division, Policy and Procedures Branch, AIR–230, Room 815, 800 Independence Avenue SW., Washington, DC 20591, at telephone number (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–20B provides information and guidance concerning surveillance of suppliers to U.S. production approval holders (PAH) by the PAH and the Federal Aviation Administration. Further, this AC includes procedures which supplement bilateral airworthiness agreements pertaining to certification of components manufactured outside the United States.

Comments Invited

Interested persons are invited to comment on the proposed AC 21–20B, listed in this notice, by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. All communications received on or before the closing date for comments, specified above, will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Comments received on the proposed AC 21–20B may be examined before or after the comment closing date in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, S.W., Washington, DC 20591, between 8:00 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

Issued in Washington, DC on November 29, 1994.

Joyce A. Eaton,

Acting Manager, Production and Airworthiness Certification Division.

[FR Doc. 94–31085 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA General Docket No. H–94–6; Notice No. 2]

Public Hearing Involving Remotely Controlled Locomotives

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of revised date of public hearing.

SUMMARY: On November 18, 1994, FRA published in the **Federal Register** (59 FR 59826) a notice regarding a test program of rail operations involving use of remotely controlled locomotives. An informal hearing to discuss the test program was scheduled for January 11, 1995. Due to conflicts with other scheduled FRA public proceedings, FRA is rescheduling the public hearing to Thursday, February 23, 1995 at 9:30 a.m., in Room 2230, 400 Seventh Street, S.W., Washington, D.C. 20590.

Comments received by March 3, 1995 will be considered before final action is taken. All comments received will be available for examination during regular working hours in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on December 13, 1994

Bruce M. Fine

Associate Administrator for Safety

[FR Doc. 94–31150 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–06–P

Federal Transit Administration

[Docket 94–B]

Third Party Contracting Guidelines Circular Revision

AGENCY: Federal Transit Administration DOT

ACTION: Extension of comment period

SUMMARY: On September 7, 1994, the Federal Transit Administration (FTA) issued a notice announcing that the FTA was revising Circular 4220.1B, Third Party Contracting Guidelines. Specifically, this notice announced the availability of the draft circular for review and solicited comments from interested parties on the proposed changes. FTA is extending the comment period to allow interested parties additional time to review the draft circular and to comment on the proposed revisions.

DATES: Comments must be received on or before January 18, 1995.

ADDRESSES: All requests for the draft circular should be addressed to Carolyn Thompson, Third Party Contract Review Division, Federal Transit Administration, 400 Seventh Street, S.W., Room 7405, Washington, DC 20590. Comments on the Circular should be submitted to the FTA Docket Clerk, same address, Room 9316.

FOR FURTHER INFORMATION CONTACT: Carolyn Thompson, Procurement Analyst, Third Party Contract Review Division, Federal Transit Administration, 202–366–5470.

SUPPLEMENTARY INFORMATION: Current contracting guidance for FTA grantees is contained in FTA Circular 4220.1B "Third Party Contracting Guidelines" dated May 5, 1988, revised February 5, 1990. FTA is revising the Circular to incorporate new provisions included in the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, October 28, 1991) and to reflect a more current contracting policy.

The original comment period ended on November 7, 1994. FTA is extending the comment period for an additional 30 days, in order to allow interested parties adequate time to review the draft circular and formulate their comments. The comment period will now end January 18, 1995.

Issued on: December 14, 1994

Gordon J. Linton,

Administrator.

[FR Doc. 94–31082 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–57–P

National Highway Traffic Safety Administration

[Docket No. 92–50; Notice 3]

Autokraft Ltd; Receipt of Application for Renewal of Temporary Exemption From Motor Vehicle Safety Standard No. 208

Autokraft Limited of Weybridge, Surrey, England, has applied for a renewal of NHTSA Exemption No. 92–6, exempting its AC MkIV until January 1, 1995, from compliance with paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application is published in accordance with agency regulations on the subject (49 CFR Part 555) and does not represent any judgment of the agency on the merits of the application.

Autokraft was granted NHTSA Exemption No. 92–6 on December 21 1992 (57 FR 60563). The reader is referred to that notice for further information about the company and its initial compliance efforts. The exemption from S4.1.4 of Standard No 208 will expire on January 1, 1995. Because the application for renewal of the exemption was filed "not later than 60 days before the termination date" (in this instance, October 27, 1994), the termination date is stayed until the Administrator has acted upon the application (49 CFR 555.8(e)).

The applicant seeks a further two-year exemption for its AC Mark IV passenger car, of which it has produced 15 in the year preceding the filing of its application. Although the company had projected sales of 150 units in the United States in the years 1992–94, in fact, there have been only seven sales. According to its application, Autokraft "has continued the process of researching and developing the installation of a driver and passenger side airbag system" but "we have been unable to achieve the fitting of a suitable system mainly due to the chassis design being based upon a classic 1960's design and not easily adaptable to suit air bag installation." The delay is also due to "the project having insufficient funds generated by sales and available for completing the development."

Autokraft has concluded that the adaptation of an existing automatic restraint system is the only viable alternative. Its continuation of compliance efforts has given it "significant knowledge into the areas of vehicle modification, computer simulation, design rough road testing and low, medium and high speed crash testing." Complicating its efforts is the need to use a different engine and transmission after October 1, 1995, and the possible effect that this will have upon compliance. It estimates the cost to achieve conformance would be $550,000, achievable by spreading these costs during the exemption period Autokraft reports losses totalling 3,308,243 Pounds Sterling (approximately $5,624,000 at a rate of $1.70/1) for the years 1992–93, and projects a further loss for 1994.

The company argues that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety because it meets all applicable EEC standards, and all U.S. Federal motor vehicle safety standards with the exception of the automatic restraint requirements of Standard No. 208 (its 3-point driver and passenger restraints meet the previous requirements). The production of the car makes available to the public "at a realistic price" a replica of the original AC Cobra vehicle produced from the original AC Cobra tooling, manufactured during the 1960's predominantly for the American market. Autokraft is in the process of finalizing a U.S. distribution agreement and will show the car at the North American International Auto Show in Detroit in January 1995.

The applicant believes that it will comply with Standard No. 208 six months before January 1, 1997, when the 2-year extension of its exemption that it has requested would expire.

Interested persons are invited to submit comments on the application described above. Comments should refer to Docket No. 92–50; Notice 3, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh St. SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below

Comment closing date: January 18, 1995.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 13, 1994

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–31081 Filed 12–16–94, 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–65; Notice 2]

General Motors Corporation; Decision That Noncompliance With Standard No. 108 is Inconsequential to Safety

General Motors Corporation (GM) of Warren, Michigan, determined that some of its vehicles failed to comply with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," and filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 - "Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety

Notice of receipt of the application was published on July 29, 1994, and an opportunity afforded for comment (59 FR 38660). This notice grants the application.

Figure 10 of FMVSS No. 108, referenced at S5.1.1.27(a)(3), lists the photometric requirements for center high-mounted stop lamps (CHMSLs). GM produced two different vehicle populations which do not meet the photometric requirements of Figure 10. The first population of vehicles, approximately 23,695 Cadillac Deville and Deville Concours produced between the start of the 1994 model year and November 19, 1993, had their CHMSLs "framed" in the rear window by a 27 mm high opening in the blackout paint at the lower edge of the rear window. A vertical shift in the installed position of the rear window, compounded by build variation, caused the painted frame around the CHMSL on each of these vehicles to obscure the photometric performance at the 5D line.

The second population of vehicles, approximately 65,403 Cadillac Deville and Deville Concours produced between November 19, 1993, and May 4, 1994, has a narrower painted "frame" around the CHMSL in the rear window. The painted frame width was reduced due to

an engineering change by 5 mm to a width of 22 mm. The shift in installed position and build variation noted above obscured the 5D line on some of these vehicles. Other vehicles within this second population had the 10U line obscured as a result of build variation. In no case were both the 5D and 10U lines obscured.

GM supported its application for inconsequential noncompliance as discussed below. GM also submitted diagrams and tables in support which are available for review in the NHTSA docket. According to GM:

GM performed a dimensional analysis on a 51-vehicle sample to determine where the paint opening on the rear glass was in relation to the CHMSL. (Note that no CHMSL could be obscured at both the top and bottom by the paint line.) For those vehicles with the CHMSL obscured at the bottom of the lamp, the analysis, which approximates a normal distribution, indicated that 1.5 percent of the entire population of vehicles, or approximately 1,336 vehicles, could experience sufficient obscuration to render the vehicles out of compliance with FMVSS 108, with a 4.6 mm worst case infringement at the bottom of the CHMSL. However, a photometric test conducted on a CHMSL with a 4.6 mm mask at the bottom of the lamp established that for the test points that fell on and below horizontal, i.e., for the points on the H and 5D lines, photometric output exceeded FMVSS 108 requirements by an average of 75 percent. * * * Even on the 5D line, all five test points were within 20 percent of FMVSS 108, with the worst performance at 5D–5R, where the tested value was 23.0 candela, or 82 percent of the 25.0 candela requirement.

As for those vehicles with the CHMSL obscured at the top of the lamp, the sample suggests that 15 percent of the second population described above, or 9,810 vehicles, could be obscured to the point that they would fail to comply with FMVSS 108, with a worst case infringement at the top of the CHMSL of 4.5 mm. However, a photometric test on a CHMSL with a 4.5 mm mask at the top of the lamp demonstrated that while test values on the 10U line fall below required levels, the lamp provides approximately 75 percent more light output above horizontal (at the 5U and 10U lines combined) than required by FMVSS 108. (Photometric output of the obscured lamp as a whole approximated 33 percent more than FMVSS 108 requirements.) * * *

To determine the extent of the noncompliance for those vehicles obscured at the top of the CHMSL, GM plotted data from a series of photometric tests of 10U-V (the worst performing test point), with varying degrees of obscuration, against performance to the FMVSS 108 requirement. The result approximates a linear function of obscuration versus photometric output, and suggests that subject CHMSLs obscured less than 3.07 mm will fall within 20 percent of the values listed in FMVSS 108 * * * Applying the distribution determined from GM's 51-vehicle sample to that, approximately 76 percent, or 7,456 of the 9,810 vehicles described above, will provide photometric output within 20 percent of the FMVSS 108 requirements at 10U

As acknowledged in NHTSA's notices granting other similar Petitions for Determination of Inconsequential Noncompliance, a change in luminous intensity of approximately 25 percent is required before the human eye can detect a difference between two lamps. (See, e.g., Notice granting Petition by Subaru of America (56 Fed. Reg. 59971); and Notice granting Petition by Hella, Inc. (55 Fed. Reg. 37601, at 37602).) Given this, the 7,456 vehicles obscured less than 3.07 mm at the top of the CHMSL, as well as the 1,336 vehicles obscured at the bottom of the lamp, do not compromise motor vehicle safety since the noncompliance is imperceptible to the naked eye and the overall light at the outer zones (H & 5D; 5U & 10U) exceeds the FMVSS requirements.

Although the degradation in light output for the 2,354 remaining vehicles would likely be discernible in a subjective side-by-side comparison with a conforming lamp, visible light is still emitted at the 10U line. Moreover, GM's photometric analysis indicates that even with a worst case obscuration of the 10U line, the 16 candela required light output at 10U-V is supplied at 8U-V Given that and the location of the CHMSL on the subject vehicles, these CHMSLs perform their intended function in a manner virtually indistinguishable from CHMSLs on other vehicles that fully comply with FMVSS 108, as demonstrated below

The specified range of required photometric output for CHMSLs from 10U to 5D was developed from SAE J186a and is presumably intended to allow manufacturers latitude in locating CHMSLs for the myriad of vehicle designs, while assuring that sufficient light is available to signal drivers of following vehicles. For example, the 10U photometric angle helps to assure that drivers of large vehicles (such as medium and heavy duty trucks), perceive a preceding vehicle's CHMSL signal, regardless of the size of that vehicle or the CHMSL's mounting location

However, the Cadillac CHMSL is mounted relatively high in relation to other passenger vehicles on the road, and is located in the passenger compartment, not on the deck lid. Therefore, the light emitted from the Cadillac CHMSL at the upward-most photometric angles is not as critical as light at those same angles emitted from vehicles with CHMSLs located rearward and closer to the ground.

To illustrate this point, GM compared the Cadillac CHMSL to the CHMSL on the Mazda Miata. The Miata sits comparatively low to the ground, and its CHMSL is mounted low on the deck lid. After determining that the 16 candela photometric output required by FMVSS 108 at 10U-V is provided by the Cadillac CHMSL with a worst case intrusion at 8U, GM overlaid the mounting location and 10U line of the Mazda Miata on a drawing of the Cadillac CHMSL and 8U line, placing the rear of the vehicles at the same location * * * The result shows that the 8U and 10U lines cross 37 4 feet behind the vehicles and 9.3 feet above the ground; until that point, the Cadillac CHMSL provides more light to the extreme up positions than does the fully compliant Miata CHMSL

GM then overlaid on the drawing of the Cadillac and Miata CHMSLs the average eye ellipse location for heavy duty trucks (cab over) and medium duty trucks, which are 7 7 feet and 6.8 feet from ground, respectively * * * The fact that these eye-ellipse locations fall well below the 9 3 feet intersection point of the Cadillac CHMSL 8U line and the Miata CHMSL 10U line demonstrates that the Cadillac CHMSL provides sufficient usable light to all following drivers

That is, because GM designed the subject vehicles with a high and forward CHMSL mounting location, drivers sitting at the highest positions from the road will see the photometric output intended by the Standard for the upward-most angles, regardless of (worst case) obscuration of the lamp The Cadillac CHMSL actually provides a greater area of visible light than a vehicle with a fully compliant lamp that is mounted lower and rearward.

There are vehicles with fully compliant CHMSLs, at mounting locations approximating that of the Cadillac that cast more light in the upper extreme areas behind the vehicle. However, * * * a compliant CHMSL (mounted at the same location as the Cadillac CHMSL) will provide only an additional triangular area six feet in length and eleven inches high of potentially usable light, starting 20 feet behind the vehicle This small area is only visible to drivers of the largest vehicles Given that and negligible decrease of light emitted by the Cadillac CHMSL, GM believes that the Cadillac CHMSL will perform its intended function effectively identical to fully compliant CHMSLs mounted at the same location Furthermore, as demonstrated above the Cadillac CHMSL provides more light at the extreme up angles than other fully compliant CHMSLs mounted lower and rearward These factors, together with the small number of Cadillacs involved, support GM's belief that the CHMSLs at issue here will not have an adverse affect on motor vehicle safety

The CHMSLs otherwise meet all FMVSS 108 requirements, and the photometric output of the stop lamps, which are supplemented by the CHMSL, far exceeds FMVSS 108 minimum requirements

GM is not aware of any accidents, injuries owner complaints or field reports related to this issue

General Motors believes that the noncompliance that results from a small obstruction of the CHMSL by blackout paint on the rear window is inconsequential as it relates to motor vehicle safety In consideration of the foregoing, General Motors petitions that it be exempted from the recall and remedy provisions of the Act for this specific noncompliance with FMVSS 108

No comments were received on the application

In presenting its arguments, GM has separated its noncomplying vehicles into two categories, those in which the diminished luminous intensity of the CHMSL might be discernible, and those in which it might pass unnoticed

The noncompliance that is most likely to have a consequential effect on safety is the degradation in light output that "would likely be discernible in a subjective side-by-side comparison with a conforming light." This appears to occur only in vehicles where compliance along the 10U line is affected. GM argues that, in the worst case, there is full compliance along a hypothetical 8U line, and that "visible light is still emitted at the 10U line." Thus, the effect on safety of a diminished luminous intensity in the two degrees between 8U and 10U must be considered. GM has pointed out the obvious, that the mounting height of the CHMSL is not standardized among vehicles, and that factor, in addition to the differing eye height of following drivers and the angle of approach, results in an infinite number of perceptions. The result of this is that, in some instances, the noncompliant Cadillac CHMSL "actually provides a greater area of visible light" than a complying CHMSL "that is mounted lower and rearward." With respect to the two-degree area of noncompliance, a complying lamp "will provide only an additional triangular area six feet in length and eleven inches high of potentially usable light, starting 20 feet behind the vehicle." Terming this a "small area," GM submits that it "is only visible to drivers of the largest vehicles."

