AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

2–28–94
Vol. 59 No. 39

federal register

Monday
February 28, 1994

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

2-28-94
Vol. 59 No. 39
Pages 9381–9612

federal register

Monday
February 28, 1994

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WHO: The Office of the Federal Register.

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93–095–2]

Importation of Apples, Apricots, Peaches, Persimmons, Pomegranates, and Citrus From Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by adding San Luis Rio Colorado to the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported without treatment for these pests. We have determined that this municipality is free from certain injurious insect pests known to occur in Mexico and known to attack these fruits. This action allows the importation of these fruits into the United States from San Luis Rio Colorado, in accordance with the regulations. We also are making other nonsubstantive changes for clarity.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) restrict the importation of fruits and vegetables to prevent the introduction and dissemination of certain injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Paragraphs (e) and (f) of § 319.56–2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects. Paragraph (h) of § 319.56–2 lists municipalities in Sonora, Mexico, that are considered free of five listed insect pests: *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus.* Apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from municipalities in Sonora, Mexico, listed in paragraph (h) may be imported into the United States without treatment for these five insect pests.

In a document published in the **Federal Register** on August 25, 1993 (58 FR 44779–44780, Docket No. 93–095–1), we proposed to add San Luis Rio Colorado to the list of municipalities in Sonora, Mexico, determined to be free from the five listed insect pests and from which apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines may be imported into the United States without treatment for these pests. We have determined that San Luis Rio Colorado meets all the criteria contained in § 319.56–2 (e)(4) and (f).

We solicited comments concerning our proposal for a 30-day comment period ending September 24, 1993. We received one comment by that date from a State agency. The commenter expressed concern regarding Mexican Government enforcement efforts to prevent the introduction of fruit flies into San Luis Rio Colorado and requested any pertinent information that we used in formulating the proposed rule.

We have since responded to the commenter and have provided him with the pest risk assessment we used in adding San Luis Rio Colorado to the list of Sonoran municipalities considered to be free of fruit flies. As indicated in the pest risk assessment, the Mexican Government performs fruit fly trapping surveys adequate to detect any fruit fly infestation in San Luis Rio Colorado. The Mexican Government also maintains roadside inspection stations to prevent the introduction of fruit flies through incoming produce.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit from this additional source of fruit. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

The action allows the importation of apples, apricots, grapefruit, oranges, peaches, persimmons, pomegranates, and tangerines from San Luis Rio Colorado into the United States without treatment for the five listed insect pests. This action could increase imports of these articles into the United States, since import costs will be lowered through the elimination of treatment costs. The small entities that could be affected by this action include fumigators at the Mexican border, importers of the above-listed fruits, and domestic growers, distributors, and retailers of these fruits.

The economic impact on these entities should be insignificant since the amount of fruit imported into the United States from San Luis Rio Colorado is expected to be very small.

Based on available information, we anticipate that only imports of oranges, peaches, and possibly grapefruit may increase as a result of this rule. Further, if imports of oranges and peaches from

Sonora and imports of grapefruit from Mexico in general were to increase 10 percent from 1992 levels, this increase would amount to less than one percent of total U.S. production and less than one percent of total U.S. imports of these commodities. Consequently, we do not estimate any changes in prices or costs of fresh oranges, peaches, or grapefruit as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule allows fruit to be imported into the United States from San Luis Rio Colorado, Mexico. State and local laws and regulations regarding fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant Diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

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).

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (h) is amended by removing the eight semicolons following each city name and by adding commas in their places and by adding the phrase "San Luis Rio Colorado," immediately after "Puerto Penasco,".

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4485 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 457

General Crop Insurance Regulations; Small Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure Small Grains (wheat, barley, flax, oats, and rye), and options for increased coverage on Winter Wheat and Malting Barley. This rule consolidates the provisions for insuring small grains into one policy and provides for late planting, prevented planting, and wheat winter coverage.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1998.

Kenneth D. Ackerman, Manager, FCIC, has determined that this action is in conformance with Executive Order 12866 and is not a "significant regulatory action." Based on information compiled by the Department, it has been determined that this final rule: (1) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) would not alter the budgetary impact of entitlement, grants, user fees or loan programs or rights and obligations of recipients thereof; and (4) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget.

This action will not have a significant impact on a substantial number of small businesses. The insurance companies delivering these policies will not increase the amount of work required over the previous policy delivery. In fact, the combination of a number of previously independent policies into one policy should reduce confusion and increase efficiency. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The small grains crop provisions were developed to provide one policy form for insuring wheat, barley, flax, oats, and rye. Using one policy for these five crops will: (1) Substantially reduce paperwork by issuing one policy form rather than the five separate policies previously used; (2) substantially reduce the number of crop handbooks and administrative procedures because separate handbooks and procedures will no longer be required for each of the small grain crops; (3) reduce the time involved to amend or revise the Provisions by eliminating repetitious review processes; and (4) continue to allow insureds the flexibility to elect any of the five small grain crops they wish to insure.

By separate rule, FCIC will remove and reserve the present sections for these crop endorsements.

On Thursday, June 10, 1993, FCIC published a notice of proposed rulemaking in the **Federal Register** at 58 FR 32458 proposing to revise the Common Crop Insurance Regulations by

adding new provisions for oats, wheat, winter wheat, flax, barley, malting barley, and rye crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. Comments were received from various representatives of farm and commodity groups, the crop insurance industry, and FCIC. The comments received and FCIC responses are as follows:

Comment: Six comments suggested that the Crop Provisions should be delayed until after the 1994 crop year because:

(1) Timeliness—Implementation of this program for the 1994 crop would cause confusion and disruption because companies had insufficient time for training and marketing of the program to agents and insureds;

(2) Program Integrity—The effect upon the overall public acceptance and program integrity will be negative as a result of the inevitable service problems associated with "rushing" a program of such national scale; and

(3) Changes—To a large degree, most of the proposed provisions are positive and will improve the program; however, by delaying implementation until the 1985 crop year specific provisions can be studied.

Response: FCIC delayed implementation until the 1995 crop year.

Comment: Two comments suggested the proposed Small Grains Crop Provisions undergo a pilot test in two to three county groupings located in (1) a predominantly spring wheat only area, (2) a winter wheat only area, and (3) an area having significant acreage of both winter and spring wheat. The comments stated that this approach would avoid undue risk of adverse effects to a wheat program currently working well for thousands of policyholders. An additional comment recommended that the proposal be tabled for further study and discussion to give all parties sufficient time to adequately assess the effects of the proposed changes.

Response: The Small Grains Crop Provisions permit farmers to choose the same or nearly the same coverage as currently offered. FCIC does not anticipate significant problems with the proposed provisions, and sees no need to create a pilot program to test effectiveness.

Comment: Two comments recommended that the term "initially planted" be defined for the purposes of unit division. Current farming practices are such that more than one use/interpretation of this term is possible. Another comment recommended that "initially planted" be defined as "the first occurrence of planting the crop to the acreage for the crop year".

Response: FCIC agrees that the term "initially planted" should be defined and has done so.

Comment: One comment stated that the definition of "practical to replant" contained in the Common Crop Insurance Policy conflicts with the Small Grains Crop Provisions. The Common Crop Insurance Policy indicates it is practical to replant until 20 days after the final planting date. The Small Grains Crop Provisions indicate that any acreage of the insured crop damaged before the final planting date must be replanted unless FCIC agrees that replanting is not practical. It was recommended that a definition of "practical to replant" be added to the Small Grains Crop Provisions that will override the definition contained in the Common Crop Insurance Policy.

Response: The comment misapplies the definition of "practical to replant" in the Common Policy. That policy does not indicate that it is practical to replant until 20 days after the final planting date but, to the contrary, states that it is not practical to replant after that date. The provisions do not conflict. A new definition has not been added due to this comment. However, a new definition has been added that is compatible with the new 25 day late planting period.

Comment: One comment noted that the definition of "swathed" indicates that a wheat crop that has been cut but not placed in windrows is considered "swathed." The comment suggested rewording the definition to require that the crop be placed in a windrow.