NHTSA reviews noncompliances involving performance failures with special concern, and it has done so here. But it has concluded that GM has met this concern with respect to the possible effect of this specific noncompliance upon motor vehicle safety, and has decided that it does not affect safety in a consequential manner.

With respect to the remaining noncompliances, those that might not be discernible to the naked eye, GM cites NHTSA's previous grants of inconsequentiality petitions based upon the agency's conclusion that a change in luminous intensity of approximately 25 percent must occur before the human eye can discern a difference. Three-quarters of GM's noncompliant lamps probably are said to have a noncompliance in luminous intensity that does not exceed 20 percent of Figure 10's specifications.

GM has correctly noted NHTSA's position on the effect of deviations in luminous intensity. Additional support for that position has been provided in a recent report "Driver Perception of Just-Noticeable Differences of Automotive Signal Lamp Intensities" (DTNH22–92–D–07002) which found that 25 percent is a reasonable criterion for use in inconsequentiality decisions.

Accordingly, the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety, and General Motors Corporation is hereby exempted from the notification requirements of 49 U.S.C. 30118 and the remedy requirements of 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and NHTSA Order 800–2)

Issued on: December 13, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–31089 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–77; Notice 2]

Decision That Nonconforming 1988 Volvo 740 Sedans Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1988 Volvo 740 Sedans are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1988 Volvo 740 Sedans not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1988 Volvo 740 Sedan), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Western Cascade of Seattle Washington (Registered Importer R–94–023) petitioned NHTSA to decide whether 1988 Volvo 740 Sedans are eligible for importation into the United States. NHTSA published notice of the petition on September 27, 1994 (59 FR 49281) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 87 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1988 Volvo 740 Sedan not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1988 Volvo 740 Sedan originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 13, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–31013 Filed 12–16–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 242
Monday, December 19, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 20, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Protocol Revisions

The staff will brief the Commission on a final rule revising the child-resistant packaging test protocols under the Poison Prevention Packaging Act.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 14, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–31243 Filed 12–15–94; 2:55 pm]

BILLING CODE 6355–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m., December 23, 1994.

PLACE: Board Conference Room, Suite 700, 625 Indiana Avenue, N.W., Washington, D.C. 20004.

STATUS: Closed. Exemption 3. Portions of the meeting may also be closed under Exemption 1 and Exemption 9.

MATTERS TO BE CONSIDERED: The Board will discuss a possible Recommendation to the Secretary of Energy pertaining to DOE's adherence to health and safety orders and requirements during the period in transition to rulemaking.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The Board specifically reserves its right to further schedule and otherwise regulate the course of the hearing, to recess, reconvene, postpone or adjourn the hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: December 15, 1994.

John T. Conway,

Chairman.

[FR Doc. 94–31185 Filed 12–15–94; 2:51 pm]

BILLING CODE 6820–KD–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, December 20, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6502—Recommendations to 37 States, Puerto Rico & District of Columbia: A Lower Blood Alcohol Concentration for All Drivers

6213A—Marine Accident Report: Explosion and Fire on Board The U.S. Tankship OMI CHARGER, Galveston, Texas, October 9, 1993

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: December 14, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–31170 Filed 12–15–94; 8:45 am]

BILLING CODE 7533–01–P

Federal Register

Monday
December 19, 1994

Part II

Reader Aids

Cumulative List of Public Laws
103d Congress, Second Session

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the 103d Congress, Second Session. The List of Public Laws will resume when bills are enacted into public law during the 104th Congress, First Session, which convenes on January 4, 1995. Any comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408.

Public Law	Title	Approved	108 Stat.
103–211	Making emergency supplemental appropriations for the fiscal year ending September 30, 1994, and for other purposes.	Feb. 12, 1994	3
103–212	To designate the Federal Building and United States Courthouse located at 402 East State Street in Trenton, New Jersey, as the "Clarkson S. Fisher Federal Building and United States Courthouse".	Feb. 16, 1994	43
103–213	To designate the Federal building located at 525 Griffin Street in Dallas, Texas, as the "A. Maceo Smith Federal Building".	Feb. 16, 1994	44
103–214	To designate the Federal building located at 100 East Fifth Street in Cincinnati, Ohio, as the "Potter Stewart United States Courthouse".	Feb. 16, 1994	45
103–215	To designate the United States courthouse located in Houma, Louisiana, as the "George Arceneaux, Jr., United States Courthouse".	Feb. 16, 1994	46
103–216	To designate the United States courthouse under construction at 611 Broad Street, in Lake Charles, Louisiana, as the "Edwin Ford Hunter, Jr., United StatesCourthouse".	Feb. 16, 1994	47
103–217	To designate the month of March 1994 as "Irish-American Heritage Month"	Feb. 22, 1994	48
103–218	Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994	Mar. 9, 1994	50
103–219	To amend the Everglades National Park Protection and Expansion Act of 1989, and for other purposes.	Mar. 9, 1994	98
103–220	To amend title 23, United States Code, to permit the use of funds under the highway bridge replacement and rehabilitation program for seismic retrofit of bridges, and for other purposes.	Mar. 17, 1994	100
103–221	To designate the week beginning April 11, 1994, as "National Public Safety Telecommunicators Week".	Mar. 24, 1994	101
103–222	Designating March 25, 1994, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".	Mar. 24, 1994	102
103–223	To proclaim March 20, 1994, as "National Agriculture Day"	Mar. 24, 1994	103
103–224	To designate March 20 through March 26, 1994, as "Small Family Farm Week"	Mar. 24, 1994	105
103–225	Food Stamp Program Improvements Act of 1994	Mar. 25, 1994	106
103–226	Federal Workforce Restructuring Act of 1994	Mar. 30, 1994	111
103–227	Goals 2000: Educate America Act	Mar. 31, 1994	125
103–228	To temporarily extend certain provisions of the Marine Mammal Protection Act	Mar. 31, 1994	281
103–229	Designating March 23, 1994, as "Education and Sharing Day, U.S.A."	Apr. 6, 1994	282
103–230	Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994	Apr. 6, 1994	284
103–231	To extend certain compliance dates for pesticide safety training and labeling requirements	Apr. 6, 1994	333
103–232	To reauthorize and amend the National Fish and Wildlife Foundation Establishment Act, and for other purposes.	Apr. 11, 1994	336
103–233	Multifamily Housing Property Disposition Reform Act of 1994	Apr. 11, 1994	342
103–234	To redesignate the Federal building located at 380 Trapelo Road in Waltham, Massachusetts, as the "Frederick C. Murphy Federal Center".	Apr. 14, 1994	380
103–235	To extend until July 1, 1998, the exemption from ineligibility based on a high default rate for certain institutions of higher education.	Apr. 28, 1994	381
103–236	Foreign Relations Authorization Act, Fiscal Years 1994 and 1995	Apr. 30, 1994	382
103–237	To suspend temporarily the duty on the personal effects of participants in, and certain other individuals associated with, the 1994 World Cup Soccer Games, the 1994 World Rowing Championships, the 1995 Special Olympics World Games, the 1996 Summer Olympics, and the 1996 Paralympics.	Apr. 30, 1994	530
103–238	Marine Mammal Protection Act Amendments of 1994	Apr. 30, 1994	532
103–239	School-to-Work Opportunities Act of 1994	May 4, 1994	568
103–240	To amend title 38, United States Code, to extend eligibility for burial in national cemeteries to persons who have 20 years of service creditable for retired pay as members of a reserve component of the Armed Forces and to their dependents.	May 4, 1994	609
103–241	To designate the United States courthouse under construction in Denver, Colorado, as the "Byron White United States Courthouse".	May 4, 1994	610
103–242	Rio Grande Designation Act of 1994	May 4, 1994	611
103–243	To authorize appropriations for the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes.	May 4, 1994	613
103–244	Providing for the appointment of Frank Anderson Shrontz as a citizen regent of the Board of Regents of the Smithsonian Institution.	May 4, 1994	614
103–245	Providing for the appointment of Manuel Luis Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution.	May 4, 1994	615
103–246	To designate the week of May 2 through May 8, 1994, as "Public Service Recognition Week"	May 4, 1994	616
103–247	To make certain technical corrections, and for other purposes	May 6, 1994	618
103–248	Farmers Home Administration Improvement Act of 1994	May 11, 1994	619
103–249	To designate the Federal building located at 711 Washington Street in Boston, Massachusetts, as the "Jean Mayer Human Nutrition Research Center on Aging".	May 16, 1994	620
103–250	To authorize the President to proclaim September 1994 as "Classical Music Month"	May 16, 1994	621
103–251	Designating May 1, 1994, through May 7, 1994, as "National Walking Week"	May 16, 1994	622
103–252	Human Services Amendments of 1994	May 18, 1994	623
103–253	Clear Creek County, Colorado, Public Lands Transfer Act of 1993	May 19, 1994	674
103–254	Arson Prevention Act of 1994	May 19, 1994	679
103–255	To provide for a land exchange between the Secretary of Agriculture and Eagle and Pitkin Counties in Colorado, and for other purposes.	May 19, 1994	684
103–256	To designate the Federal building located at 600 Camp Street in New Orleans, Louisiana, as the "John Minor Wisdom United States Court of Appeals Building", and for other purposes.	May 25, 1994	690
103–257	To designate June 6, 1994, as "D-Day National Remembrance Day"	May 25, 1994	691
103–258	Designating May 11, 1994, as "Vietnam Human Rights Day"	May 25, 1994	692

Public Law	Title	Approved	108 Stat.
103–259	Freedom of Access to Clinic Entrances Act of 1994	May 26, 1994	694
103–260	Airport Improvement Program Temporary Extension Act of 1994	May 26, 1994	698
103–261	To extend the time period for compliance with the Nutrition Labeling and Education Act of 1990 for certain food products packaged prior to August 8, 1994.	May 26, 1994	705
103–262	To authorize appropriations for the National Historical Publications and Records Commission for fiscal years 1994, 1995, 1996, and 1997.	May 31, 1994	706
103–263	To make certain technical corrections	May 31, 1994	707
103–264	To designate the week of June 12 through 19, 1994, as "National Men's Health Week"	May 31, 1994	710
103–265	To designate the Post Office building located at 401 E. South Street in Jackson, Mississippi, as the "Medgar Wiley Evers Post Office".	June 10, 1994	712
103–266	To amend title 11, District of Columbia Code, and Part C of title IV of the District of Columbia Self-Government and Governmental Reorganization Act to remove gender-specific references.	June 13, 1994	713
103–267	Child Safety Protection Act	June 16, 1994	722
103–268	To amend the District of Columbia Spouse Equity Act of 1988 to provide for coverage of the former spouses of judges of the District of Columbia courts..	June 28, 1994	730
103–269	To amend title 11, D.C. Code, to clarify that blind individuals are eligible to serve as jurors in the Superior Court of the District of Columbia.	June 28, 1994	731
103–270	Independent Counsel Reauthorization Act of 1994	June 30, 1994	732
103–271	Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994	July 1, 1994	740
103–272	To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code.	July 5, 1994	745
103–273	To designate the Federal building located at 601 East 12th Street in Kansas City, Missouri, as the "Richard Bolling Federal Building" and the United States Courthouse located at Ninth and Locust Streets, in Kansas City, Missouri, as the "Charles Evans Whittaker United States Courthouse".	July 5, 1994	1402
103–274	To designate the United States courthouse located in Bridgeport, Connecticut, as the "Brien McMahon Federal Building".	July 5, 1994	1403
103–275	Making supplemental appropriations for the Department of Housing and Urban Development for the fiscal year ending September 30, 1994, and for other purposes.	July 5, 1994	1404
103–276	To provide for the imposition of temporary fees in connection with the handling of complaints of violations of the Perishable Agricultural Commodities Act, 1930.	July 5, 1994	1406
103–277	To extend the Export Administration Act of 1979	July 5, 1994	1407
103–278	Designating July 16 through July 24, 1994, as "National Apollo Anniversary Observance"	July 20, 1994	1408
103–279	John F. Kennedy Center Act Amendments of 1994	July 21, 1994	1409
103–280	To remove certain restrictions from a parcel of land owned by the city of North Charleston, South Carolina, in order to permit a land exchange, and for other purposes.	July 22, 1994	1418
103–281	Twin Falls County Landfill Act of 1994	July 22, 1994	1420
103–282	To amend the Small Business Act to increase the authorization for the development company program, and for other purposes.	July 22, 1994	1422
103–283	Legislative Branch Appropriations Act, 1995	July 22, 1994	1423
103–284	To designate the plaza to be constructed on the Federal Triangle property in Washington, DC, as the "Woodrow Wilson Plaza".	Aug. 1, 1994	1448
103–285	To designate the Federal building located on St. Croix, Virgin Islands, as the "Almeric L. Christian Federal Building".	Aug. 1, 1994	1449
103–286	To require certain payments made to victims of Nazi persecution to be disregarded in determining eligibility for and the amount of benefits or services based on need.	Aug. 1, 1994	1450
103–287	To designate the Federal building and United States courthouse in Lubbock, Texas, as the "George H. Mahon Federal Building and United States Courthouse".	Aug. 1, 1994	1453
103–288	To designate the United States courthouse located at 940 Front Street in San Diego, California, and the Federal building attached to the courthouse as the "Edward J. Schwartz Courthouse and Federal Building".	Aug. 1, 1994	1454
103–289	To designate the Federal building and United States courthouse located at 100 East Houston Street in Marshall, Texas, as the "Sam B. Hall, Jr. Federal Building and United States Courthouse".	Aug. 1, 1994	1455
103–290	To provide that the National Education Commission on Time and Learning shall terminate on September 30, 1994.	Aug. 1, 1994	1456
103–291	Designating May 29, 1995, through June 6, 1995, as a "Time for the National Observance of the Fiftieth Anniversary of World War II".	Aug. 1, 1994	1457
103–292	Winter Run Chinook Salmon Captive Broodstock Act of 1993	Aug. 11, 1994	1458
103–293	Designating August 2, 1994, as "National Neighborhood Crime Watch Day"	Aug. 11, 1994	1459
103–294	To designate August 1, 1994, as "Helsinki Human Rights Day"	Aug. 11, 1994	1460
103–295	To authorize the transfer of naval vessels to certain foreign countries	Aug. 12, 1994	1462
103–296	Social Security Independence and Program Improvements Act of 1994	Aug. 15, 1994	1464
103–297	Telemarketing and Consumer Fraud and Abuse Prevention Act	Aug. 16, 1994	1545
103–298	General Aviation Revitalization Act of 1994	Aug. 17, 1994	1552
103–299	Recognizing the American Academy in Rome, as American overseas center for independent study and advanced research, on the occasion of the 100th anniversary of its founding.	Aug. 18, 1994	1555
103–300	To designate the United States courthouse under construction in St. Louis, Missouri, as the "Thomas F. Eagleton United States Courthouse".	Aug. 19, 1994	1557
103–301	To proclaim the week of October 16 through October 22, 1994, as "National Character Counts Week".	Aug. 19, 1994	1558
103–302	Indian Dams Safety Act of 1994	Aug. 23, 1994	1560
103–303	District of Columbia Justice Reform Act of 1994	Aug. 23, 1994	1564
103–304	King Holiday and Service Act of 1994	Aug. 23, 1994	1565
103–305	Federal Aviation Administration Authorization Act of 1994	Aug. 23, 1994	1569
103–306	Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1995, and making supplemental appropriations for such programs for the fiscal year ending September 30, 1994, and for other purposes.	Aug. 23, 1994	1608
103–307	Military Construction Appropriations Act, 1995	Aug. 23, 1994	1659
103–308	Designating December 7 of each year as "National Pearl Harbor Remembrance Day"	Aug. 23, 1994	1669
103–309	Designating October 1994 as "Italian-American Heritage and Culture Month"	Aug. 23, 1994	1670

Public Law	Title	Approved	108 Stat.
103–310	To direct the Administrator of General Services to acquire by transfer the Old U.S. Mint in San Francisco, California, and for other purposes.	Aug. 25, 1994	1672
103–311	To amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1994, 1995, 1996, and 1997, and for other purposes.	Aug. 26, 1994	1673
103–312	Federal Trade Commission Act Amendments of 1994	Aug. 26, 1994	1691
103–313	Farmington Wild and Scenic River Act	Aug. 26, 1994	1699
103–314	George Washington National Forest Mount Pleasant Scenic Area Act	Aug. 26, 1994	1703
103–315	To redesignate the postal facility located at 2100 North 13th Street in Reading, Pennsylvania, as the "Gus Yatron Postal Facility".	Aug. 26, 1994	1706
103–316	Energy and Water Development Appropriations Act, 1995	Aug. 26, 1994	1707
103–317	Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies programs for the fiscal year ending September 30, 1995, and making supplemental appropriations for these departments and agencies for the fiscal year ending September 30, 1994, and for other purposes.	Aug. 26, 1994	1724
103–318	Northern Great Plains Rural Development Act	Aug. 26, 1994	1781
103–319	To designate the week beginning on November 20, 1994 and ending on November 26, 1994, as "National Family Caregivers Week".	Aug. 26, 1994 ...	1790
103–320	Designating September 16, 1994, as "National POW/MIA Recognition Day" and authorizing display of the National League of Families POW/MIA flag.	Aug. 26, 1994	1791
103–321	To amend the Commemorative Works Act, and for other purposes	Aug. 26, 1994	1793
103–322	Violent Crime Control and Law Enforcement Act of 1994	Sept. 13, 1994	1796
103–323	To restore Federal services to the Pokagon Band of Potawatomi Indians	Sept. 21, 1994	2152
103–324	Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act ..	Sept. 21, 1994	2156
103–325	Riegle Community Development and Regulatory Improvement Act of 1994	Sept. 23, 1994	2160
103–326	To reduce the restrictions on lands conveyed by deed under the Act of June 8, 1926	Sept. 23, 1994	2297
103–327	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995.	Sept. 28, 1994	2298
103–328	Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994	Sept. 29, 1994	2338
103–329	Treasury, Postal Service and General Government Appropriations Act, 1995	Sept. 30, 1994	2382
103–330	Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995.	Sept. 30, 1994	2435
103–331	Department of Transportation and Related Agencies Appropriations Act, 1995	Sept. 30, 1994	2471
103–332	Department of the Interior and Related Agencies Appropriations Act, 1995	Sept. 30, 1994	2499
103–333	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1995.	Sept. 30, 1994	2539
103–334	Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes.	Sept. 30, 1994	2576
103–335	Making appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.	Sept. 30, 1994	2599
103–336	To designate the building located at 41–42 Norre Gade in Saint Thomas, Virgin Islands, for the period of time during which it houses operations of the United States Postal Service, as the Alvaro de Lugo Post Office; and to amend title 39, United States Code, to make applicable with respect to the United States Postal Service certain exclusionary authority relating to the treatment of reemployed annuitants under the civil service retirement laws, and forother purposes.	Oct. 3, 1994	2661
103–337	National Defense Authorization Act for Fiscal Year 1995	Oct. 5, 1994	2663
103–338	To designate the facility of the United States Postal Service located at 401 South Washington Street in Chillicothe, Missouri, as the "Jerry L. Litton United States Post Office Building", and to authorize travel and transportation expenses for certain Federal career appointees, and for other purposes.	Oct. 6, 1994	3114
103–339	Guam Excess Lands Act	Oct. 6, 1994	3116
103–340	Junior Duck Stamp Conservation and Design Program Act of 1994	Oct. 6, 1994	3119
103–341	To designate the United States Post Office building located at 220 South 40th Avenue in Hattiesburg, Mississippi, as the "Roy M. Wheat Post Office".	Oct. 6, 1994	3122
103–342	To designate the United States Post Office building located at 1601 Highway 35 in Middletown, New Jersey, as the "Candace White Post Office"	Oct. 6, 1994	3123
103–343	To designate the United States Post Office building located at 9630 Estate Thomas in Saint Thomas, Virgin Islands, as the "Aubrey C. Ottley Post Office"	Oct. 6, 1994	3124
103–344	American Indian Religious Freedom Act Amendments of 1994	Oct. 6, 1994	3125
103–345	President John F. Kennedy Assassination Records Collection Extension Act of 1994	Oct. 6, 1994	3128
103–346	To direct the Secretary of the Interior to convey to the City of Imperial Beach, California, approximately 1 acre of land in the Tijuana Slough National Wildlife Refuge.	Oct. 6, 1994	3131
103–347	To designate October 1994 as "Crime Prevention Month"	Oct. 6, 1994	3132
103–348	Vegetable Ink Printing Act of 1994	Oct. 6, 1994	3133
103–349	Plant Variety Protection Act Amendments of 1994	Oct. 6, 1994	3136
103–350	Piscataway Park Expansion Act of 1994	Oct. 6, 1994	3146
103–351	To express the sense of the Congress in Commemoration of the 75th anniversary of Grand Canyon National Park.	Oct. 8, 1994	3147
103–352	To provide for the continuation of certain fee collections for the expenses of the Securities and Exchange Commission for fiscal year 1995.	Oct. 10, 1994	3148
103–353	Uniformed Services Employment and Reemployment Rights Act of 1994	Oct. 13, 1994	3149
103–354	Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994	Oct. 13, 1994	3178
103–355	Federal Acquisition Streamlining Act of 1994	Oct. 13, 1994	3243
103–356	Government Management Reform Act of 1994	Oct. 13, 1994	3410
103–357	To amend the Act entitled "An Act to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes"	Oct. 14, 1994	3418
103–358	Child Abuse Accountability Act	Oct. 14, 1994	3420
103–359	Intelligence Authorization Act for Fiscal Year 1995	Oct. 14, 1994	3423
103–360	To designate the United States courthouse to be constructed at 907 Richland Street in Columbia, South Carolina, as the "Matthew J. Perry, Jr. United States Courthouse"	Oct. 14, 1994	3462
103–361	To designate the second Sunday in October of 1994 as "National Children's Day"	Oct. 14, 1994	3463

Public Law	Title	Approved	108 Stat.
103–362	To establish the fourth Sunday of July as "Parents' Day"	Oct. 14, 1994	3465
103–363	Designating the week beginning October 16, 1994, as "National Penny Charity Week"	Oct. 14, 1994	3466
103–364	Saguaro National Park Establishment Act of 1994	Oct. 14, 1994	3467
103–365	Arizona Wilderness Land Title Resolution Act of 1994	Oct. 14, 1994	3469
103–366	To designate 1994 as "The Year of Gospel Music"	Oct. 14, 1994	3472
103–367	To designate October 1994 as "National Breast Cancer Awareness Month"	Oct. 14, 1994	3473
103–368	Designating 1995 the "Year of the Grandparent"	Oct. 14, 1994	3475
103–369	Satellite Home Viewer Act of 1994	Oct. 18, 1994	3477
103–370	To designate October 19, 1994, as "National Mammography Day"	Oct. 18, 1994	3483
103–371	Petroleum Marketing Practices Act Amendments of 1994	Oct. 19, 1994	3484
103–372	To provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.	Oct. 19, 1994	3487
103–373	Federal Payment Reauthorization Act of 1994	Oct. 19, 1994	3488
103–374	To authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1995 and 1996.	Oct. 19, 1994	3492
103–375	North American Wetlands Conservation Act Amendments of 1994	Oct. 19, 1994	3494
103–376	Farm Credit System Agricultural Export and Risk Management Act	Oct. 19, 1994	3497
103–377	Mohegan Nation of Connecticut Land Claims Settlement Act of 1994	Oct. 19, 1994	3501
103–378	To authorize the transfer of naval vessels to certain foreign countries	Oct. 19, 1994	3508
103–379	Designating the months of March 1995 and March 1996 as "Irish-American Heritage Month"	Oct. 19, 1994	3510
103–380	Providing for temporary extension of the application of the final paragraph of section 10 of the Railway Labor Act with respect to the dispute between the Soo Line Railroad Company and certain of its employees.	Oct. 19, 1994	3512
103–381	African Conflict Resolution Act	Oct. 19, 1994	3513
103–382	Improving America's Schools Act of 1994	Oct. 20, 1994	3518
103–383	Full Faith and Credit for Child Support Orders Act	Oct. 20, 1994	4063
103–384	Native American Veterans' Memorial Establishment Act of 1994	Oct. 22, 1994	4067
103–385	To redesignate the Post Office building located at 1000 Lamar Street in Wichita Falls, Texas, as the "Graham B. Purcell, Jr. Post Office Building"	Oct. 22, 1994	4069
103–386	To designate the United States Post Office building located at 3000 Veterans Drive in Saint Thomas, Virgin Islands, as the "Arturo R. Watlington, Sr Post Office"	Oct. 22, 1994	4070
103–387	Social Security Domestic Employment Reform Act of 1994	Oct. 22, 1994	4071
103–388	Federal Employees Family Friendly Leave Act	Oct. 22, 1994	4079
103–389	Unlisted Trading Privileges Act of 1994	Oct. 22, 1994	4081
103–390	To grant the Consent of the Congress to the Kansas and Missouri Metropolitan Culture District Compact.	Oct. 22, 1994	4085
103–391	Rhinoceros and Tiger Conservation Act of 1994	Oct. 22, 1994	4094
103–392	Jobs Through Trade Expansion Act of 1994	Oct. 22, 1994	4098
103–393	Water Bank Extension Act of 1994	Oct. 22, 1994	4105
103–394	Bankruptcy Reform Act of 1994	Oct. 22, 1994	4106
103–395	Providing for the convening of the First Session of the One Hundred Fourth Congress	Oct. 22, 1994	4152
103–396	Animal Medicinal Drug Use Clarification Act of 1994	Oct. 22, 1994	4153
103–397	Payments In Lieu of Taxes Act	Oct. 22, 1994	4156
103–398	Lincoln County, Montana, Lands Transfer Act of 1994	Oct. 22, 1994	4162
103–399	Indian Lands Open Dump Cleanup Act of 1994	Oct. 22, 1994	4164
103–400	United States-Mexico Border Health Commission Act	Oct. 22, 1994	4169
103–401	Pension Annuitants Protection Act of 1994	Oct. 22, 1994	4172
103–402	To amend the Aleutian and Pribilof Islands Restitution Act to increase authorization for appropriation to compensate Aleut villages for church property lost, damaged, or destroyed during World War II.	Oct. 22, 1994	4174
103–403	Small Business Administration Reauthorization and Amendments Act of 1994	Oct. 22, 1994	4175
103–404	To designate the Warren B. Rudman United States Courthouse, the Jamie L. Whitten Federal Building, and the William H. Natcher Federal Building and United States Courthouse.	Oct. 22, 1994	4206
103–405	To designate the United States Courthouse in Detroit, Michigan, as the "Theodore Levin Courthouse", and for other purposes.	Oct. 22, 1994	4208
103–406	Energy Policy and Conservation Act Amendments Act of 1994	Oct. 22, 1994	4209
103–407	Sheep Promotion, Research, and Information Act of 1994	Oct. 22, 1994	4210
103–408	To recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy.	Oct. 22, 1994	4228
103–409	FEGLI Living Benefits Act	Oct. 25, 1994	4230
103–410	To redesignate the Post Office building located at 600 Princess Anne Street in Fredericksburg, Virginia, as the "Samuel E. Perry Post Office Building"	Oct. 25, 1994	4235
103–411	Independent Safety Board Act Amendments of 1994	Oct. 25, 1994	4236
103–412	American Indian Trust Fund Management Reform Act of 1994	Oct. 25, 1994	4239
103–413	Indian Self-Determination Act Amendments of 1994	Oct. 25, 1994	4250
103–414	To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.	Oct. 25, 1994	4279
103–415	To make certain technical amendments relating to the State Department Basic Authorities Act of 1956, the United States Information and Educational Exchange Act of 1948, and other provisions of law.	Oct. 25, 1994	4299
103–416	Immigration and Nationality Technical Corrections Act of 1994	Oct. 25, 1994	4305
103–417	Dietary Supplement Health and Education Act of 1994	Oct. 25, 1994	4325
103–418	Veterans' Compensation Cost-of-Living Adjustment Act of 1994	Oct. 25, 1994	4336
103–419	Civil Rights Commission Amendments Act of 1994	Oct. 25, 1994	4338
103–420	Judicial Amendments Act of 1994	Oct. 25, 1994	4343
103–421	Base Closure Community Redevelopment and Homeless Assistance Act of 1994	Oct. 25, 1994	4346
103–422	Approving the location of a Thomas Paine Memorial and a World War II Memorial in the Nation's Capital.	Oct. 25, 1994	4356
103–423	Regarding United States policy toward Haiti	Oct. 25, 1994	4358
103–424	To reauthorize the Office of Special Counsel, and for other purposes	Oct. 29, 1994	4361
103–425	To amend the Defense Department Overseas Teachers Pay and Personnel Practices Act	Oct. 31, 1994	4369