Response: FCIC agrees with the comment and has appropriately modified the definition.

Comment: One comment stated that the wording in the unit division section has significantly changed as has the unit division wording in the "draft" 1994 Crop Insurance Handbook (CIH). The comment recommended corresponding policy language with that in the CIH.

Response: Language contained in the Crop Insurance Handbook is interpretive and procedural in nature. The Crop Insurance Handbook details unit division for various crops, and is intended for use by insurers and their agents to interpret the crop provisions. In the event of conflict the provisions control. The Small Grains Crop Provisions outline the unit structure for small grains in a concise manner and are controlling.

Comment: One comment disagreed with requiring insureds to furnish records for each optional unit for at least the last crop year the unit was planted. According to current procedure, "in order for optional units to apply, the insured must have provided production reports for the most recent year in the base period which support the optional units proposed by the insured." The comment asserts that unless all optional units are planted every year, the new policy could require an insured to furnish records for several years to qualify for optional units. This places an increased burden on all producers, particularly on those practicing crop rotation. The comment recommended revising the provision to "You must have verifiable records of production for at least the last crop year used to determine your production guarantee."

Response: FCIC agrees with the comment and has modified the provision with language similar to that recommended.

Comment: A comment inquired if the process of raising the planter for a few feet and then resuming planting, or leaving a space unplanted is sufficient for a "clear and discernible break in the planting pattern". The comment suggested further clarification of the term, "clear and discernible break in the planting pattern".

Response: Requirements for separate units have been met if the break in the planting pattern is adequate to allow measurement of individual insurance units, and allow separate harvest of the units. The terms are self explanatory. Whether a break exists depends on whether these functions can occur. No changes in policy language are needed to clarify boundary requirements.

Comment: Four comments supported initially planted spring wheat being treated as a separate unit. Each comment also indicated that there should not be a mandatory replant provision for damaged winter wheat. One of the four comments indicated that any premium increase caused by the separate optional units for spring and winter wheat should be minimal.

Response: Separate optional units for initially planted winter and spring wheat are allowed by this regulation, although farmers who elect this choice will forgo the premium discount for maintaining a single unit. These terms are consistent with those terms given to a producer who elects to plant spring and winter wheat into separate sections.

The Wheat Winter Coverage Endorsement provides optional coverage for those growers who may not wish to replant damaged winter wheat. However, the Basic Policy requires that crops damaged prior to the final planting date be replanted when

practical. This requirement helps FCIC maintain lower premium rates.

Comment: Some comments were in disagreement with the provision allowing insureds to select optional units for initially planted winter wheat and initially planted spring wheat for the following reasons:

a. Currently, production from winter wheat acreage often off-sets losses on spring wheat acreage. Allowing optional units by type can only increase the loss ratio in those areas where both winter and spring types wheat are planted and insured. To increase risk exposure by allowing winter and spring wheat units when other changes are concurrently being implemented in the program to decrease the loss ratio seems to create a conflict.

b. There is no appreciable difference in harvesting and marketing the soft white winter wheat and the soft white spring wheat grown in the northwest. Although a yield difference does exist between the two types of wheat, yield differences also exist for many other crop practices and types not allowed separate optional units.

c. If optional units are allowed by type, a significant increase in losses could result. According to information from some member companies who have analyzed prior year losses by type, loss ratios for wheat would have been substantially higher if winter and spring wheat could have been insured as a separate optional units.

d. One organization had not received any requests for optional units by type from companies, agents, or insureds, and therefore did not see the need for the provision.

Other comments provided the following observations and inquiries:

a. Will the cost of the options in provisions governing Unit Division be prohibitive?

b. Production of spring wheat and winter wheat is commingled more often than not.

c. Allowing winter and spring optional units may significantly increase risk. FCIC should analyze winter and spring statistics to determine if an additional rate should be charged.

d. The provision allowing optional units for initially planted Winter Wheat and initially planted Spring Wheat will permit growers who have insufficient acreage to plant in separate sections and declare separate optional units. Large producers will also be able to declare separate optional units, and the net effect will increase the number of wheat units. This may have a negative effect on FCIC's loss ratio. The provision will also increase the paperwork burden of the already overburdened claims adjuster.

e. Changes or adjustments to the program should be sensitive to rating adequacy and reduction of excess of loss ratios. Some of the provisions of the program contradict these goals. For instance, analyses by companies and industry trade associations do not support the notion that no additional rate is required for optional units by type. As proposed, optional units by type can only be justified as a marketing tool in some areas of the country.

Response: Separate units for winter and spring wheat have been requested by grower groups in Washington, Idaho, and Oregon. FCIC agrees that farmers should have the opportunity to designate initially planted spring and winter wheat as separate optional units because they are planted several months apart and are normally harvested separately. FCIC also agrees that soft white wheat types may be marketed together. However, there are substantial price penalties for commingling production of spring and winter wheat of other types.

FCIC has analyzed types of wheat reported by unit for the states in which both winter and spring types are insured. An average of only 7 percent of all units in these states reported both winter and spring types within the same unit. The majority, or 93 percent of all units, reported only a single type within the unit. These results suggest that most farmers already manage their land in a manner that permits them to put the winter and spring types into separate optional units. This is accomplished by planting the types within different legally defined sections of land. Thus, FCIC believes that the potential for increases in the number of optional units is not substantial. Most farmers who have enough land and who wish to designate separate optional units already do so.

Farmers who designate separate optional units by type within the same section will forgo the premium discount that is currently allowed if a basic unit is not separated into optional units. Thus, farmers who elect to designate units by type of wheat within the section will pay more premium than a farmer who elects to retain all acreage within a basic unit.

The comments concerning additional paperwork are overstated. Farmers already are required to report separately any acreage planted to the spring and winter types within section because different premium rates, insurance guarantees, or both, apply to such acreage. The only difference in the acreage report under the new provision is that two distinct unit numbers will be used by the insurer rather than one as at present. Farmers will be required to report the production of the two types separately, which they already may do in many cases. FCIC cannot estimate the number of cases in which a new report may be required. The former wheat endorsement required only that insured persons report the total production of all the insurable crop produced on the unit. If a farmer elects to report only total production under the present arrangements, the accuracy of the guarantees for the types is reduced because the insurer must allocate the production in some manner to establish a guarantee by type. If farmers who now report the combined production of the two types within section do designate separate optional units, the change may enhance the precision of guarantees for the separate types, thereby benefiting the insurer. If the farmer already reports production of the two types separately, there will be no change in the paperwork required.

Insured persons who wish to take advantage of the opportunity to designate separate optional units within a section must comply with all other requirements for unit division. Thus, if a producer commingles production of the winter and spring types, separate optional units may not be elected. If a producer plants spring wheat into a failed winter stand, separate optional units may not be elected. If planting patterns do not permit separate identification of the acreage, optional units may not be elected. If a producer wishes to reduce the premium paid for the insurance, he or she can elect to retain all the acreage in a basic unit. The new provisions do not mandate separate optional units.

Finally, much of the research about units referenced in the comments relates to size of acreage, not specifically to unit division. Results of such research suggests that small farmers should pay higher premiums than large farmers because small acreage may have higher losses on average. Although the issues is related, FCIC believes that the issues should be treated separately. If it is ultimately demonstrated that small acreage should be subject to a surcharge due to actuarial considerations, the surcharge should be assessed against small acreage regardless of whether these result from small farming operations or from unit division.

In summary, FCIC does not find these comments persuasive.

Comment: One comment took issue with winter wheat vs. spring wheat Transitional Yields (T-yields) and factors in many Pacific Northwest

counties. The comment suggested that the uncoupling of winter wheat and spring wheat into separate units be preceded by a major rework of T-yield factors to prevent potential over-payments on spring wheat units.

Response: FCIC agrees that T-yields should reflect any significant differences in yields. Evaluations will be performed and any necessary changes will be made as soon as practicable. However, those changes will not require a change in this rule.