Public Law	Title	Approved	108 Stat.
103–426	To authorize the Secretary of the Interior to negotiate agreements for the use of Outer Continental Shelf sand, gravel, and shell resources.	Oct. 31, 1994	4371
103–427	To ensure that timber-dependent communities adversely affected by the Forest Plan for a Sustainable Economy and a Sustainable Environment qualify for loans and grants from the Rural Development Administration.	Oct. 31, 1994	4373
103–428	To authorize the Export-Import Bank of the United States to provide financing for the export of nonlethal defense articles and defense services the primary end use of which will be for civilian purposes.	Oct. 31, 1994	4375
103–429	To codify without substantive change recent laws related to transportation and to improve the United States Code.	Oct. 31, 1994	4377
103–430	Census Address List Improvement Act of 1994	Oct. 31, 1994	4393
103–431	Ocean Pollution Reduction Act	Oct. 31, 1994	4396
103–432	Social Security Act Amendments of 1994	Oct. 31, 1994	4398
103–433	To designate certain lands in the California Desert as wilderness, to establish the Death Valley and Joshua Tree National Parks, to establish the Mojave National Preserve, and for other purposes.	Oct. 31, 1994	4471
103–434	To provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes.	Oct. 31, 1994	4526
103–435	To make certain technical corrections, and for other purposes	Nov. 2, 1994	4566
103–436	Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act	Nov. 2, 1994	4577
103–437	To make technical improvements in the United States Code by amending provisions to reflect the current names of congressional committees.	Nov. 2, 1994	4581
103–438	International Antitrust Enforcement Assistance Act of 1994	Nov. 2, 1994	4597
103–439	Central Midwest Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1994.	Nov. 2, 1994	4607
103–440	To authorize appropriations for high-speed rail transportation, and for other purposes	Nov. 2, 1994	4615
103–441	To designate the United States courthouse located at 231 West Lafayette Street in Detroit, Michigan, as the "Theodore Levin United States Courthouse" and to designate the postal facility located at 1401 West Fort Street in Detroit, Michigan, as the "George W Young Post Office".	Nov 2, 1994	4629
103–442	To amend title 18, United States Code, with respect to certain crimes relating to Congressional medals of honor.	Nov 2, 1994	4630
103–443	To amend the Omnibus Budget Reconciliation Act of 1993 to permit the prompt sharing of timber sale receipts of the Forest Service and the Bureau of Land Management.	Nov. 2, 1994	4631
103–444	Crow Boundary Settlement Act of 1994	Nov. 2, 1994	4632
103–445	To provide for the acceptance by the Secretary of Education of applications submitted by the local educational agency serving the Window Rock Unified School District, Window Rock, Arizona, under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) for fiscal years 1994 and 1995.	Nov 2, 1994	4644
103–446	Veterans' Benefits Improvements Act of 1994	Nov. 2, 1994	4645
103–447	International Narcotics Control Corrections Act of 1994	Nov. 2, 1994	4691
103–448	Healthy Meals for Healthy Americans Act of 1994	Nov. 2, 1994	4699
103–449	To establish the Quinebaug and Shetucket Rivers Valley National Heritage Corridor in the State of Connecticut, and for other purposes.	Nov. 2, 1994	4752
103–450	To expand the boundaries of the Red Rock Canyon National Conservation Area	Nov. 2, 1994	4766
103–451	National Maritime Heritage Act of 1994	Nov. 2, 1994	4769
103–452	Veterans Health Programs Extension Act of 1994	Nov. 2, 1994	4783
103–453	To designate the building located at 216 Coleman Avenue in Waveland, Mississippi, for the period of time during which it houses operations of the United States Postal Service, as the "John Longo, Jr. Post Office"	Nov. 2, 1994	4790
103–454	To provide for the annual publication of a list of federally recognized Indian tribes, and for other purposes.	Nov. 2, 1994	4791
103–455	To designate the building located at 100 Vester Gade, in Cruz Bay, Saint Thomas, Virgin Islands, for the period of time which it houses operations of the United States Postal Service, as the "Ubaldina Simmons Post Office".	Nov. 2, 1994	4797
103–456	To designate the United States Post Office building located at 115 North Chester in Ruleville, Mississippi, as the "Fannie Lou Hamer Post Office".	Nov. 2, 1994	4798
103–457	To award a congressional gold medal to Rabbi Menachem Mendel Schneerson	Nov. 2, 1994	4799
103–458	To designate the United States Post Office building located at 301 West Lexington Street in Independence, Missouri, as the "William J. Randall Post Office"	Nov. 2, 1994	4801
103–459	To designate the United States Post Office building located at 103–104 Estate Richmond in Saint Croix, Virgin Islands, as the "Wilbert Armstrong Post Office"	Nov. 2, 1994	4802
103–460	To designate the building located at 4021 Laclede in St. Louis, Missouri, for the period of time during which it houses operations of the United States Postal Service, as the "Marian Oldham Post Office"	Nov. 2, 1994	4803
103–461 ...	To direct the Secretary of the Interior to make technical corrections to maps relating to the Coastal Barrier Resources System, and to authorize appropriations to carry out the Coastal Barrier Resources Act.	Nov. 2, 1994	4804
103–462	Designating the month of November in each of the calendar years 1993 and 1994 as "National American Indian Heritage Month".	Nov. 2, 1994	4805
103–463	Designating January 16, 1995, as "National Good Teen Day"	Nov. 2, 1994	4807
103–464	Designating September 17, 1994, as "Constitution Day"	Nov. 9, 1994	4808
103–465	Uruguay Round Agreements Act	Dec. 8, 1994	4809

NOTE: The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). Some laws may not yet be available for purchase.

federal register

Monday
December 19, 1994

Part III

Department of the Interior

Fish and Wildlife Service

Notice of Availability-Planning and Management Chapter of the Service Manual; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability—Planning and Management Chapter of the Service Manual

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Part 602 of the Service Manual concerning planning and management has been prepared. This chapter will provide guidance for comprehensive management planning for all lands, waters, and interests of the National Wildlife Refuge System. This guidance will be applicable to the full range of planning needs that reflect an ecosystem approach to land management and provides a clear statement of the desired future conditions of units that comprise the National Wildlife Refuge System (NWRS). The purpose of this Notice is to allow the public the opportunity to comment on the content of the chapter. The chapter is available for review by writing for a copy at the address listed below under the heading **ADDRESSES**.

DATES: Written comments will be accepted on or before February 17, 1995.

ADDRESSES: Copies of the planning and management chapter may be obtained and comments regarding such chapter received at: U.S. Fish and Wildlife Service, 1849 C Street, NW, Attention: Pete Jerome, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Pete Jerome, at the address listed under the heading **ADDRESSES**; telephone: 703–358–2043.

SUPPLEMENTARY INFORMATION: The planning and management chapter has been developed with Regional input over a period of several months. The Directorate has reviewed the chapter for consistency with Regional goals and the mission of the Service. The chapter ensures consistency with the National Environmental Policy Act (NEPA), including the Draft "Refuges 2003" Plan/Environmental Impact Statement (March 1993—to be completed in 1995), and the Service's Ecosystem Approach to Fish and Wildlife Conservation (March 1994) and associated National Implementation Guidance (June 1994). The major objectives of comprehensive management planning, as outlined in the chapter, are: (1) To ensure that management of NWRS lands reflects policies and goals of the NWRS and the purposes for which each was established; (2) to ensure that all units contribute to the conservation of biological diversity and to the structure and function of the ecosystem in which they are located; (3) to provide a clear statement of the desired future conditions of the planning unit as it should be when system and individual unit purposes are accomplished, (4) to provide a systematic process to aid decision making by identifying opportunities, issues, and concerns, collecting, organizing, and analyzing information; and developing and considering a range of management alternatives; (5) to aid in determining the compatibility of uses on Service units; (6) to ensure that other Service programs, other agencies, and the public have opportunities to participate in management decision making for each Service unit; (7) to provide a uniform basis for budget requests for operational maintenance, and capital development programs that accomplish unit and NWRS purposes; (8) to provide a basis for monitoring progress and evaluating plan implementation; (9) to identify unit objectives and management strategies leading to their achievement; and (10) to provide long-term continuity in unit management.

Dated: November 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–31030 Filed 12–16–94 8:45 am]

BILLING CODE 4310–55–M

federal register

Monday
December 19, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 3500

Real Estate Settlement Procedures Act, Section 6, Transfer of Servicing of Mortgage Loans and Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures; Technical Correction; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 3500

[Docket Nos. R–94–1538; FR–2942–F–04 and R–94–1688; FR–3255–F–04]

RIN: 2502–AG27

Real Estate Settlement Procedures Act, Section 6, Transfer of Servicing of Mortgage Loans (Regulation X); and Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures; Technical Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This final rule replaces the Interim Rule dated April 26, 1991, and implements the provisions of section 6 of the Real Estate Settlement Procedures Act (RESPA). Most recently, the Riegle Community Development and Regulatory Improvement Act of 1994 provides alternate methods for disclosure of mortgage servicing history. Section 6 also sets forth procedures regarding the transfer of mortgage servicing for any federally related mortgage loan, as defined in section 3 of RESPA and the definition is refined in the implementing regulation for RESPA and 24 CFR 3500.2. Although RESPA was extended by section 908 of the Housing and Community Development Act of 1992 to subordinate liens, in this rule the Secretary has exempted from RESPA's mortgage servicing coverage all federally related mortgage loans that are not secured by a first lien. In addition, the Department has adopted conforming amendments to 24 CFR part 203, the FHA Single Family Mortgage Insurance program.

The Department is also publishing a conforming amendment to its final rule on escrow accounting procedures, published on October 26, 1994 (59 FR 53890). This amendment will update a cross-reference in another section of part 3500 that references enforcement of escrow accounting provisions.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Staff, Room 5239, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 708–4560. The TDD number for hearing-impaired persons is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2502–0458.

Justification for Final Rulemaking—Part 203

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish for effect without first soliciting public comment the sections of this rule that pertain to 24 CFR part 203, and that prior public procedure is unnecessary because those portions of this rule merely conform part 203 to the provisions of Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) that have been developed through notice and comment rulemaking.

Background

Section 941 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) amended the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq. (RESPA), by adding a new section 6, which addresses mortgage servicing requirements (i.e., the right to collect mortgage payments for principal, interest, and any escrow account items). Section 6 (12 U.S.C. 2605) requires disclosure to certain mortgage loan applicants of historical data regarding the transfer of mortgage servicing, as well as estimates regarding the potential transfer of servicing pertaining to the applicant's mortgage loan and other mortgage loans. Section 6 was further amended on April 10, 1991, by Dire Emergency Supplemental Appropriations Act (Pub. L. 102–27), to create a transition period during which lenders and servicers would not be liable for violations of the Act. This amendment also directed HUD to publish implementing regulations effective no later than April 20, 1991. On April 26, 1991, the Department published an Interim Rule implementing Section 6 (56 FR 19505). That rule remains in effect until it is replaced by this final rule.

Section 6 requires that, at the time of application for federally related mortgage loans, applicants be given information in a disclosure statement (hereafter called "Servicing Disclosure Statement") concerning the likelihood that the servicing of their mortgage may be transferred and information regarding the history of mortgage servicing transfers of the person making the loan Section 6 sets forth additional notice requirements at the time of a servicing transfer (hereafter called "Notice of Transfer") and other rights for borrowers, and provides for the collection of damages and costs by borrowers from servicers for noncompliance. Finally, section 6 preempts any State law or regulation regarding notice to borrowers at the time of application or servicing transfer, as long as the lender or servicer complies with the relevant provisions of section 6.

HUD originally complied with the requirements to promulgate a model disclosure statement and applicant's acknowledgement by publication of a notice in the **Federal Register** on March 20, 1991 (56 FR 11886). These requirements were restated in an Interim Rule of April 26, 1991 (56 FR 19505). HUD encourages persons covered by this new rule to implement its provisions earlier than its effective date. (The Department also recently published a related rule on escrow accounting procedures under section 10 of RESPA (59 FR 53890, October 26, 1994).

Comments on Interim Rule and Responses

In the interim rule the Department requested comments on the provisions of the rule. The following is a summary of comments received and HUD's position on the issues in the final rule.

Questions Regarding Definitions

Business day. There were two comments about the definition of "business day." Both recommended that the definition be put in § 3500.2, so that it would apply to the entire regulation, and that it be the same definition in Regulation X and Regulation Z (Truth in Lending).

HUD response. The current RESPA rule defines a "business day" utilizing language conforming with the definition in Regulation Z, which implements the Truth in Lending Act. Section 6 of RESPA does not specifically define "business day", but in certain

provisions excludes public holidays, Saturdays, and Sundays from references to "days". To assure uniform statutory construction, as well as to continue uniformity with related Federal regulatory statutes, the Department is applying the "business day" definition of the Regulation X in this rule. Therefore, business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions. If a day is not specified as a business day in this rule, the reference is to a calendar day.

Effective date of transfer. There were three comments on this definition. One commenter approved of the definition because the date was pinpointed. Another commenter disagreed and considered the date indefinite, particularly as it relates to delinquent mortgages. The third thought the effective date of transfer should be the date the contract between the parties states that the transfer takes place.

HUD response. The term "effective date of transfer" is defined in Section 6 of the Act as the date on which the mortgage payment of a borrower is first due to the transferee servicer (new servicer) pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan. The statute controls and HUD does not have discretion to consider the suggested alternatives.

Mortgage servicing loan. The Department received several comments regarding the extent and limitations of coverage under this rule. The term "federally related mortgage loan" was the starting point for delineating coverage and is defined in § 3500.2, subject to the exemptions in § 3500.5. Pursuant to section 19(a) of RESPA, at this time the Secretary has exempted from the requirements of this rule any subordinate lien federally related mortgage loans and has excluded all open-end lines of credit (home equity plans), whether secured by a first or subordinate lien, that are covered under the Truth in Lending Act and Regulation Z. The penalty provisions of the Truth in Lending Act are similar to those of Section 6 of RESPA, and the error resolution section of Regulation Z (12 CFR 226.13) provides protections similar to Section 6 of RESPA. Any other federally related mortgage loan secured by a first lien and not exempted under § 3500.5, is covered by these requirements and called a "mortgage servicing loan."

Other Terms

Four commenters asked for definitions of additional terms. One commenter suggested that "loans made" be distinguished from "loans originated", and that "servicing transfer" be defined.

HUD response. The terms "loans made" and "loans originated" are synonymous, but the Department agrees that consistent use of terminology would avoid confusion and, therefore, has eliminated the term "loans made." HUD considers a "servicing transfer" to be a sale, assignment, or transfer of servicing to a person or legal entity other than the maker of the loan named in the legal documents. Also, as discussed more fully later in this preamble, a servicing transfer occurs as part of a table-funding (defined in § 3500.2) between the mortgage broker, as transferor, and the funding lender, as transferee.

Refinancing Transactions

The Department received 18 comments relating to refinancing transactions. Seven commenters recommended that refinancing be defined. Three commenters questioned the statutory authority for covering refinancing transactions. Since HUD received these comments, the Housing and Community Development Act of 1992 amended RESPA to state specifically that refinancing transactions are covered. A definition of refinancing was added to part 3500 in revisions published on February 10, 1994 (59 FR 6505, concerning subordinate liens), and is applicable to this section. The impact of this definition is that transactions specifically excluded from the definition of refinancing do not require new disclosures.

Questions Involving State Law Preemption

One commenter asked about the effect of Section 6 on State laws. While Section 18 of RESPA (12 U.S.C. 2616) sets forth general provisions regarding preemption, Section 6 contains its own preemption provision.

The Secretary believes that one of the significant achievements of Section 6 was the elimination of perceived difficulties in the marketing of servicing rights for mortgage loans originated in various States. In part, Section 6 constituted a recognition of the *de facto* national market for mortgages and mortgage servicing and represented an attempt to facilitate such a market by establishing uniform standards. Therefore, Section 6 is determinative of the information required for the Servicing Disclosure Statement and the Notice(s) of Transfer; any other similar State requirements are preempted. Other provisions of State laws, such as those requiring additional notices to insurance companies or taxing authorities are not preempted by Section 6 or this rule. If permitted under State law, such additional information may be added to a notice prepared under this section.

Requests for Exemption

(1) Nine commenters requested that their institutions be exempted from providing Servicing Disclosure Statements, either because they were not institutions that transferred servicing or because they were chartered to make certain public purpose loans. Another commenter wanted an exemption for lenders that always transfer loans at closing; three commenters requested an exemption for lenders that do not sell the servicing rights.

HUD response. While the Secretary has the authority to create classes of exemptions under Section 19 of RESPA, no commenter advanced a reason that would justify an exempted class. The Servicing Disclosure Statement is particularly appropriate when a lender always transfers loans at closing. When a servicer never sells servicing rights, it can simply state that fact. In any event, the information relating to complaint resolution must be provided, although lenders that do not transfer servicing may incorporate this information into the HUD–1 or HUD–1A. HUD amended the Servicing Disclosure Statement to include a sentence in the heading suggesting that a borrower save the statement if a loan is approved and to include alternate language regarding the history of mortgage servicing transfers that is allowed under the 1994 amendments of Section 6.

(2) In the event a lender changes its policy and begins to sell the servicing, a commenter suggested that these lenders have to follow the rule within six months after beginning sale of servicing.

HUD response. When a lender determines that it will sell servicing, the lender will be subject to the requirement that it furnish to the borrower a 15-day Notice of Transfer. The lender may also be required to revise its Servicing Disclosure Statement at the next calendar year revision. There is no obligation to send an amended Servicing Disclosure Statement for previously closed loans at the time of the sale of servicing; the 15-day Notice of Transfer provides the required information.

(3) Three commenters suggested that mortgage brokers should be exempt from furnishing the Servicing Disclosure Statement, because furnishing the Statement is the obligation of the

funding lender. However, another commenter suggested that a face-to-face meeting with the mortgage broker should satisfy the face-to-face meeting requirement for a lender. Two other commenters stated that the time (3 business days) should begin to run after the lender receives the written application from another party.

HUD response. The general rule is that the Servicing Disclosure Statement shall be provided within 3 days of receipt of the borrower's written loan application, unless the application for credit is turned down within that time. If an application is received by a mortgage broker that will close the loan in its own name using table funding, the table funding mortgage broker is to provide the Servicing Disclosure Statement, using the "we do not service mortgage loans" optional language in § 3500.21(b)(4). Similarly, for first-lien dealer loans, the dealer should provide the Servicing Disclosure Statement, using the "we do not service mortgage loans" optional language.

(4) A commenter questioned whether a Servicing Disclosure Statement is required when the mortgage servicing function is transferred to an affiliated entity. A question was also posited as to how to treat a circumstance when a lender had a program that always sold servicing and another where no servicing was required.

HUD response. A Notice of Transfer generally is required when there is a transfer of servicing between or to affiliates, unless there are no substantial changes in the way the borrower makes payments (see discussion below). However, the information regarding affiliate or subsidiary transfers is not required to be included in the statistical computations found in the Servicing Disclosure Statement. In the interest of full disclosure, this information may be provided voluntarily; the model format allows for this disclosure. If the lender is providing the historical data, the lender should indicate whether the Servicing Disclosure Statement includes assignments, sales or transfers to affiliates or subsidiaries. When the lender has a variety of programs, some of which sell servicing and some of which do not, information may be added to the model format to allow the servicer to describe this situation, or some variation of this situation. Further, while the use of the acknowledgment is mandatory, the use of the model format is not, and the incorporation in a footnote or otherwise of reasonable additional information, to describe situations that do not fit conveniently into the format is anticipated and expected. Sample language describing other alternative situations has been included with the model format.

(5) Several commenters discussed proposed variations to the Servicing Disclosure Statement. These variations included permitting a lender to: (i) state its reasons for servicing or not servicing loans; (ii) identify the types of loans it services and, by the percentages of each type of loan transferred, the types of loans it sells; and (iii) advise the borrower of the new servicer, if any, at settlement. One commenter suggested that § 3500.21(c) contain a statement that the use of the sample language in the appendices be considered as compliance with the disclosure requirements of that paragraph. Fifteen commenters recommended that lenders should not be required to obtain written acknowledgements of the Servicing Disclosure Statement from loan applicants whose applications are rejected or withdrawn. One commenter recommended that actual percentages be used rather than rounding to the nearest quartile. Commenters also requested that HUD permit longer than 31 days to calculate the percentage after the end of the calendar year.

HUD response. The elements contained in the rule and Servicing Disclosure Statement comply with the Secretary's mandate under Section 6 of RESPA. The Secretary is required to develop a disclosure statement that would notify applicants for federally related mortgage loans about the servicing procedures, transfer practices and requirements, and the available complaint resolution process. In addition, the Secretary must develop an acknowledgement that the disclosure has been read and understood, as evidenced by signatures of the applicants when such a statement appears in the application. As in the interim rule, the Secretary has determined that is in the applicant's best interest for the signature to be at the end of the Servicing Disclosure Statement, because this directs the applicant's attention particularly to the servicing transfer issue.

While the precise wording of the Servicing Disclosure Statement is left to the lender's discretion, HUD presumes that lenders will use the sample language in developing their own forms. However, HUD will not give blanket approval to forms that it has not seen; the lender must determine the appropriate language to make proper disclosure to the borrower. Only the language in the model Applicant's Acknowledgement is mandatory and must be followed precisely.

Even though the Department believes that most lenders will use the simpler alternative language allowed by the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, approved September 23, 1994), the Department has adopted the suggestion of permitting a longer time for computation of the previous year's percentages. The final rule allows the lender to calculate the percentages no later than the end of the first quartile in the next calendar year (March 31). Under his Section 19 authority, the Secretary has also created an exemption to the disclosure requirement, including the signed acknowledgment, if an applicant is turned down for credit within three business days of receipt of the application. This exemption makes all the mortgage servicing notice provisions consistent with good faith estimate amendments in section 951 of the Housing and Community Development Act of 1992.

Merger and/or Acquisition of Servicing

(1) Several commenters asked various questions as to what disclosures were necessary when a servicer buys another servicer, with or without changing the servicer's name, or merges one servicer into another servicer. In addition, two comments concerned the functions of "master servicers" and "subservicers." The entity holding servicing rights is frequently called the "master servicer," and the entity performing the actual servicing is called the "subservicer". Two situations were posited: first, the rights to servicing are sold, but the subservicer remains the same. Second, the subservicer changes, but the master servicer remains the same.

HUD response. The controlling consideration in whether a Notice of Transfer must be delivered for a sale, transfer, or assignment is whether there is a significant change of servicing that potentially affects the borrower. In ordinary transfers of servicing between distinct entities, the Notice of Transfer is always required. In certain other situations—e.g., transfers between affiliates, transfers because a servicer or subservicer is bought or merged into another entity, and transfers between master servicers when the subservicer stays the same and when the subservicer changes—a Notice of Transfer is required unless there is no change in the payee, the collection address, account number, or the amount of the payment.

(2) Six commenters suggested that when there are multiple applicants, it should be sufficient for the lender to give the Servicing Disclosure Statement to one of the co-applicants in a face-to-face interview. One commenter requested that a co-signer not be considered as a person who applies for

a loan, therefore obviating the need for the co-signer to receive a Servicing Disclosure Statement. Another commenter asked how long a lender must keep co-signers' signatures on file.

HUD response. Delivery of a single Servicing Disclosure Statement in a face-to-face meeting with one or more applicants is acceptable, and the Acknowledgement may be signed at that time. For each applicant or co-applicant who is not present, the Servicing Disclosure Statement may be delivered on his or her behalf to an applicant who is present, or may be mailed within 3 business days by first class mail, postage prepaid. While a co-signer might be an integral party to the transaction, a co-signer is primarily interested in timely payments of the mortgage, not in who holds the mortgage servicing. Therefore, a co-signer's acknowledgment is not required.

The signed acknowledgments are to be in the loan package. Consistent with other record-retention requirements of part 3500, the lender must keep the signed acknowledgments for five years after the date of settlement of the loan unless the lender disposes of its interest in the loan and does not service the mortgage. In this case, the Servicing Disclosure Statement would be part of the transferred loan file.

(3) One comment suggested that requiring prepaid, first-class postage for a Servicing Disclosure Statement that is mailed is unnecessary, costly, and inconsistent with the disclosure mailed in compliance with the Truth in Lending and Equal Credit Opportunity Acts. If the transaction is handled by mail, one commenter suggested, the period of three business days should begin only after the lender receives a written application from the borrower.

HUD response. The use of prepaid, first-class mail is common business practice. The practice reasonably assures that the borrower will receive the Servicing Disclosure Statement and, thus, affords protection to those responsible for delivering the statement. The 3-business day period begins only when the application is received.

(4) Four commenters suggested that lenders be permitted to include in the Servicing Disclosure Statement a statement that "the loan cannot be funded unless the acknowledgements are signed and returned." One commenter asked that no follow-up correspondence be required if the lender has provided the Servicing Disclosure Statement to the borrower and the borrower has not returned a signed Acknowledgement.

HUD response. The Department has deleted in this final rule the provision that no loan should be funded unless the signed Acknowledgement was contained in the loan package. HUD has determined that there is sufficient oversight by regulators and secondary market purchasers, and no overriding reason to highlight the Servicing Disclosure Statement over any other required statement. However, the Acknowledgement is still required to be a part of the loan package. The Department has also eliminated the mandatory follow-up requirement that was included in the interim rule.

(5) One commenter stated that if the servicing is always sold, transferred, or assigned, there is not a "present servicer" or a "new servicer" at the time of application for the loan. The model language of the Notice of Transfer indicates that the borrower will be informed about the servicer, but the language fails to state when and in what format the borrower will receive this information.

HUD response. The Department disagrees with the content of this comment. Whoever sells, transfers, or assigns a federally related mortgage loan is considered the present servicer and is called the "transferor servicer" in this rule. The servicer that buys, is transferred, or is assigned the mortgage servicing function is the new servicer and is called the "transferee servicer." A mortgage broker that closes a table-funded transaction in its own name is in the position of a transferor servicer. A dealer in a first lien dealer loan situation is also a transferor servicer. Appendix B of the interim rule presented sample language for the Notice of Transfer; the language is retained in substantial degree in this final rule. As with the Servicing Disclosure Statement, discretion is allowed concerning the exact wording of the Notice of Transfer, but the various elements that the notice must contain are detailed in § 3500.21(e).

(6) Two commenters requested clarification about who bears the primary responsibility for notifying the borrower of a transfer of servicing when the transferor and transferee choose to notify the borrower in a single, joint Notice of Transfer.

HUD response. HUD believes that in normal business transactions, the timing and issuance of Notices of Transfer would be resolved as part of the purchase and sale agreement. If a joint notice is not feasible, both notices will be required.

(7) Several commenters were concerned about the impact of the requirements on the servicer's ability to administer collection practices consistent with investor requirements. A commenter questioned whether a late payment could be assessed prior to the 60-day period if the payment had not been made to the transferee. Also, two commenters asked whether late fees due prior to the transfer could be assessed.

HUD position. If within the 60-day period the borrower has mistakenly mailed a payment to the transferor instead of the transferee, a late fee may not be imposed. However, if neither the transferor nor the transferee has received a regularly scheduled payment within the 60-day period, or any longer applicable grace period, late payment charges may be assessed in accordance with the servicer's established practices. Late charges due from the borrower before the effective date of transfer of servicing are not covered by RESPA or this rule.

Questions Relating To Qualified Written Requests

(1) Two comments addressed the type of information that HUD permits a borrower to include in a "qualified written request." One commenter wished to limit the requirements to those inquiries asserting errors that have been caused by the transfer of servicing on a mortgage account. The other commenter wanted clarification on whether the requirements were limited to inquiries on payments and account balances. Another question concerned the length of time a servicer has to respond to qualified written requests after a loan is paid off or after servicing has been transferred.

HUD response. The statute encompasses all information relating to the servicing of a mortgage loan and does not restrict the subject matter to questions concerning the transfer of servicing, installment payments, or account balances. For example, a written inquiry concerning a collection for or disbursement from an escrow account would be a qualified written request if the correspondence contains the required identifying elements. In § 3500.21(f)(2), the Department establishes a 1-year period in which a qualified written request is valid after the date of loan pay-off or mortgage servicing transfer.

(2) Three commenters were concerned about how written requests were received. One said that the regulations should state that "a qualified written request" must be mailed to an address supplied by the servicer in the coupon book or written correspondence and not the address for the mortgage payment. Another wanted to disregard requests that lacked the account number or were attached to the borrower's check, as distinguished from being placed in the

same envelope. The third suggested that the regulations should specifically disqualify written inquiries that the borrower includes with the loan payment. A commenter suggested that the Department require a servicer to provide to the borrower information identifying the name and telephone number of a representative or the office or department of the servicer through which the borrower will receive assistance after submitting a qualified written request.

HUD response. (i) This rule does not require that a servicer establish an office to handle borrowers' complaints. It does, however, allow the servicer to do so. In the event the servicer establishes such an office and complies with all the necessary notice provisions of this rule, then the borrower must deliver its request to that office in order for the inquiry to be a "qualified written request" (see the optional language in Appendix MS–2 to part 3500).

(ii) If the servicer determines that a borrower's correspondence does not constitute a qualified written request (the most likely disqualification would be writing the inquiry on the payment coupon), the servicer should retain sufficient information to support its determination.

(3) A commenter sought clarification of when the Department considers an inquiry to be resolved.

HUD response. An inquiry is resolved when the servicer supplies the requested information or corrects an error. See, for example, Regulation Z, 12 U.S.C. 226.13(e) and (f) for similar complaint resolution provisions.

(4) Eight commenters discussed the protection of the borrower's credit rating during a dispute. Most commenters asked whether a lender could provide payment information to a consumer reporting agency prior to the end of the 60-business day period if the dispute was resolved. Two commenters noted that a servicer would be in an unfair position if the servicer has previously reported a borrower's loan as past due and then is not allowed to report the payment. The commenters suggested that the servicer be permitted to advise the credit agency that the servicer is prohibited by law from providing additional information at that time. As a benefit to the borrower, one comment suggested that the servicer be allowed to report prior to the 60-business day period to clear a borrower's record. One commenter raised a question about whether a lender should assume that a third party is acting as the borrower's agent, or should require proof from the borrower of this delegation of authority. Furthermore, the commenter asked if the 20-business day time-frame, in which the borrower must receive a written acknowledgement from the servicer, is calculated from when the request is received or when the servicer confirms that the third party is the borrower's agent.

HUD response. HUD interprets the statute to mean that no adverse information relating to a borrower's overdue payment information may be provided to a credit reporting agency within the 60-day period after the servicing function is transferred, assigned, or sold or after the servicer receives a qualified written request for information. The statute is implemented by this rule in a manner that does not prohibit a servicer from reporting an improvement (such as a payment found or received) in the borrower's record within the 60 day period. It is the servicer's responsibility to determine whether it has sufficient information that a third party is acting as the borrower's agent or the borrower should verify the agent's representative capacity. When the servicer is in doubt as to the status of the third party, the written acknowledgement can also be mailed to the borrower to ask that the borrower verify the status of the third party.