Comment: The last paragraph under section 2. (Unit Division) indicates that optional units not in compliance with the provisions of the section will be combined into the basic unit from which they were formed. A comment suggested that this language be clarified to separate this combination from that which occurs at loss time if production is commingled between optional units. The comment recommended the following language: "If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with this section into the basic unit from which they were formed."

Response: FCIC agrees with the comment and has modified the provision as recommended.

Comment: One comment suggested that Harding and Perkins counties, South Dakota, be added to the list of wheat counties that have an April 15 cancellation and termination date. Statistics indicate that over 80 percent of the wheat in these counties is initially planted spring wheat. In order to maintain the line of counties which separates the April 15 counties from counties with earlier dates, Harding and Perkins counties should be listed with the other South Dakota counties with the April 15 date.

Response: FCIC agrees with the comment and has modified the provision as recommended.

Comment: Four comments agreed with changing the wheat sales closing and cancellation dates for Idaho, Oregon, and Washington from October 31, to September 30. However, they recommended the dates not be changed until the 1995 crop year due to the late publication of the proposed rule. One of the four comments indicated the change would cause the production reporting date to occur at an earlier date. In some areas of the Northwest, harvest may not be completed by that new production reporting date.

Response: The effective date of these regulations has been postponed until the 1995 crop year, therefore, the wheat sales closing and cancellation dates for Idaho, Oregon, and Washington from October 31 to September 30 has been postponed to 1995. FCIC will take action to change the production reporting date if problems occur.

Comment: One comment stated that the change of the wheat sales closing and cancellation dates from October 31 to September 30 for Idaho, Oregon, and Washington is favorable and inquired as to the reason that Nevada and Utah remain at the 10/31 date.

Response: FCIC changed the sales closing and cancellation in Idaho, Oregon, and Washington due to an allegation that the previous dates posed a potential for adverse selection. FCIC has not received any comments or recommendations regarding the dates in Nevada or Utah. It is FCIC's intent to allow the maximum sales period possible as long as program integrity is not compromised. FCIC will not change the proposed rule.

Comment: A comment recommended that the cancellation and termination dates be changed from April 15 to February 28 for barley and oats in all Pacific Northwest states.

Response: FCIC plans an overall assessment of program dates for all crops. The recommendation will be considered in that review.

Comment: A comment recommended moving the cancellation and termination dates from the Crop Provisions to the Special Provisions. The comment suggested that any information specific to a state, county or group of counties be located in the Special Provisions where the appropriate parties have access to it.

Response: These dates must remain in the Common Crop Insurance Policy due to the requirements of § 457.8. However, FCIC will consider also placing them in the Special Provisions.

Comment: One comment stated that as proposed, policy language in subsection 6.(a) could lead the reader to believe that the insured has the option of insuring only a portion of their insurable acreage.

Response: FCIC agrees that this language should be clarified. The provision has been modified to indicate the crop insured is each small grain the producer elects to insure, that is grown in the county on insurable acreage, and for which premium rates are provided by the actuarial table.

Comment: One comment recommended requiring that requests for written agreements be received by FCIC within 15 days of the acreage reporting date and that the requirement be added to section 6. Insured Crop.

Response: The Crop Insurance Handbook now indicates that these types of written agreements must be sent to FCIC, and be postmarked no later than 15 days after the acreage reporting date. Since reinsured insurance contracts are between the reinsured company and the insured, the contract should not contain obligations that exist between FCIC and the reinsured company. Therefore, language indicating that requests must be received by FCIC within 15 days of the acreage reporting date will not be included in the crop provisions.

Comment: Three comments were received regarding the provision that allows the insured to designate wheat acreage that will be destroyed before harvest as uninsurable acreage, or acreage eligible for a reduced premium rate. The comments suggested that applicability of the provisions not be limited to wheat, and that the reduced premium rate should only be provided in counties where early destruction of crops has been a problem.

Response: FCIC agrees that applicability of the provisions should not be limited to wheat. Only acreage intended to be harvested for grain qualifies as an insurable crop. Therefore, if it is known at the acreage reporting date that the acreage will be destroyed, it is not insurable. The provision that allows an insured to designate only wheat acreage as uninsurable acreage has been changed to apply to all covered crops. The provision that provides for a reduced premium rate if acreage is destroyed by a certain date, has been changed so that it applies only in those counties for which such a reduced rate is included on the actuarial table. This change will allow FCIC to provide a "short rate" only in areas where small grain crops are most commonly used for multiple purposes, e.g., grazing and harvest for grain.

Comment: One comment questioned the benefit of using the under-reported premium factor as opposed to current procedure whereby production from unreported acreage is counted against the guarantee for reported acreage, or the acreage report is revised if acreage is over-reported.

Response: Current procedure is not altered if under-reported acreage is the only problem. The under-reported premium factor reduces the guarantee when share, practice, type, or other material information is under-reported.

Comment: One comment noted that it is extremely important that shifting liability procedure be reinstated. Acreage is reported by unit and the insurance company requires the insured to indicate on the acreage report the acreage he plans to destroy, however, insureds often do not know at acreage

report time exactly which acres will be destroyed. Therefore, the company is asking for information that is often unknown at the time the acreage report is filed. Shifting liability procedure is an equitable method of addressing the situation.

Response: If an insured indicates that acreage will be destroyed and then does not destroy the acreage, the unit will be subject to the under-reporting provisions of subsection 6.(f) of the Common Crop Insurance Policy (§ 457.8).

Comment: Two comments indicated that the wheat provision will allow any insured producer whose wheat sustains early damage to destroy any remaining wheat, pay a reduced premium rate, and receive a full indemnity. The comments suggested that the provision should be changed to prohibit this practice, and to require the insured to notify the insurer prior to destroying any insured wheat.

Response: FCIC agrees that the reduced premium should apply only when there is no insurable damage. FCIC also agrees that the insured should notify the insurer prior to and after destruction of any acreage of the insured crop. This notification will allow the insurer to make any necessary inspections and adjustments to the Acreage Report. The provision has been revised accordingly.

Comment: Two comments indicated that the provisions for destroyed acreage are difficult to assess without seeing the proposed prorata premium charges, or the deadlines which will be designated in the Special Provisions. The comments asked if the expense reimbursement to reinsured companies for acreage destroyed by the deadline in the Special Provisions would be calculated using the total premium or the reduced premium.

Response: Premium rates for destroyed acreage will vary in accordance with the probability of loss in individual geographic areas. If insurable damage occurs prior to the crop being destroyed by the grower, the loss will be processed in the normal manner and 100 percent of the premium will be due. Expense reimbursement will also be calculated on this basis. If the insured destroys the acreage by the date designated in the Special Provisions and does not claim insurable damage on such acreage, the reduced rate will be used to determine the premium and the reduced premium will be used to determine the expense reimbursement.

Comment: One comment recommended that if the terms of the Late Planting Agreement Option are added to the Small Grains Policy, an option should be allowed for insureds to decline this coverage. The comment supported giving insureds the opportunity to make a management decision on whether their late planted acreage has coverage.

Response: Provisions for late planting coverage have been added to these provisions in order to provide more complete coverage for insureds. If insureds are allowed to opt out of the coverage it may result in adverse selection against the insurer. When agronomic conditions are good many insureds would tend to opt out of the coverage, but if growing conditions are poor, insureds would tend to keep the coverage.

Comment: One comment inquired about the lack of availability of the late planting option for late planted winter wheat. The comment pointed out that the option is available for both fall and spring planted barley, and suggested that it be available for winter wheat.

Response: FCIC has received comments indicating that the wheat final planting dates are now set as late as it is normally practical to plant. The additional planting period allowed by the Late Planting Agreement Option (LPAO) permits planting too late in the year to expect production equal to or in excess of the insurance guarantee provided by the Option. Although coverage similar to that provided by the current LPAO will no longer be available, coverage for winter wheat planted after the final planting date will be available under the prevented planting provisions (section 12). FCIC received no comments opposed to removing the LPAO for winter wheat.

Comment: One comment recommended changing the wording in subsection 6.(d) to: "If you do not select one of the options for alternate coverage, you agree that in counties for which the special provisions designate both a fall final planting date and a spring final planting date, any damage to fall planted wheat which occurs between the fall final planting date and the spring final planting date due to any cause is not insured."