(5) One comment asked for clarification of whether the servicer was prohibited from reporting delinquencies unrelated to a dispute.

HUD response. A servicer may report a delinquency to a credit reporting agency provided that the report does not concern a pending qualified written request, which questions the correctness of the account, or a loan payment sent by the borrower to the transferor, rather than the transferee, within 60 days after the servicing of the loan is transferred.

(6) One commenter hypothesized a situation in which a borrower sends a qualified request in September concerning a late charge assessed on the March payment, yet the borrower has not made his April through August payments. Is the servicer prohibited from reporting these delinquencies in September, although they are unrelated to the March dispute?

HUD position. The receipt of a qualified written request by the servicer determines when the 60-business day period begins. If the April through August delinquencies are caused by the problem or issue identified by the borrower in the request, adverse information related to all of these delinquencies may not be submitted or resubmitted, if previously reported. In this instance, the 60-business day period begins when the qualified written request is received in September. However, there is nothing in RESPA that prohibits the servicer from initiating foreclosure action, or taking other remedial actions under the applicable mortgage documents, against the mortgaged property based on the delinquent payments in March through August. The servicer's timing on initiating foreclosure action is governed by the provisions of the borrower's mortgage document.

Servicing Involving Certain Government-Related Agencies or Enterprises

Section 6 provides that certain government or government-sponsored entities that have oversight or other relationships with servicers are not themselves servicers for purposes of Section 6. These entities include the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC) in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution. Section 6 also makes provisions for certain circumstances involving mortgage servicing loans when government or government-sponsored entities have to deal with the termination for cause of the contract for servicing a loan or with the commencement of proceedings for bankruptcy of the servicer in a program involving such entity. In addition, in giving the transfer notice the statute also allows a delay of up to 30 days after the transfer of servicing. HUD believes that Congress exempted these entities from most mortgage servicing transfer requirements so as not to interfere with the fiduciary responsibilities of the entities with regard to protective actions needed to be taken by such entities, and not to create for such governmental entities potential liability that could inhibit the orderly transfer of servicing. Also, imposition of standard business requirements in troubled situations involving a fiduciary could adversely affect the underlying value of the related mortgage servicing. Because the rationales discussed above apply equally well to other Federal entities not specifically enumerated in Section 6(i)(2) of the Act, the Secretary has exercised his authority under Section 19(a) of RESPA and has added certain other Federal agencies (HUD, including FHA; VA; NCUA; and FmHA) that might also be in a fiduciary position or need to protect a borrower in an otherwise covered mortgage loan situation.

In addition, under Section 19 the Secretary has exempted FHA from

having to provide the Notice of Transfer in those instances where the mortgage has been assigned (along with the servicing) to FHA for the payment of the mortgage insurance benefits pursuant to section 230 of the National Housing Act (12 U.S.C. 1715u). Under the assignment program, the mortgagor actively provides information to both the mortgagee and FHA in order to show that the mortgagor meets certain eligibility criteria. The assignment of the mortgage to FHA is not a business decision. Rather, it is a means by which eligible mortgagors can avoid foreclosure and keep their homes.

Mortgagors are aware early on in the process that, if deemed eligible, HUD will become their mortgagee and servicer. HUD also accepts assignment of other single-family insured mortgage loans under certain specialty programs. These assignments are not comparable to the normal sale and purchase transactions that the mortgage servicing transfer provisions of Section 6 were designed to address. Thus, requiring HUD to provide the notice of transfer in cases where mortgages are assigned to HUD would not serve the purposes of Section 6, and these assignments have been exempted under the Secretary's authority in Section 19.

Damages and Costs

(1) The statute provides that whoever fails to comply with any provision of Section 6 shall be liable to the borrower. These damages include actual damages and, in an action brought by an individual, up to $1,000 for a pattern of noncompliance; in a class action, the additional damages may not exceed the lesser of $500,000 or 1% of the servicer's net worth.

A commenter noted that "actual damages" should be clarified. If a servicer reported a debt to a credit bureau within the 60-business day proscribed period, and the borrower alleges that the reporting resulted in the borrower's inability to obtain credit, the servicer could be liable for damages, even if the report was correct. Therefore, the commenter suggested that to prove actual damages the borrower must show:

(a) The servicer made the report to a credit company within the proscribed period;

(b) The borrower was correct, the dispute was resolved in the borrower's favor; and

(c) The borrower would have otherwise been approved for the credit.

HUD position. If a servicer violates § 3500.21(g) by reporting information on a borrower to a credit agency relating to a dispute regarding the borrower's payments within 60 business days of receiving a qualified written inquiry from the borrower, that servicer will be liable for all proven actual damages that the borrower suffered because of the servicer's action. Further, if a pattern of noncompliance can be established, the servicer may be liable to that borrower for additional damages not to exceed $1,000. The costs of the action and attorneys fees also can be recovered. The statute requires no qualifying criteria that the borrower must meet before actual damages may be sought from the servicer.

(2) One commenter suggested that the date on the Servicing Disclosure Statement was unnecessary. Another commenter noted that the Acknowledgment Form requires the applicant to state that he has read and "understands" its contents; however, the commenter stated, this might create potential legal complications.

HUD response. Since the servicer is liable for damages and costs, it is in the servicer's own interest to note, by dating the form, when the Servicing Disclosure Statement was given (or placed in the mail) to the borrower. In any event, the requirement is statutory and has been retained in the final rule. Similarly, the language concerning the applicant's understanding of the disclosure statement reflects the statute and follows common business practice.

Conforming Amendment to Escrow Rule

The Department is also publishing a conforming amendment to its final rule on escrow accounting procedures, published on October 26, 1994 (59 FR 53890).

Other Matters

Regulatory Flexibility Act

Under 5 U.S.C. 605(b), the Regulatory Flexibility Act, the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. HUD finds that there are no anticompetitive aspects of the interim rule that are discriminatory with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities. In any event, by statute, the requirements of this rule must be adhered to by all lenders and servicers.

Environmental Impact

At the time of publication of the interim rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This final rule does not make changes to the interim rule that are significant in this context. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410–0500.

Executive Order 12616, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12616, *Federalism*, has determined that the policies contained in this regulation do not have significant federalism implications and, thus, are not subject to review under the Order. Issuance of the regulation does not change existing Federal, State or local governmental relationships, except that, under the statute, compliance with the disclosure provisions of this rule will preempt State law requirements dealing with identical subject matter. Given the lack of discretion pertaining to the preemption issue by the statute, further analysis of the federalism implications of the rule would serve no purpose.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *the Family*, has determined that the policies contained in this regulation do not have a potential significant impact on family function, maintenance and general well being, and, thus, are not subject to review under the order.

Semiannual Agenda of Regulations

This final rule was listed as Item No. 1813 on the Department's Semiannual Agenda of Regulations, published on November 14, 1994 (59 FR 57632, 57659), as required by Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community

development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 203 and 3500 of title 24 of the Code of Federal Regulations are amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

2. In § 203.502, paragraph (b) is revised to read as follows:

§ 203.502 Responsibility for servicing.

* * * * *

(b) Whenever servicing of any mortgage is transferred from one mortgagee or servicer to another, notice of the transfer of service shall be delivered:

(1) By the transferor mortgagee or servicer:

(i) To the mortgagor. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in § 3500.21(e)(2) of this title; and

(ii) To the Secretary. This notification shall be delivered within 15 days of the transfer, on a form approved by the Secretary; and

(2) By the transferee mortgagee or servicer to the mortgagor. The notification shall be delivered not more than 15 days after the effective date of the transfer and shall contain the information required in § 3500.21(e)(2) of this title.

3. Section 203.508 is amended by adding a new paragraph (e), to read as follows:

§ 203.508 Providing information.

* * * * *

(e) Each servicer of a mortgage shall deliver to the mortgagor a written notice of any assignment, sale, or transfer of the servicing of the mortgage. The notice must be sent in accordance with the provisions of § 3500.21(e)(1) of this title and shall contain the information required by § 3500.21(e)(2) of this title. Servicers must respond to mortgagor inquiries pertaining to the transfer of servicing in accordance with § 3500.21(f) of this title.

* * * * *

4. Section 203.554 is amended by adding a new paragraph (d), to read as follows:

§ 203.554 Enforcement of late charges.

* * * * *

(d) During the 60-day period beginning on the effective date of transfer of the servicing of a mortgage, a late charge shall not be imposed on the mortgagor with respect to any payment on the loan. No payment shall be treated as late for any other purpose if the payment is received by the transferor servicer, rather than the transferee servicer that should receive the payment, before the due date (including any applicable grace period allowed under the mortgage documents) applicable to such payment.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

5. The authority citation for 24 CFR part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

6. Section 3500.2 is amended by revising the definition of "Business day", to read as follows:

§ 3500.2 Definitions.

* * * * *

Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

* * * * *

7. In § 3500.19, paragraph (a) is amended by revising the second sentence, to read as follows:

§ 3500.19 Enforcement.

(a) * * * Specific provisions for enforcing the escrow account statement provisions (12 U.S.C. 2609(c) and (d)) are set out in § 3500.17. * * *

* * * * *

8. A new § 3500.21 is added, to read as follows:

§ 3500.21 Mortgage servicing transfers.

(a) *Definitions.* As used in this section:

Effective date of transfer means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage servicing loan pursuant to the assignment, sale or transfer of the servicing of the mortgage servicing loan.

Master servicer means the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer.

Mortgage servicing loan means a federally related mortgage loan, as that term is defined in § 3500.2, subject to the exemptions in § 3500.5, when the mortgage loan is secured by a first lien. The definition does not include subordinate lien loans or open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z, including open-end lines of credit secured by a first lien.

Qualified written request means a written correspondence from the borrower to the servicer prepared in accordance with paragraph (f)(2) of this section.

Servicer means the person responsible for the servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; or

(2) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the Resolution Trust Corporation (RTC); the Federal Deposit Insurance Corporation (FDIC); the Department of Housing and Urban Development (HUD), including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA); the National Credit Union Administration (NCUA); the Farmers Home Administration (FmHA); and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage servicing loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) The Federal Housing Administration (FHA), in cases where a mortgage insured under the National Housing Act is assigned to HUD.

Servicing means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage servicing loan, including amounts for escrow accounts under section 10 of RESPA, and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity

conversion mortgage or reverse mortgage as defined in § 3500.2, servicing includes making payments to the borrower.

Subservicer means a servicer who does not own the right to perform servicing, but who does so on behalf of the master servicer.

Transferee servicer means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding.

Transferor servicer means a servicer, including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

(b) *Servicing Disclosure Statement and Applicant Acknowledgement; requirements.* (1) At the time an application for a mortgage servicing loan is submitted, or within 3 business days after submission of the application, the lender, mortgage broker who anticipates using table funding, or dealer who anticipates a first lien dealer loan shall provide to each person who applies for such a loan a Servicing Disclosure Statement. This requirement shall not apply when the application for credit is turned down within three business days after receipt of the application. A format for the Servicing Disclosure Statement appears as Appendix MS–1 to this part. Except as provided in paragraph (b)(2) of this section, the specific language of the Servicing Disclosure Statement is not required to be used, but the Servicing Disclosure Statement must include the information set out in paragraph (b)(3) of this section, including the statement of the borrower's rights in connection with complaint resolution. The information set forth in Instructions to Preparer on the Servicing Disclosure Statement need not be included on the form given to applicants, and material in square brackets is optional or alternative language.

(2) The Applicant's Acknowledgement portion of the Servicing Disclosure Statement in the format stated *is mandatory.* Additional lines may be added to accommodate more than two applicants.

(3) The Servicing Disclosure Statement must contain the following information, except as provided in paragraph (b)(3)(ii) of this section:

(i) Whether the servicing of the loan may be assigned, sold or transferred to any other person at any time while the loan is outstanding. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan does not engage in the servicing of any mortgage servicing loans, the disclosure may consist of a statement to the effect that there is a current intention to assign, sell, or transfer servicing of the loan.

(ii) The percentages (rounded to the nearest quartile (25%)) of mortgage servicing loans originated by the lender in each calendar year for which servicing has been assigned, sold, or transferred for such calendar year. Compliance with this paragraph (b)(3)(ii) is not required if the lender, table funding mortgage broker, or dealer on a first lien dealer loan chooses option B in the model format in paragraph (b)(4) of this section, including in square brackets the language "[and have not serviced mortgage loans in the last three years.]". The percentages shall be provided as follows:

(A) This information shall be set out for the most recent three calendar years completed, with percentages as of the end of each year. This information shall be updated in the disclosure no later than March 31 of the next calendar year. Each percentage should be obtained by using as the numerator the number of mortgage servicing loans originated during the calendar year for which servicing is transferred within the calendar year and, as the denominator, the total number of mortgage servicing loans originated in the calendar year. If the volume of transfers is less than 12.5 percent, the word "nominal" or the actual percentage amount of servicing transfers may be used.

(B) This statistical information does not have to include the assignment, sale, or transfer of mortgage loan servicing by the lender to an affiliate or subsidiary of the lender. However, lenders may voluntarily include transfers to an affiliate or subsidiary. The lender should indicate whether the percentages provided include assignments, sales, or transfers to affiliates or subsidiaries.

(C) In the alternative, if applicable, the following statement may be substituted for the statistical information required to be provided in accordance with paragraph (b)(3)(ii) of this section: "We have previously assigned, sold, or transferred the servicing of federally related mortgage loans."

(iii) The best available estimate of the percentage (0 to 25 percent, 26 to 50 percent, 51 to 75 percent, or 76 to 100 percent) of all loans to be made during the 12-month period beginning on the date of origination for which the servicing may be assigned, sold, or transferred. Each percentage should be obtained by using as the numerator the estimated number of mortgage servicing loans that will be originated for which servicing may be transferred within the calendar year and, as the denominator, the estimated total number of mortgage servicing loans that will be originated in the calendar year.

(A) If the lender, mortgage broker, or dealer anticipates that no loan servicing will be sold during the calendar year, the word "none" may be substituted for "0 to 25 percent." If it is anticipated that all loan servicing will be sold during the calendar year, the word "all" may be substituted for "76 to 100 percent."

(B) This statistical information does not have to include the estimated assignment, sale, or transfer of mortgage loan servicing to an affiliate or subsidiary of that person. However, this information may be provided voluntarily. The Servicing Disclosure Statements should indicate whether the percentages provided include assignments, sales or transfers to affiliates or subsidiaries.

(iv) The information set out in paragraphs (d) and (e) of this section.

(v) A written acknowledgement that the applicant (and any co-applicant) has/have read and understood the disclosure, and understand that the disclosure is a required part of the mortgage application. This acknowledgement shall be evidenced by the signature of the applicant and any co-applicant.

(4) The following is a model format, which includes several options, for complying with the requirements of paragraph (b)(3) of this section. The model format may be annotated with additional information that clarifies or enhances the model language. The lender or table funding mortgage broker (or dealer) should use the language that best describes the particular circumstances.