Response: Subsection 6.(d) (renumbered as 6.(c) in this final rule) is intended solely to inform the insured of the availability of the Wheat Winter Coverage Endorsement. Section 7 (Insurance Period) clearly indicates the coverage limitations for fall planted wheat in counties with both fall and spring final planting dates. Additional language in subsection 6.(d) is not necessary.

Comment: A comment suggested that FCIC provide a deadline for selecting Option A or B under the Winter Coverage Option.

Response: The sales closing date will be the last date an insured can select either Option A or B under the Winter Coverage Option. FCIC agrees that the Option should indicate this date and has revised it accordingly.

Comment: One comment stated that if wheat insurance attaches at different times depending on which style of insurance a grower has purchased, it will lead to administrative problems. The comment suggested that insurance on wheat attach on the day the acreage is planted or the date the application is accepted—whichever is later.

Response: The insurance provisions attach on the later of the date the application is accepted or the date the crop is planted. This does not vary based on the insurance options chosen by the insured.

Comment: One comment indicated concern that the replant provision could be interpreted to mean that a crop that had sustained 1% damage before the final planting date must be replanted. The comment recommended "damage" be defined to mean damaged to the extent that the crop will not be further cared for, will not be harvested, or will be abandoned.

Response: FCIC agrees that the amount of damage should be clarified. Language has been added clarifying that any acreage damaged to the extent that growers in the area would not further care for the crop must be replanted unless replanting is not practical. The same change has been made to similar provisions for barley and wheat acreage (subparagraphs 7.(a)(2)(ii), 7.(a)(2)(iii), and 7.(a)(2)(iv)).

Comment: One comment stated that clarification is needed regarding the definition of "practical to replant."

Response: FCIC agrees with the comment and has clarified the definition. The new definition clarifies that it is practical to replant if it is "our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, etc., that a replanting of the insured crop will attain maturity in the remainder of the crop year."

Comment: A comment inquired as to the practicality of replanting wheat before the fall planting date.

Response: Replanting wheat before the fall final planting date is considered practical if certain conditions are met.

Comment: Three comments suggested that coverage limitations applicable to winter wheat also apply to winter barley. One of the comments also inquired if the requirement that a

written request be made to insure fall planted wheat in counties with only a spring final planting date would result in extra paperwork.

Response: FCIC agrees that the limitations that apply to wheat should also apply to barley. The provisions have been modified accordingly. A written request to insure the fall planted acreage will serve to notify the insurer that a crop inspection is necessary in the spring to determine whether or not an adequate stand exists in the spring.

Comment: One comment noted that the provisions of section 7 specifically state that spring wheat damaged prior to the spring final planting date must be reseeded. The comment recommended that specific wording be added to state that damaged fall wheat must be reseeded prior to the fall final planting date and that no replanting payment applies.

Response: FCIC agrees that this clarification should be made. The provisions have been modified to state that any acreage damaged prior to the fall final planting date must be replanted to winter wheat unless FCIC agrees it is not practical. Paragraph 9.(a)(4) clearly indicates that a replanting payment for damage occurring prior to the fall final planting date is not allowed. Therefore, language regarding replanting payments was not added.

Comment: The following questions regarding winter wheat were submitted:

a. When winter wheat is planted in a county that has only a spring final planting date, will the winter wheat be insured using the spring wheat yield or will the RSO set a winter wheat yield on the written agreement?

b. Will the winter wheat production be considered spring wheat for APH purposes or must winter wheat APH yield be established?

c. What production guarantee is used to determine if the winter wheat has an adequate stand?

Response: The provision that applies to these questions is unchanged from the present wheat endorsement. Actuarial tables for the counties in question do not designate a wheat type. When a type is not designated, the guarantee is based on wheat production without regard to the type. This guarantee is used for APH purposes and is also used to determine whether or not an adequate stand exists.

Comment: For winter wheat in counties that only have a spring final planting date, the policy states that insurance will attach on the earlier of the spring final planting date or the date the insurer agrees to accept the acreage. The policy also requires insureds planting winter wheat in these counties to request insurance for winter planted wheat. One comment suggested that because the insurer must inspect the crop to determine if an adequate stand exists, insurance should attach when the insurer agrees to accept liability (not on the spring final planting date). The comment suggested that the applicable sentence in subparagraph 7.(a)(2)(v) should be revised to read as follows: "* * * Insurance will attach to acreage having an adequate stand on the date we agree to accept the acreage for insurance."

Response: The policy language was written to set a specific date by which the insurer must accept liability. The language requires insurers to inspect acreage in a timely manner so that the insured can be advised about the coverage level prior to the spring final planting date. No changes have been made in the provisions.

Comment: Under the winter coverage endorsement, FCIC is giving producers two additional coverage options for losses on winter wheat that is damaged prior to the spring final planting date. A Montana producer expressed concern that the new provisions may change the current basic winter wheat coverage and premium levels.

Response: The basic coverage under the wheat provisions is similar to the existing wheat endorsement. The changes (primarily replanting payments in certain instances) may have a small impact on the rate charged for the base coverage. The new basic policy (without the Wheat Winter Coverage Endorsement) clearly states that winter wheat damaged prior to the spring final planting date must be replanted in counties with both winter and spring final planting dates.

Comment: One comment recommended that the calendar dates for the end of the insurance period be moved to the Special Provisions. The comment also indicated that it is incorrect to state that the end of the insurance period is "October 31 following planting in all other states" because, in many states, the crop is planted prior to October 31.

Response: FCIC agrees that language regarding the end of the insurance period is incorrect and has made appropriate corrections. The Common Crop Insurance Policy (§ 457.8), to which the Small Grains Crop Provisions attaches, requires that the calendar date for the end of the insurance period be indicated in the crop provisions. FCIC will consider placing this date in the Special Provisions at a later date.

Comment: One comment expressed concern that the provisions pertaining to sufficient or improper application of insect or disease control measures could lead FCIC towards micro-management. The comment also indicated that an over-zealous appraiser could unjustly claim that a producer did not use the right timing, kind of pesticide, or the equipment for application.

Response: Language indicates that crop damage caused by insects or disease is covered unless the damage is due to insufficient or improper application of control measures. It has always been the loss adjustor's responsibility to determine if good farming practices are carried out by the producer. This responsibility includes determining if cultural practices necessary to control insects and disease are followed. The new language does not change current loss adjustment procedures, or give loss adjustors the latitude to require unreasonable control measures. The language is intended to clearly advise insureds that they are expected to take control measures that typically would be used in the area.

Comment: One comment recommended adding the following language under failure of water supply as an insured cause of loss: "(water source and means for supplying irrigation water, without regard to equipment or facilities). This includes the water source, dams, canals, ditches, pipelines, etc., necessary to supply water for movement from the source to the acreage but does not include any irrigation equipment or facilities."

Response: Failure of the irrigation water supply during the insurance period is a covered cause of loss. The "supply" includes several items not included in the recommendation, e.g., aquifers, precipitation, etc. Also covered are off-farm irrigation facilities and equipment used by water regulators and suppliers. The recommended language would not provide coverage when such facilities failed. Language in the proposed rule will remain unchanged.

Comment: One comment inquired if the provision concerning wheat replant payments includes replant payments for winter wheat as well as spring wheat.

Response: The provisions provide a replant payment for winter wheat in counties with both a fall and spring final planting date, only if the winter wheat is damaged after the fall final planting date. A replant payment is also provided to replant spring wheat in counties with a spring final planting date.

Comment: Five comments were received opposing paying replant payments for wheat. The comments stated that: (a) Insureds have not requested replant payments for spring wheat; (b) insureds are currently

replanting or "sweetening" stands at their own minimal expense; (c) replant payments for spring wheat will not reduce indemnity payments because insureds already replant at their own expense; (d) the cost of replanting wheat is much less than other spring crops; (e) unnecessary increased loss adjustment expense will result; (f) if FCIC persists with implementation of this proposal, provisions addressing these increased expenses should be made; (g) without a commensurate increase in rates, adding a replant payment has the net effect of increasing the loss ratio; (h) this provision will tremendously impact the loss adjustment expense; (i) the replant provisions are extremely hard to react to on a timely basis and very expensive to administer; and (j) replants on row crops are normally confined to smaller areas with fewer miles to travel. The same is not applicable to other small grains.

Response: The intended effects of replanting payments are to: (1) Provide coverage requested by wheat growers; (2) provide reimbursement to insureds for replanting expenses; (3) reduce indemnities by encouraging replacement of damaged or destroyed crops; and (4) provide equity among the various crops. FCIC understands that administrative costs will be associated with this coverage, however, replant payments are a loss control mechanism and may outweigh any additional administrative costs. Comments received did not establish findings that all damaged acreage is presently replanted in the absence of a payment.

Comment: One comment recommended revising language concerning wheat replant payments to specify that damage must be due to an insurable cause of loss in order for a replay payment to be made.

Response: FCIC agrees with the comment and has revised the language accordingly.

Comment: The provisions require that wheat be damaged to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the unit to qualify for a replant payment. One comment stated that these provisions conflict with the winter coverage options because the options indicate a replant payment can be made on a portion of a unit. The comment recommended changing the language to allow a replant payment if the remaining stand will not produce at least 90 percent of the production guarantee for the acreage as opposed to the unit.

Comment: FCIC agrees that changing the language as recommended makes replanting payment provisions consistent between the Basic Policy and Winter Wheat Coverage Endorsement. Changes have been made accordingly.

Comment: The provisions do not include any limitation regarding the date an insured can replant and be eligible for a replanting payment. One comment recommended adding a provision requiring that acreage be replanted within 25 days after the spring final planting date to remain eligible for a replant payment. The comment also recommended clarifying if "sweetening" is considered replanting.

Response: FCIC agrees that replanting should take place within 25 days after the spring final planting date and has added appropriate language. The provision has been changed to indicate that planting new seed into an existing damaged stand at a reduced seeding rate will not be considered replanting.

Comment: One comment stated that the replant payment provisions do not indicate the consequences when wheat is replanted using a practice that is uninsurable for an original planting. The comment recommended the following language be added to clearly indicate what happens in such a situation: "When wheat is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will be based on the original liability."

Response: FCIC agrees with the comment and has added the language as recommended.

Comment: One comment recommended that replant payments apply onto wheat. In addition, the comment recommended clarification that no replant payment for barley, oats, rye or flax will be provided.

Response: The provisions already clearly state that a replant payment is allowed only for wheat. Further clarification is not necessary. After loss experience with wheat replanting payments is analyzed, replanting payment coverage may be extended to barley, oats, rye and flax.

Comment: One comment inquired why the number of days a representative sample must be left unharvested has been changed from 15 to 30.

Response: The provisions have been revised to require that representative samples be left until the earlier time the insurer gives consent to destroy the samples or 15 days after harvest.

Comment: One comment stated that the proposed provisions do not link the time notice is given with the requirement to leave representative samples of the insured crop. In addition, the provisions do not clearly indicate that a sample is required for each field in the unit. The comment recommended that there be some indication that the requirements in this provision are in addition to the insured's duties contained in the Common Crop Insurance Policy. The comment also recommended that the following language be used: "In addition to your duties contained under section 14 of the Common Crop Insurance Policy (§ 457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 30 days after harvest is completed on the unit."

Response: FCIC agrees with the comment and has changed the provisions as recommended with the exception of the 30 day requirement.

Comment: One comment inquired about the intent of the provisions under the heading, "Duties in the Event of Damage or loss."

Response: This provision requires that representative samples be left when notice of damage is given within 15 days of, or during harvest. It does not apply only when the producer is going to destroy the acreage. The intent of this provision is to enable the loss adjustor to have a reasonable amount of time to inspect a portion of the undisturbed crop and determine the extent of insurable damage. After the crop is harvested it can be extremely difficult to accurately determine the extent of insurable damage.

Comment: One comment suggested clarifying the provisions under section 11, "Settlement of Claim", by indicating that mixed grains will be graded based on a sample of the insured (predominant) grain.

Response: According to current procedure, mixed grains may be quality adjusted if the predominant grain is separable from other grains in the mix. Additionally, the predominant grain must meet policy requirements for quality adjustment. This is a procedural matter and will remain in loss adjustment procedure handbooks.

Comment: Two comments recommended that the provisions be revised to state that only those optional units on which production is commingled will be combined. As proposed, the provisions require that all optional units within a basic unit be combined when production is

commingled between any optional units.

Response: FCIC agrees with the comment and has revised the provisions accordingly.

Comment: One comment stated that language under section 11, "Settlement of Claim", is misleading because it indicates that "All appraised production which is: Not less than the production guarantee will be counted for acreage that is abandoned * * *" This could lead the reader to believe that only appraised production in excess of the production guarantee will be counted. The comment recommended revising the language as follows: "All appraised production as follows: Not less than the production guarantee for acreage which is abandoned * * *."

Response: FCIC agrees with the comment and has revised the language as recommended.

Comment: One comment suggested that "appraised production" be defined in the policy. The comment also inquired if FCIC intends to include definitions of "appraised production," "harvested production" and "uninsured causes" in the small grains policy?

Response: The term "appraised production" is defined in the provisions. "Harvested production" and "uninsured causes" are definitive terms and do not require specific definitions.

Comment: One comment suggested clarifying the provisions under section 11, "Settlement of Claim", by revising the language to read as follows: "(i) not less than the production guarantee for: (a) acreage which is abandoned, (b) put to another use without our consent, (c) damaged solely by uninsured causes, or (d) for which you fail to provide records of production that are acceptable to us."

Response: FCIC agrees that separating the items in the language makes it easier to read and revisions have been made accordingly.

Comment: One comment recommended that the provisions under section 11, "Settlement of Claim", be revised to allow adjusting production for both (1) moisture exceeding the requirements in the policy and (2) quality deficiencies exceeding the grade requirements stated in the policy for each small grain crop. The comment also recommended that an adjustment for moisture should be addressed using moisture charts in the handbook.

Response: FCIC agrees with the comment and has revised the provisions so that adjustments for moisture and quality are determined separately.

Comment: One comment inquired if individuals licensed under the United States Warehouse Act are qualified to determine grade due to damaged kernels, shrunken or broken kernels, defects, sound barley, thin barley, sound oats, etc. The comment also inquired if tests for vomitoxin by state university labs and commercial labs licensed by the state will continue to be acceptable.

Response: Grain graders licensed under the United States Warehouse Act are authorized to inspect, weigh, and grade grain for the purposes of warehouse receipts. Ability to grade grain varies considerably. When grade problems exist and elevator personnel are unable to adequately establish the quality, samples are generally sent to Federal Grain Inspection Service (FGIS) for a grade determination. FGIS has the authority to make final grade determinations. Insurers who are uncomfortable with grade determinations made by individuals licensed under the United States Warehouse Act should send samples to FGIS for final grade determination. Specialized tests, such as tests for vomitoxin, must be performed by a qualified laboratory. Language specifying that specialized tests must be performed by a laboratory approved by the insurer has been added to the provisions.

Comment: One comment recommended clarifying the definition of "local market price".

Response: FCIC agrees that the definition should be clarified and has done so.

Comment: Two comments recommended changing the term "final inspection" under section 11, "Statement of Claim", to either: "final settlement" or "the date the loss is adjusted."

Response: The date of the final inspection is used to determine values used in quality adjustment. This is the date the claim is completed. Changing the term to either of the above suggestions does not significantly clarify the provision.

Comment: One comment recommended revising the provisions concerning quality adjustment under section 11, "Statement of Claim", to the following: "The value we use for the damaged production will reflect only reduction in value to the requirements outlined in 11(d). It will not reflect any reduction in value due to moisture content, uninsured causes, charges for drying, handling or processing or any other reduction."

Response: FCIC agrees with the comment and has revised the language accordingly.