(i) *Model Format:* The following is the best estimate of what will happen to the servicing of your mortgage loan:

(A) *Option A.* We may assign, sell, or transfer the servicing of your loan while the loan is outstanding. [We are able to service your loan[.][,] and we [will] [will not] [haven't decided whether to] service your loan.]; or

(B) *Option B.* We do not service mortgage loans[.][,] [and have not serviced mortgage loans in the past three years.] We presently intend to assign, sell, or transfer the servicing of your mortgage loan. You will be informed about your servicer.

(C) As appropriate, the following paragraph may be used:

We assign, sell, or transfer the servicing of some of our loans while the loans are outstanding, depending on the type of loan and other factors. For the program for which you have applied, we expect to [assign, sell, or transfer all of the mortgage

servicing][retain all of the mortgage servicing] [assign, sell, or transfer ____% of the mortgage servicing].

(ii) [Reserved]

(c) *Servicing Disclosure Statement and Applicant Acknowledgement; delivery.* The lender, table funding mortgage broker, or dealer that anticipates a first lien dealer loan shall deliver Servicing Disclosure Statements to each applicant for mortgage servicing loans. Each applicant or co-applicant must sign an Acknowledgement of receipt of the Servicing Disclosure Statement before settlement.

(1) In the case of a face-to-face interview with one or more applicants, the Servicing Disclosure Statement shall be delivered at the time of application. An applicant present at the interview may sign the Acknowledgment on his or her own behalf at that time. An applicant present at the interview also may accept delivery of the Servicing Disclosure Statement on behalf of the other applicants.

(2) If there is no face-to-face interview, the Servicing Disclosure Statement shall be delivered by placing it in the mail, with prepaid first-class postage, within 3 business days from receipt of the application. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

(d) *Notices of Transfer; loan servicing.* (1) *Requirement for notice.* (i) Except as provided in this paragraph or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in paragraph (d)(3) of this section, of any assignment, sale, or transfer of the servicing of the loan. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) Transfers between affiliates;

(B) Transfers resulting from mergers or acquisitions of servicers or subservicers; and

(C) Transfers between master servicers, where the subservicer remains the same.

(ii) The Federal Housing Administration (FHA) is not required under paragraph (d) of this section to submit to the borrower a Notice of Transfer in cases where a mortgage insured under the National Housing Act is assigned to FHA.

(2) *Time of notice.* (i) Except as provided in paragraph (d)(2)(ii) of this section:

(A) The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan; and

(B) The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer.

(C) The transferor and transferee servicers may combine their notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.

(ii) The Notice of Transfer shall be delivered to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage servicing loan in any case in which the transfer of servicing is preceded by:

(A) Termination of the contract for servicing the loan for cause;

(B) Commencement of proceedings for bankruptcy of the servicer; or

(C) Commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer or an entity that owns or controls the servicer.

(iii) Notices of Transfer delivered at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, will satisfy the timing requirements of paragraph (d)(2) of this section.

(3) *Notices of Transfer; contents.* The Notices of Transfer required under paragraph (d) of this section shall include the following information:

(i) The effective date of the transfer of servicing;

(ii) The name, payment amount, and consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the servicer that can be contacted by the borrower for answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain coverage; and

(vi) A statement that the transfer of servicing does not affect any other term or condition of the mortgage documents, other than terms directly related to the servicing of the loan.

(4) *Notices of Transfer; sample notice.* Sample language that may be used to comply with the requirements of paragraph (d) of this section is set out in Appendix MS–2 of this part. Minor modifications to the sample language may be made to meet the particular circumstances of the servicer, but the substance of the sample language shall not be omitted or substantially altered.

(5) *Consumer protection during transfer of servicing.* During the 60-business day period beginning on the effective date of transfer of the servicing of a mortgage servicing loan, a late fee may not be imposed on the borrower with respect to any payment on the loan. In addition, a payment made within that time by the borrower may not be treated as late for any other purposes if the payment is received by the transferor servicer, rather than by the transferee servicer, before the due date (including any applicable grace period allowed under the mortgage documents) applicable to the payment.

(e) *Duty of loan servicer to respond to borrower inquiries.* (1) *Notice of receipt of inquiry.* Within 20 business days of a servicer of a mortgage servicing loan receiving a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide to the borrower a written response acknowledging receipt of the qualified written response. This requirement shall not apply if the action requested by the borrower is taken within that period and the borrower is notified of that action in accordance with the paragraph (f)(3) of this section. By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.

(2) *Qualified written request; defined.* (i) For purposes of paragraph (f) of this section, a qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the

servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

(ii) A written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable.

(3) *Action with respect to the inquiry.* Not later than 60 business days after receiving a qualified written request from the borrower, and, if applicable, before taking any action with respect to the inquiry, the servicer shall:

(i) Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction. This written notification shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower; or

(ii) After conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(A) To the extent applicable, a statement of the servicer's reasons for concluding the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower; or

(B) Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower.

(4) *Protection of credit rating.* (i) During the 60 business day period beginning on the date of the servicer receiving from a borrower a qualified written request relating to a dispute on the borrower's payments, a servicer may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency (as that term is defined in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a).

(ii) In accordance with section 17 of RESPA, 12 U.S.C. 2615, the protection of credit rating provision of paragraph (e)(4)(i) of this section does not impede a lender or servicer from pursuing any of its remedies, including initiating foreclosure, allowed by the underlying mortgage loan instruments.

(f) *Damages and costs.* (1) Whoever fails to comply with any provision of this section shall be liable to the borrower for each failure in the following amounts:

(i) *Individuals.* In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed $1,000.

(ii) *Class Actions.* In the case of a class action, an amount equal to the sum of any actual damages to each borrower in the class that result from the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not greater than $1,000 for each class member. However, the total amount of any additional damages in a class action may not exceed the lesser of $500,000 or 1 percent of the net worth of the servicer.

(iii) *Costs.* In addition, in the case of any successful action under paragraph (f) of this section, the costs of the action and any reasonable attorneys' fees incurred in connection with the action.

(2) *Nonliability.* A transferor or transferee servicer shall not be liable for any failure to comply with the requirements of this section, if within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) *Timely payments by servicer.* If the terms of any mortgage servicing loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the mortgaged property, the servicer shall make payments from the escrow account in a timely manner for the taxes, insurance premiums, and other charges as the payments become due, as governed by the requirements in § 3500.17(k).

(h) *Preemption of State laws.* A lender who makes a mortgage servicing loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any State law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by Section 6 of RESPA or this section, and this additional information may be added to a notice prepared under this section, if the procedure is allowable under State law.

9. Appendices K through M are reserved and appendices MS–1 and MS–2 are added to part 3500, to read as follows:

BILLING CODE 4210–27–P

APPENDIX MS-1 to PART 3500

[Sample language; use business stationery or similar heading]

SERVICING DISCLOSURE STATEMENT

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED. FEDERAL LAW GIVES YOU CERTAIN RELATED RIGHTS. IF YOUR LOAN IS MADE, SAVE THIS STATEMENT WITH YOUR LOAN DOCUMENTS. SIGN THE ACKNOWLEDGMENT AT THE END OF THIS STATEMENT ONLY IF YOU UNDERSTAND ITS CONTENTS.

Because you are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. §2601 et seq.) you have certain rights under that Federal law.

This statement tells you about those rights. It also tells you what the chances are that the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest and escrow account payments, if any. If your loan servicer changes, there are certain procedures that must be followed. This statement generally explains those procedures.

Transfer practices and requirements

If the servicing of your loan is assigned, sold, or transferred to a new servicer, you must be given written notice of that transfer. The present loan servicer must send you notice in writing of the assignment, sale or transfer of the servicing not less than 15 days before the effective date of the transfer. The new loan servicer must also send you notice within 15 days after the effective date of the transfer. The present servicer and the new servicer may combine this information in one notice, so long as the notice is sent to you 15 days before the effective date of transfer. The 15 day period is not applicable if a notice of prospective transfer is provided to you at settlement. The law allows a delay in the time (not more than 30 days after a transfer) for servicers to notify you, upon the occurrence of certain business emergencies.

Notices must contain certain information. They must contain the effective date of the transfer of the servicing of your loan to the new servicer, and the name, address, and toll-free or collect call telephone number of the new servicer, and toll-free or collect call telephone numbers of a person or department for both your present servicer and your new servicer to answer your questions. During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Complaint Resolution

Section 6 of RESPA (12 U.S.C. §2605) gives you certain consumer rights, whether or not your loan servicing is transferred. If you send a "qualified written request" to your servicer, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and the information regarding your request. Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, or must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

A Business Day is any day in which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Damages and Costs

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section.

Servicing Transfer Estimates

1. The following is the best estimate of what will happen to the servicing of your mortgage loan:

A. We may assign, sell or transfer the servicing of your loan while the loans is outstanding. [We are able to service your loan[.][,] and we [will][will not] haven't decided whether to] service your loan.].

[or]

B. We do not service mortgage loans[.][,] and we have not serviced mortgage loans in the past three years.] We presently intend to assign, sell or transfer the servicing of your mortgage loan. You will be informed about your servicer.

[INSTRUCTIONS TO PREPARER: The model format may be annotated with further information that clarifies or enhances the model language. The following model language may be used where appropriate:

> We assign, sell or transfer the servicing of some of our loans while the loan is outstanding depending on the type of loan and other factors. For the program you have applied for, we expect to [sell all of the mortgage servicing][retain all of the mortgage servicing] [assign, sell or transfer __% of the mortgage servicing].

2. For all the first lien mortgage loans that we make in the 12 month period after your mortgage loan is funded, we estimate that the percentage of such loans for which we will transfer servicing is between:

_____ [0 to 25%] or [NONE]

_____ 26 to 50%

_____ 51 to 75%

_____ [76 to 100%] or [ALL]

[This estimate [does] [does not] include assignments, sales or transfers to affiliates or subsidiaries.] This is only our best estimate and it is not binding. Business conditions or other circumstances may affect our future transferring decisions.

[3(A). We have previously assigned, sold, or transferred the servicing of first lien mortgage loans.]

[or]

[3(B). This is our record of transferring the servicing of the first lien mortgage loans we have made in the past:

Year	Percentage of Loans Transferred (Rounded to nearest quartile--0%, 25%, 50%, 75% or 100%).
19__	_____ %
19__	_____ %
19__	_____ %

[This information [does] [does not] include assignments, sales or transfers to affiliates or subsidiaries.]]

_____

[Signature Not Mandatory]

_____

DATE

[INSTRUCTIONS TO PREPARER: Select either Item 3(A) or Item 3(B), except if you chose the provision in 1(B) stating: "We do not service mortgage loans, and we have not serviced mortgage loans in the past three years," all of Item 3 should be omitted.

[INSTRUCTIONS TO PREPARER: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the effective date of the transfer of servicing rights if certain emergency business situations occur. See 24 CFR § 3500.21(e)(1)(ii). "Lender" may be substituted for "present servicer" where appropriate. These instructions should not appear on the format.]

PRESENT SERVICER [Signature not required] Date

[and][or]

FUTURE SERVICER [Signature not required] Date

APPENDIX MS-2 to PART 3500

[Sample language; use business stationery or similar heading]

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from _____ to _____, effective _____.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later that 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice].

Your present servicer is _____.
If you have any questions relating to the transfer of servicing from your present servicer call _____ [enter the name of an individual or department here] between _____ a.m. and _____ p.m. on the following days _____.
This is a [toll-free] or [collect call] number.

Your new servicer will be _____.

The business address for your new servicer is:

_____
_____.

The [toll-free] [collect call] telephone number of your new servicer is _____. If you have any questions relating to the transfer of servicing to your new servicer call _____ [enter the name of an individual or department here] at _____ [toll free or collect call telephone number] between _____ a.m. and _____ p.m. on the following days _____.

The date that your present servicer will stop accepting payments from you is _____. The date that your new servicer will start accepting payments from you is _____. Send all payments due on or after that date to your new servicer.

[Use this paragraph if appropriate; otherwise omit] The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner:

_____
_____
_____
_____
_____

and you should take the following action to maintain coverage:

_____
_____
_____.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. [If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

_____
_____]

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

[INSTRUCTIONS TO PREPARER: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the effective date of the transfer of servicing rights if certain emergency business situations occur. See 24 CFR § 3500.21(e)(1)(ii). "Lender" may be substituted for "present servicer" where appropriate. These instructions should not appear on the format.]

PRESENT SERVICER [Signature not required] Date

[and][or]

FUTURE SERVICER [Signature not required] Date

BILLING CODE 4210–27–C

Dated: December 6, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–30413 Filed 12–16–94; 8:45 am]

BILLING CODE 4210–27–P

federal register

Monday
December 19, 1994

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 31, 42, and 52
Federal Acquisition Regulation; Penalties on Unallowable Indirect Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 42, and 52

[FAR Case 94–751]

RIN: 9000–AG20

Federal Acquisition Regulation; Penalties on Unallowable Indirect Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement the requirements for penalties for unallowable costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 17, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Attn: Beverly Fayson, Washington, DC 20405.

Please cite FAR case 94–751 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr Clarence Belton, Cost Principles Team Leader, at (703) 602–2357 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–751.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Computer Network.

This notice announces proposed FAR revisions developed under FAR Case 94–751, Penalties on Unallowable Indirect Costs, involving Sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 which change the contract value threshold for assessment of penalties on unallowable costs from $100,000 to $500,000 and expand the coverage from only the Department of Defense to all executive agencies. The proposed rule applies to all executive agencies and recognizes the increase in the contract value threshold for inclusion of the contract clause. With the exception of the threshold value, the penalty provisions in the new law are the same as those implemented in the current Defense Federal Acquisition Regulations Supplement. Since there are interactions between this proposed rule and the new rule proposed under FAR case 94–752 to create a new subsection 42.703–2, the two rules should be read together to fully understand the changes.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–751) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see ADDRESSES caption) on or before January 18, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entitles within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded through sealed bidding on a firm-fixed price basis. The penalty provisions apply only to contracts which are not firm-fixed price. Also, the proposed rule would only apply to contracts in excess of $500,000, eliminating the impact on contracts below that threshold. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–751), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31, 42, and 52

Government procurement.

Dated: December 13, 1994.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 31, 42, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 31, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.110 is added to read as follows:

31.110 Indirect cost rate certification and penalties on unallowable costs.

Certain contracts require certification of the indirect cost rates proposed for progress or billing payment purposes. If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See 42.703–2 and 42.709 for administrative procedures regarding the certification and penalty assessment provisions and for related contract clause prescriptions.

PART 42—CONTRACT ADMINISTRATION

3. and 4. Sections 42.709 thru 42.709–6 are added to read as follows:

42.709 Scope.

(a) This section implements 10 U.S.C. 2324 (a) through (d) and 41 U.S.C. 256 (a) through (d). It covers the assessment of penalties against contractors which include unallowable indirect costs in—

(1) Final indirect cost rate proposals, or

(2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This section applies to all contracts in excess of $500,000, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items.

42.709–1 General.

(a) The following penalties apply to contracts covered by this section:

(1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—

(i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted, plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.

(b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

42.709–2 Responsibilities.

(a) The contracting officer assigned to administer a contract is responsible for—

(1) Determining whether the penalties in 42.709–1(a) should be assessed;

(2) Determining whether such penalties should be waived pursuant to 42.709–5; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

(b) The contract auditor, in the review and/or the determination of final indirect costs proposals for contracts subject to this section, is responsible for—

(1) Recommending to the contracting officer which costs may be unallowable and subject to the penalties in 42.709–1(a);

(2) Providing rationale and supporting documentation for any recommendation; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

42.709–3 Assessing the penalty.