Comment: One comment expressed concern over FCIC's option to utilize prices of outside markets as opposed to local markets to establish the value for local grain.

Response: This provision allows insurers to seek higher prices for damaged grain which may result in the insured receiving compensation from a buyer rather than from an insurance indemnity. This provision should help reduce indemnities and keep premiums lower.

Comment: One comment suggested requiring damaged grain with zero value be destroyed prior to paying any indemnity.

Response: Once a loss adjuster determines a crop has no value it should remain the insured's choice how to handle its disposition. Loss adjustors are trained to make accurate evaluations of crop potential and any determinations made by them should be accepted by the insurer. The suggested language has not been added.

Comment: One comment recommended that a provision be added to clarify that any discount used to establish the net price of damaged production be usual, customary, and reasonable.

Response: FCIC agrees with the comment and has revised the provision accordingly.

Comment: One comment recommended revising paragraph 11.(d)(3) regarding moisture reduction to read as follows: "Production eligible for moisture adjustment will be reduced by .12 percent for each .1 percentage point of moisture in excess of * * *."

Response: FCIC agrees with the comment and has revised the paragraph accordingly.

Comment: Four comments indicated that it is difficult to assess provisions of the Winter Coverage Endorsement without knowing the premium rates. One of the comments points out that dissatisfaction would occur with the Endorsement when premium rates are published. The author of another comment expressed concern that the proposed Options may erode the affordable value of the insurance product in counties currently covered by the Winter Coverage Option/Fall Seeded Endorsement. If Option B is priced too high, it may cause a migration of business to the less expensive Option A or the basic endorsement. The result would be less significant protection, on an affordable basis, and an overall devaluation of the effectiveness of the insurance product in counties that currently have the Winter Coverage Option.

Response: Final rate determinations cannot be made until the endorsement provisions are finalized. Any premium rate changes will reflect the coverage

provided by regulations published in this final rule. Adequate time will be allowed to inform insureds of coverage and rate changes, and for insureds to make choices regarding their insurance protection.

Comment: Three comments stated that it will be necessary to provide extra training to insurance agents before they sell the Winter Coverage Endorsement.

Response: FCIC agrees that it is imperative to properly train insurance agents regarding program changes. Adequate training will be provided prior to implementing program changes contained in the new Winter Coverage Endorsement.

Comment: One comment stated that "conservation compliance requirements are encouraging more intensive rotational systems. Producers throughout South Dakota are opting to use both Spring wheat and Winter wheat within their rotational systems. Unfortunately for many producers, they are unable to buy winter wheat coverage in a large portion of the state." The comment suggested that serious consideration be given to allowing insurance coverage for both wheats on a state wide basis.

Response: The Wheat Winter Coverage Endorsement will be available in all South Dakota counties that currently have both fall and spring final planting dates. Research is being done by FCIC to determine if the Endorsement should be available in other counties. Expanded availability will depend on the outcome of this research.

Comment: One comment submitted the following questions: If an insured chooses to destroy damaged acreage covered by the Wheat Winter Coverage Endorsement, can they destroy only damaged acres, or do they have to destroy all the remaining acres in the unit? Is spring wheat insurable on acres indemnified under Winter Wheat Option A? Will the insured qualify for a replant payment on those acres?

Response: The insured may destroy only the damaged acres on the unit and qualify for coverage as long as at least 20 acres or 20 percent of the acreage in the unit does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage. Under Option A, an insured may choose to have the acreage appraised, destroy damaged winter wheat, or plant spring wheat on the acreage and insure it separately. If the insured chooses to accept an appraisal of the remaining potential, a replant payment is not allowed, even if the acreage is replanted to spring wheat.

Comment: One comment recommended adding the following to the last sentence in paragraph 3 of the Winter Coverage Endorsement: "* * * unless we agree in writing that it is practical to replant after the spring final planting date."

Response: The provisions of paragraph 3 do not prevent a replant payment for acreage replanted after the spring final planting date. It is not necessary to extend coverage after the period covered by the Winter Coverage Endorsement.

Comment: One comment stated that the word "damage," used in the Winter Coverage Endorsement, can be interpreted to mean that a crop which has suffered one percent damage can either be replanted, carried to harvest or destroyed. The comment recommended that "damage" be qualified to mean damaged to the extent that the crop does not have the potential to produce the yield used to determine the production guarantee, will not be further cared for, will not be harvested or will be abandoned.

Response: Coverage under both Options A and B is limited to situations in which at least 20 acres or 20 percent of the acreage in the unit, whichever is less, is damaged to the extent that it does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage (see first paragraphs under Options A and B).

Comment: Two comments indicated that since one of the choices the insured has under the Winter Coverage Option is to replant to spring wheat, the notice of damage should be required by the spring final planting date. The deadline for notice of loss under the current Fall-Winter Coverage Option is the spring final planting date.

Response: FCIC agrees that notice of damage under the Endorsement should be provided by the spring final planting date. The provisions have been revised accordingly.

Comment: Eight comments were received regarding coverage limitations under Option A of the Wheat Winter Coverage Endorsement. The comments stated that limiting coverage for damaged wheat to 30 percent of the production guarantee, after the time period covered by the Endorsement, is inappropriate. A crop carried on after the winter coverage period would have a potential much greater than 30 percent of the production guarantee. Two of the comments recommended allowing coverage to remain at the full production guarantee when the insured continues to care for the crop. One comment recommended allowing coverage to remain in place at the actual crop potential.

Response: Option A limited coverage to 30 percent of the production guarantee even if the insured elected to carry the damaged wheat to harvest. FCIC has revised Option A to allow coverage to continue based on the full guarantee if the production potential on the spring final planting date is such that growers in the area continue to maintain the crop.

Comment: The author of one comment submitted the following questions: Under Option A of the Wheat Winter Coverage Endorsement, is 70 percent of the production guarantee levied against total production on damaged acres only? What if there is winter damage and the insurer was not informed until after harvest?

Response: Option A clearly indicates that the amount of production to count will not be less than 70 percent of the production guarantee for the damaged acreage. If notice of damage is not given in accordance with policy provisions, and such lack of notice interferes with determination of covered damage, a claim may not be payable for the unit.

Comment: One comment outlined concerns that the coverage under Option A will not be sufficient to cover production costs incurred before the crop must be destroyed. The comment also inquired about the actual premium costs.

Response: Option A of the Wheat Winter Coverage Endorsement is designed as a lower cost alternative to the full coverage of Option B. Although full production costs may not be covered, there is a significant increase in coverage over the base policy which does not provide protection unless the crop is replanted. Rate determinations cannot be made until the Endorsement provisions are finalized. The premium rates for Option A will reflect the coverage provided by regulations published in this final rule.

Comment: One comment recommended adding language to the Wheat Winter Coverage Endorsement that would state that when damaged winter wheat is replanted to spring wheat, the spring wheat will have the winter wheat guarantee.

Response: FCIC agrees that clarification is needed and has revised the language accordingly.

Comment: Two comments were received regarding the provisions in the Wheat Winter Coverage Endorsement that allow an insured to destroy damaged wheat acreage, replant the acreage to spring wheat, and consider such replanted acreage as a separate crop. One comment indicated that the

endorsement may cause program abuse by encouraging an insured to gamble and seed winter wheat if he is normally a spring wheat producer. If there is not a good stand in the spring, the insured could destroy the crop, collect an indemnity, and plant spring wheat as is normally done. The second comment indicated that the provision will cause FCIC to insure two different crops of wheat on the same acreage during one crop year, which could cause a myriad of administrative problems.

Response: As written, both Option A and B allow an insured to destroy damaged winter wheat, receive any applicable indemnity payment, and then replant to spring wheat. The spring wheat can then be insured separately for a separate premium. If the insured is forced to include acreage replanted to spring wheat as part of the winter unit, a significant coverage provided by the options is eliminated. FCIC does not anticipate the administrative difficulties will be unmanageable.

Comment: The following question was submitted: "Under Option A, if damaged winter wheat is replanted to spring wheat, does the harvested spring wheat production count against the winter wheat unit production guarantee?"

Response: Yes.

Comment: The following question was submitted: "Does the winter wheat guarantee continue on the replanted spring wheat crop under paragraph b of Option B."

Response: Yes.

Comment: One comment stated that Option B provides better coverage than Option A and will be more attractive to insureds. The comment found no appreciable differences between the new Option B and former Winter Coverage Option for wheat.

Response: Option B is not similar to the current Winter Coverage Endorsement. Option B allows spring wheat (planted to replace damaged winter wheat) to be treated as a separate crop. The current Endorsement requires that spring wheat in this situation be a part of the winter wheat unit. This new choice provides more comprehensive coverage than the current Endorsement.

Comment: One comment inquired if FCIC is aware of the recommendations from the meeting of the Montana Committee and the Billings RSO regarding clarification of the Malting Barley Option.

Response: FCIC has considered and incorporated the recommendations of the Billings Regional Service Office and the Montana Committee. The recommendations were to: (1) Include a clearer definition of the entity (i.e., a brewery or business that makes or sells malt or processed mash to a brewery) contracting with the insured to produce malting barley; and (2) clearly state that the insurer's liability under the Option is limited to the lesser of the number of contracted bushels or the production guarantee.

Comment: One comment inquired if malting barley basic units can be divided into optional units by section/ASCS FSN and/or irrigated/non-irrigated acreage. The comment stated that if this division is possible, paragraph 4 of the Malting Barley Option needs to be revised to refer to the Small Grains Crop Provisions, not the Basic Provisions.

Response: Paragraph 4 of the Malting Barley Option refers to the "Basic Policy," not the "Basic Provisions." The "Basic Policy" includes all provisions applicable to small grains (both the Common Crop Insurance Policy, and the Small Grains Crop Provisions). Revision is not necessary.

Comment: A comment recommended that the approved malting barley varieties be specified in the Special Provisions.

Response: FCIC agrees with the comment and has specified the varieties in the Special Provisions.

Comment: A comment suggested that the "date of the final inspection for the unit" be clarified.

Response: The date of the final inspection is the date that the loss adjustor completes the claim.

Comment: One comment recommended that the Malting Barley Option be revised to allow adjusting production for both (1) moisture exceeding the requirements in the policy and (2) exceeding the grade requirements stated in the Option.

Response: FCIC agrees with the comment and has modified the paragraphs so that adjustments for moisture and quality are determined separately.

During the interim between publication of the Small Grains Crop Provisions as a proposed rule and preparation of this final rule, provisions providing coverage for Late and Prevented Planting were added to the current Wheat Endorsement (§ 401.101), Barley Endorsement (§ 401.103), and Oat Endorsement (§ 401.105). These provisions for Late and Prevented Planting Coverage, which were published in the **Federal Register** on December 22, 1993, have been incorporated into this final rule to continue the coverage provided by the current endorsements for barley, oats, and wheat, and to provide the same coverage benefits to those insuring flax or rye. In addition, FCIC has determined that revised language is needed in subparagraph 11.(c)(1)(iv) regarding acreage an insured wants to put to another use prior to harvest. These provisions now allow an insured to destroy such acreage when an appraisal amount is not agreed upon, if the insured agrees to leave representative samples of the crop in place. The samples will be used to later determine the amount of production to count.

Accordingly, the rule, "General Crop Insurance Regulations; Small Grains Crop Insurance Provisions" published at 58 FR 32458 as revised as set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop insurance; Barley, Flax, Malting barley, Oats, Rye, Wheat, Winter wheat.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1995 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 457 is amended by revising the heading; by adding and reserving §§ 457.9 through 457.100; and by adding §§ 457.101 Small Grains Crop Provisions, 457.102 Wheat Crop Insurance Winter Coverage Endorsement, and 457.103 Malting Barley Option to read as follows:

PART 457—COMMON CROP INSURANCE; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

* * * * *

§ 457.9–457.100 [Reserved]

§ 457.101 Small Grains Crop Insurance.

The Small Grains Crop Insurance provisions for the 1995 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Small Grains Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Adequate stand*—A population of live plants per unit of acreage which will produce at least the yield used to establish your production guarantee.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions by which the insured crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—The cultural practices necessary for the insured crop to make usual and normal progress toward maturity and which can be expected to produce at least the yield used to determine the production guarantee. Good farming practices are generally those in use in the county for production of the insured crop and are recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(e) *Harvest*—Combining or threshing the insured crop for grain or cutting for hay or silage on any acreage. A crop which is swathed prior to combining is not considered harvested.

(f) *Initially planted*—The first occurrence of planting the insured crop on insurable acreage for the crop year.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted during the late planting period.

(j) *Late planting period*—(not applicable for fall-planted wheat)—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Latest final planting date*—

(1) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a final planting date for spring-planted acreage only;

(2) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a final planting date for fall-planted acreage only; or

(3) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate final planting dates for both spring-planted and fall-planted acreage.

(l) *Local market price*—The cash grain price per bushel for the U.S. No. 2 grade of the insured crop offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of the insured crop. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

(m) *Nurse crop* (companion crop)—A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

(n) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Except for flax, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Flax seed must initially be placed in rows to be considered planted.

(o) *Practical to replant*—(subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) does not apply to small grains.) Our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, etc., that a replanting of the insured crop will attain maturity in the remainder of the crop year. It will not be considered practical to replant after the end of the late planting period or the final planting date if a late planting period is not applicable (see section 7) except that it may be determined practical to replant after the end of the late planting period or the final plant date if such procedure is generally occurring in the area.

(p) *Prevented planting*—Inabiltiy to plant the insured crop with proper equipment by:

(1) The latest final planting date for the insured crop in the county; or

(2) The end of the late planting period.

You must have been unable to plant the insured crop due to an insured cause of loss that is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and that occurs between the sales closing date and the latest final planting date for the insured crop in the county or within the late planting period.

(q) *Production guarantee*—The number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(r) *Replanting*—Performing the cultural practices necessary to replace seed for the insured crop, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(s) *Small grains*—Wheat, barley, oats, rye, and flax.

(t) *Swathed*—Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

(u) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance policy (§ 457.8) may be divided into optional units if, for each optional unit you claim, all the conditions of subsections 2.(a), (b), and (c), and the conditions of paragraph 2.(d)(1), (d)(2 , or (d)(3) are met, or if we agree to such division in writing. Optional units must be established at the time you file your report of acreage for each crop year.

(a) You must have verifiable records of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner which results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have measurements of stored production or market production from each optional unit in a manner that permits us to verify the production from the optional unit.

(d) Each optional unit must meet one or more of the following:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands. In areas which have not been surveyed using the systems identified above or another system approved by us, and in areas where boundaries are not readily discernable, each optional unit must be located in separate ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number, optional units may be established if each optional unit contains only irrigated acreage or only non-irrigated acreage. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage and the non-irrigated acreage in an appropriate manner.

(3) *Optional Units by Initially Planted Winter Wheat or Initially Planted Spring Wheat:* For wheat only, in addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number as described in paragraph 2.(d)(1) or by irrigated and non-irrigated practices as described in paragraph 2.(d)(2), optional units maybe established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both fall and spring final planting dates as designated by the Special Provisions.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with these provisions into the basic unit from which they were formed. We may do this at any time we discover that you have failed to comply with these conditions.

If failure to comply with these provisions is determined to be inadvertent, and if the optional units are combined, the premium paid for electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select only one price election for each crop insured under this policy in the county.

4. Contract Changes

The contract change date is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties (see the provisions under section 4. (Contract changes) in the Common Crop Insurance Policy § 457.8).