Unless a waiver is granted pursuant to 42.709–5, the cognizant contracting officer shall—

(a) Assess the penalty in 42.709–1(a)(1), when the submitted cost is expressly unallowable under a cost principle in the FAR or an executive agency supplement that defines the allowability of specific selected costs; or

(b) Assess the penalty in 42.709–1(a)(2), when the submitted cost was determined to be unallowable for that contractor prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—

(1) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705–2 [Defense FAR Supplement, paragraph 242.705–2]) which the contractor elected not to appeal and was not withdrawn by DCAA, or any similar notice;

(2) A contracting officer final decision which was not appealed;

(3) A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance; or

(4) A determination or agreement of unallowability under 31.201–6.

(c) Issue a final decision (see 33.211) which includes a demand for payment of any penalty assessed under paragraphs (a) or (b) of this section. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

42.709–4 Computing interest.

For 42.709–1(a)(1)(ii), compute interest on any paid portion of the disallowed cost as follows:

(a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.

(b) Use the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97).

(c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

42.709–5 Waiver of the penalty.

The cognizant contracting officer shall waive the penalties at 42.709–1(a) when—

(a) The contractor withdraws the proposal before the Government formally initiates an audit of the proposal and the contractor submits a revised proposal (An audit will be deemed to be formally initiated when the Government provides the contractor with written notice that audit work on a specific final indirect cost proposal has begun or the Government holds an audit entrance conference with the contractor.);

(b) The amount of the unallowable costs under the proposal which are subject to the penalty is $10,000 or less (i.e., if the amount of expressly or previously determined unallowable costs allocable to the contracts specified in 42.709(b) is $10,000 or less); or

(c) The contractor demonstrates, to the cognizant contracting officer's satisfaction, that—

(1) It has established policies and personnel training and an internal control and review system that provide assurance that unallowable costs subject to penalties are precluded from being included in the contractor's final indirect cost rate proposals (e.g., the types of controls required for satisfactory participation in the Department of Defense sponsored self-governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and

(2) The unallowable costs subject to the penalty were inadvertently incorporated into the proposal; i.e., their inclusion resulted from an unintentional error, notwithstanding the exercise of due care.

42.709–6 Contract clause.

Use the clause at 52.242–00, Penalties for Unallowable Costs, in all solicitations and contracts over $500,000 except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at 52.216–7, 52.216–13, 52.216–16, or 52.216–17, or a similar clause from an executive agency's supplement to the FAR.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.242–00 is added to read as follows:

52.242–00 Penalties for unallowable costs.

As prescribed in 42.709–6, use the following clause:

Penalties for Unallowable Costs (Date)

(a) Definition. *Proposal* means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract, plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled, and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 604, *et seq.*).

(g) Pursuant to the criteria in FAR 42.709–5, the Contracting Officer may waive the penalties in paragraphs (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor

(End of clause)

[FR Doc. 94–31019 Filed 12–16–94; 8:45 am]

BILLING CODE 6820–34–P

federal register

Monday
December 19, 1994

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 42 and 52
Federal Acquisition Regulation;
Contractor Overhead Certification;
Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAR Case 94–752]

Federal Acquisition Regulation; Contractor Overhead Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement the requirements for contractor certification of indirect costs. Section 2151 of the Act amended Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256). This provision extended to the civilian agencies the same certification of indirect costs which is currently applicable to Department of Defense (DoD) contracts, pursuant to 10 U.S.C. 2324(h). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 17, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94–752 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Belton, Cost Principles Team Leader, at (703) 602–2357 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–752.

SUPPLEMENTARY INFORMATION:

A. Background

The Act, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

This notice announces FAR revisions developed under FAR case 94–752, which was based on provision in the Act that extended to the civilian agencies the same certification of indirect costs which is currently applicable to DoD contracts, pursuant to 10 U.S.C. 2324(h).

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–752) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption, above) on or before January 18, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the percentage of actions awarded to small business that will be affected by this rule is estimated to be less than 1% of the total of such actions. Most actions awarded to small business are firm-fixed price actions awarded on a competitive basis. The cost principles and requirements to submit indirect cost rate proposals generally apply only when certified cost or pricing data are required. The vast preponderance of actions awarded to small business do not require submittal of either cost or pricing data nor an indirect cost rate proposal. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–752), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose additional recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: December 13, 1994.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

42.703–1 General.

3. Section 42.703–1 is added as a heading to read as set forth above.

4. Section 42–703–2 is added to read as follows:

42.703–2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish billing rates or final indirect cost rates unless the costs have been certified by the contractor using the certificate of indirect costs at 52.242–XX, Certification of Indirect Costs, or a similar clause from an executive agency's supplement to the FAR.

(b) *Waiver of certification.* (1) The agency head, or designee, may waive the certification requirement when—

(i) It is determined to be in the interest of the United States; and

(ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A state or local government subject to OMB Circular A–87;

(iii) An educational institution subject to OMB Circular A–21; and

(iv) A nonprofit organization subject to OMB Circular A–122.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for billing rates or indirect cost rates and

a waiver is not appropriate, the contracting officer shall unilaterally establish the rates if they are necessary for continuation of the contract.

(2) Rates established unilaterally should be—

(i) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(ii) Set low enough to ensure that potentially unallowable costs will not be reimbursed.

(d) *False certification.* The contracting officer should consult with legal counsel to determine appropriate action when a contractor certificate of indirect costs is thought to be false.

(e) *Penalties for unallowable costs.* 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256(a) through (d) prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see Subpart 42.709 for penalties and contracting officer responsibilities).

(f) *Contract clause.* The clause at 52.242–XX (or a similar clause from an executive agency's supplement) shall be incorporated into all solicitations and contracts which provide for—

(1) Interim reimbursement of indirect costs;

(2) Establishment of final indirect cost rates; or

(3) Contract financing that includes interim payment of indirect costs, *e.g.*, progress payments based on cost (48 CFR part 32, subpart 32.5) or progress payments based on percentage or stage of completion.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.242–XX is added to read as follows:

52.242–XX Certification of Indirect Costs.

As prescribed in 42.703–2(f), insert the following clause:

Certification of Indirect Costs (Date)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.

(c) The certificate of indirect costs shall read as follows:

Certificate of Indirect Costs (Date)

This is to certify that to the best of my knowledge and belief:

1. I have reviewed this indirect cost proposal;

2. All costs included in this proposal ——*(identify proposal and date)*—— to establish billing or final indirect cost rates for ——*(identify period covered by rate)*—— are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the FAR or its supplements, including, but not limited to: advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Government contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

[FR Doc. 94–31020 Filed 12–16–94; 8:45 am]

BILLING CODE 6820–34–P

federal register

Monday
December 19, 1994

Part VII

The President

Proclamation 6762—Wright Brothers Day

Memorandum of December 15, 1994—Delegation of Certain Authorities Under 39 U.S.C. 407(a)

Federal Register
Vol. 59, No. 242
Monday, December 19, 1994

Presidential Documents

Title 3—

The President

Proclamation 6762 of December 15, 1994

Wright Brothers Day, 1994

By the President of the United States of America

A Proclamation

On a windy December day 91 years ago, Orville and Wilbur Wright made history. In 12 seconds of flight, they demonstrated to the world that mortals really could touch the sky in powered flight. In the decades since, Americans have continued to make history with countless achievements in aviation and aerospace technology.

America leads the world in aeronautics technology, and that leadership is directly reflected in the success of our aircraft industry. The legacy of the Wright brothers is clear: in the past year, the U.S. aeronautics industry sold more than $100 billion in products and employed more than a million people in high-quality jobs. Aircraft are the Nation's top manufactured export, with more than $40 billion in sales in 181 countries around the world.

We have a grand history and a promising future in aeronautics. The enactment of the General Aviation Revitalization Act of 1994, which I signed into law last August, provides a significant opportunity to reassert America's global leadership in general aviation aircraft. Offering the promise of new jobs and an enhanced economic climate, this measure applies the kind of innovation, creativity, and vision exemplified so many years ago by the Wright brothers.

Today, Orville and Wilbur's perseverance continues to challenge and inspire us as we take the lead in cutting-edge aeronautics technology. The National Aeronautics and Space Administration is working with industry to develop technologies that will make conventional aircraft safer, more affordable, and more environmentally friendly. Government and industry researchers are also working in partnership to transform the concept of affordable commercial supersonic flight into a reality early in the next century. These technological advancements in aviation and aerospace will continue to contribute to our success and prosperity. The dream that began on a lonely stretch of beach near Kitty Hawk, North Carolina, has taken us through the sound barrier and into space—and the future holds endless possibilities.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as "Wright Brothers Day" and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1994, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of December, 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.

William J. Clinton

[FR Doc. 94-31299
Filed 12-16-94; 10:35 am]
Billing code 3195-01-P

Presidential Documents

Memorandum of December 15, 1994

Delegation of Certain Authorities Under 39 U.S.C. 407(a)

Memorandum for the Governors of the United States Postal Service

I have been advised by the Department of Justice that the United States District Court for the District of Delaware held in *UPS Worldwide Forwarding v. United States Postal Service*, Civil Action No. 93–340, May 16, 1994, that the Postal Service must obtain the approval of the President to establish rates of postage or other charges on mail matter conveyed between the United States and other countries.

On appeal of the decision to the United States Court of Appeals for the Third Circuit, the Government argues that the explicit consent of the President is not required. In the view of the Government, to the extent that 39 U.S.C. 407(a) does require the President to consent, it does not require that consent be given in any particular manner. The Government's position is that the failure of the President to object to the establishment of international postage rates and other charges is consent to the establishment of such rates and other charges. This has been the practice of the Government for the past 120 years.

To the extent that the District Court's decision creates or appears to create an obligation for the President to give his consent to the establishment of rates of postage and other charges on mail matter conveyed between the United States and other countries in a particular manner, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Governors of the United States Postal Service, as defined by section 202(a) of title 39 of the United States Code, any authority vested in me by section 407(a) of title 39 of the United States Code, with respect to the establishment of rates of postage and other charges on mail matter conveyed between the United States and other countries. This delegation is effective until the date on which the Third Circuit Court of Appeals issues its mandate in the aforementioned appeal. This delegation relates only to the establishment of rates of postage and other charges on mail matter conveyed between the United States and other countries; it does not affect the obligation of the Postal Service to seek the consent of the President to negotiate and conclude postal treaties or conventions.

This memorandum shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 15, 1994.

[FR Doc. 94–31306
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300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
23	(869–022–00077–2)	21.00	Apr. 1, 1994
24 Parts:			
0–199	(869–022–00078–1)	36.00	Apr. 1, 1994
200–499	(869–022–00079–9)	38.00	Apr. 1, 1994
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–022–00081–1)	39.00	Apr. 1, 1994
1700–End	(869–022–00082–9)	17.00	Apr. 1, 1994
25	(869–022–00083–7)	32.00	Apr. 1, 1994
26 Parts:			
§§ 1.0–1–1.60	(869–022–00084–5)	20.00	Apr. 1, 1994
§§ 1.61–1.169	(869–022–00085–3)	33.00	Apr. 1, 1994
§§ 1.170–1.300	(869–022–00086–1)	24.00	Apr. 1, 1994
§§ 1.301–1.400	(869–022–00087–0)	17.00	Apr. 1, 1994
§§ 1.401–1.440	(869–022–00088–8)	30.00	Apr. 1, 1994
§§ 1.441–1.500	(869–022–00089–6)	22.00	Apr. 1, 1994
§§ 1.501–1.640	(869–022–00090–0)	21.00	Apr. 1, 1994
§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–022–00092–6)	26.00	Apr. 1, 1994
§§ 1.908–1.1000	(869–022–00093–4)	27.00	Apr. 1, 1994
§§ 1.1001–1.1400	(869–022–00094–2)	24.00	Apr. 1, 1994
§§ 1.1401–End	(869–022–00095–1)	32.00	Apr. 1, 1994
2–29	(869–022–00096–9)	24.00	Apr. 1, 1994
30–39	(869–022–00097–7)	18.00	Apr. 1, 1994
40–49	(869–022–00098–4)	14.00	Apr. 1, 1994
50–299	(869–022–00099–3)	14.00	Apr. 1, 1994
300–499	(869–022–00100–1)	24.00	Apr. 1, 1994
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

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27 Parts:			
1-199	(869-022-00103-5)	36.00	Apr. 1, 1994
200-End	(869-022-00104-3)	13.00	Apr. 1, 1994
28 Parts:			
1-42	(869-022-00105-1)	27.00	July 1, 1994
43-end	(869-022-00106-0)	21.00	July 1, 1994
29 Parts:			
0-99	(869-022-00107-8)	21.00	July 1, 1994
100-499	(869-022-00108-6)	9.50	July 1, 1994
500-899	(869-022-00109-4)	35.00	July 1, 1994
900-1899	(869-022-00110-8)	17.00	July 1, 1994
1900-1910 (§§ 1901.1 to 1910.999)	(869-022-00111-6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
1911-1925	(869-022-00113-2)	26.00	July 1, 1994
1926	(869-022-00114-1)	33.00	July 1, 1994
1927-End	(869-022-00115-9)	36.00	July 1, 1994
30 Parts:			
1-199	(869-022-00116-7)	27.00	July 1, 1994
200-699	(869-022-00117-5)	19.00	July 1, 1994
700-End	(869-022-00118-3)	27.00	July 1, 1994
31 Parts:			
0-199	(869-022-00119-1)	18.00	July 1, 1994
200-End	(869-022-00120-5)	30.00	July 1, 1994
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1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-022-00121-3)	31.00	July 1, 1994
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400-629	(869-022-00123-0)	26.00	July 1, 1994
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700-799	(869-022-00125-6)	21.00	July 1, 1994
800-End	(869-022-00126-4)	22.00	July 1, 1994
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-022-00129-9)	24.00	July 1, 1994
34 Parts:			
1-299	(869-022-00130-2)	28.00	July 1, 1994
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*400-End	(869-022-00132-9)	40.00	July 1, 1994
35	(869-022-00133-7)	12.00	July 1, 1994
36 Parts:			
1-199	(869-022-00134-5)	15.00	July 1, 1994
200-End	(869-022-00135-3)	37.00	July 1, 1994
37	(869-022-00136-1)	20.00	July 1, 1994
38 Parts:			
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18-End	(869-022-00138-8)	29.00	July 1, 1994
39	(869-022-00139-6)	16.00	July 1, 1994
40 Parts:			
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52	(869-022-00141-8)	39.00	July 1, 1994
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81-85	(869-022-00145-1)	23.00	July 1, 1994
86-99	(869-019-00146-8)	39.00	July 1, 1993
100-149	(869-022-00147-7)	39.00	July 1, 1994
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400-424	(869-022-00152-3)	27.00	July 1, 1994
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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400-429	(869-019-00161-1)	25.00	Oct. 1, 1993
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45 Parts:			
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500-1199	(869-019-00169-7)	30.00	Oct. 1, 1993
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46 Parts:			
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200-499	(869-019-00178-6)	20.00	Oct. 1, 1993
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47 Parts:			
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1000-1199	(869-019-00198-1)	18.00	Oct. 1, 1993
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50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.



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