5. Cancellation and Termination Dates

The cancellation and termination dates are:

Crop, state and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel Counties; all Iowa Counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties and all Iowa counties north thereof; all Wisconsin Counties except Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties and all Wisconsin counties north and west thereof; and all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley Counties; New York; Oregon; Rhode Island; all South Dakota counties except Harding, Perkins, Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties and all South Dakota counties north and east thereof; Washington; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties.	September 30	November 30.
Matanuska-Susitna County, Alaska; Arizona; California; Nevada; and Utah	October 31	November 30.
All Alaska Counties except Matanuska-Susitna County; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Harding, Perkins, Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin, and all Wisconsin counties north and west thereof; Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	April 15	April 15.
Barley:		
All New Mexico counties except Taos County; Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, and all states south and east thereof.	September 30	September 30.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; Connecticut; Kansas; Massachusetts; and New York.	September 30	November 30.
Arizona; California; and Clark and Nye Counties, Nevada	October 31	November 30.
All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo, and Las Animas Counties and all Colorado counties south and east thereof; all Nevada counties except Clark and Nye Counties; Taos County, New Mexico; and all other states except: Arizona, California, Connecticut, Kansas, Massachusetts, New York; and (except) Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, and New Jersey and all states south and east thereof.	April 15	April 15.
Oats:		
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; All New Mexico counties except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia, and all Virginia counties east thereof.	September 30	September 30.
Arizona; All California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties.	October 31	October 31.
Del Norte, Humbolt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California; Taos County, New Mexico; all Virginia counties except Patrick, Franklin, Pittsylvania, Campbell, Attomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties and all Virginia counties east thereof; and all other except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	April 15	April 15.
Rye:		
All states	September 30	September 30.
Flax:		
All states	April 15	April 15.

6. Insured Crop

(a) The crop insured will be each small grain you elect to insure, that is grown in the county on insurable acreage, and for which premium rates are provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest as grain (a grain mixture in which barley or oats is the predominate grain may also be insured if allowed by the Barley or Oat Special

Provisions, or if we agree in writing to insure such mixture. The crop insured will be the grain which is predominate in the mixture. The production from such mixture will be considered as the predominate grain on a weight basis);

(3) That is not:

(i) Interplanted with another crop except as allowed in paragraph 6.(a)(2);

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(4) We may agree, in writing, to insure a crop prohibited under paragraph 6.(a)(3) if you so request. Your request to insure such crop must be in writing, and submitted to your agent not later than 15 days after the acreage reporting date.

(b) If you anticipate destroying any acreage prior to harvest you:

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage. (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in subsection 6.(f) of the Common Crop Insurance Policy (§ 457.8)); or

(2) If the actuarial table provides a reduced premium rate for acreage destroyed by a date designated in the Special Provisions, you may report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage. Your premium amount will be reduced by the amount shown on the Actuarial Table for any acreage you destroy prior to a date designated in the Special Provisions if you do not claim an indemnity on such acreage. In accordance with subsection 14.(b) of the Common Crop Insurance Policy (§ 457.8), you must obtain our consent before and give us notice after you destroy any of the insured crop so your acreage report can be revised to make you eligible for this reduction in premium.

(c) In counties for which the Wheat Special Provisions designate both fall and spring final planting dates, you may elect a winter coverage endorsement for wheat. This endorsement provides two options for alternative coverage for wheat that is damaged between the fall final planting date and the spring final planting date. Coverage under the endorsement will be effective only if you designate the coverage option you elect by executing the endorsement by the sales closing date for winter wheat in the county.

7. Insurance Period

In lieu of the requirements under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), and subject to any provisions provided by the Wheat crop insurance winter coverage endorsement (§ 457.102) if you have elected such endorsement, the insurance period is as follows:

(a) Insurance attaches on each unit or part thereof on the later of the date we accept your application or the date the insured crop is planted.

(1) For oats, rye and flax, the following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the insured crop except as allowed in subsection 12.(c).

(ii) Any acreage of the insured crop damaged before the final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical (see subsection 1.(o)).

(2) For barley and wheat, the following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in subsection 12.(c).

(ii) Whenever the Special Provisions designate only a fall final planting date, any acreage of winter barley or wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, winter barley or wheat planted on or before the final planting date which is damaged:

(A) Before the fall planting final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(B) On or after the fall final planting date, but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to an appropriate variety of the insured crop unless we agree that replanting is not practical.

If you have elected coverage under one of the available wheat winter coverage options available in the county, the insurance period for wheat will be in accordance with the selected options.

(iv) Whenever the Special Provisions designate a spring final planting date, any acreage of spring barley or wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical.

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or wheat is not insured unless you request such coverage and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. Insurance will then attach to acreage having an adequate stand on the earlier of the spring final planting date or the date we agree to accept the acreage for insurance. If such fall planted acreage is not to be insured it must be recorded on the acreage report as an uninsured fall planted crop.

(b) Insurance ends on each unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on the unit;

(4) September 25 following planting in Alaska, or October 31 of the calendar year in which the crop is normally harvested in all other states; or

(5) Abandonment of the crop on the unit.

8. Causes of Loss

In addition to the provisions under section 12 (Causes of Loss) of the Common Crop Insurance Policy, any loss covered by this policy must occur within the insurance period.

The specific causes of loss for small grains are:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage allowed because of insufficient or improper application of pest control measures;

(d) Plant disease, but not damage allowed because of insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply.

9. Replanting Payments

(a) A replant payment for wheat only is allowed as follows:

(1) You comply with all requirements regarding replanting payments contained under section 13 (Replanting Payment) of the Common Crop Insurance Policy and in any winter coverage endorsement for which you are eligible and which you have elected;

(2) The wheat must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(3) The acreage must have been initially planted to spring wheat in those counties with only a spring final planting date;

(4) The damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(5) Replanting must take place not later than 25 days after the spring final planting date; and

(6) The replant wheat must be seeded at a rate that is normal for initially planted wheat (if new seed is planted at a reduced seeding rate into a partially damaged stand of wheat, the acreage will not be eligible for a replanting payment).

(b) No replanting payment will be made for acreage initially planted to winter wheat in any county for which the Special Provisions contain only a fall final planting date.

(c) In accordance with subsection 13.(c) of the Common Crop Insurance Policy (§ 457.8), the maximum amount of the replanting payment per acre will be the lesser of 20 percent (20%) of the production guarantee or 3 bushels, multiplied by your price election multiplied by your share.

(d) When wheat is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting

payment. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

In addition to your duties under section 14 of the Common Crop Insurance Policy (§ 457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or for any

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) Which is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 11.(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If:

(A) Agreement on the appraised amount of production is not reached, you may elect to continue to care for the crop, or we will give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.

(B) You elect to continue to care for the crop, we will determine the amount of production to count for the acreage using the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested production from the insurable acreage.

(d) Mature wheat, barley, oat, and rye production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of:

(i) 13.5 percent for wheat;

(ii) 14.5 percent for barley;

(iii) 14.0 percent for oats; and

(iv) 16.0 for rye.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (excluding heat damage), shrunken or broken kernels, or defects (excluding foreign material and heat damage), or grading garlicky, light smutty, smutty or ergoty;

(B) Barley not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, percentage of sound barley, damaged kernels, thin barley, or black barley, or grading smutty, garlicky, or ergoty;

(C) Oats not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight or percentage of sound oats, or grading smutty, garlicky, or ergoty;

(D) Rye not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of test weight, percent damaged kernels or thin rye, or grading smutty, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to damaged kernels; or

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged grain that is less than the local market price of U.S. No. 2 production;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grain grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by one loss adjustor.

(4) Production of small grains that is eligible for quality adjustment, as specified in paragraphs 11.(d) (2) and (3), will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be the prices on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those which are usual, customary, and reasonable. Any reduction in price due to the following factors will not be accepted:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the grain; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the production to those buyers.

(ii) The value of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor.

(iii) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushels (if appropriate)) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection (c)), and acreage you were prevented from planting (see subsection (d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and

eligible prevented planting acreage will be the same as that for timely planting acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planting acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by 50 percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subsection 1.(p)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting:

(1) For spring-planted wheat acreage in counties for which the Special Provisions designate a spring final planting date, and all barley, flax, oat, and rye acreage which is planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting the insured crop (see subsection 1.(p)), you may elect:

(i) To plant the insured crop during the late planting period (The production guarantee for such acreage will be determined in accordance with paragraph 12.(c)(1));

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year (The production guarantee for such acreage which is eligible for prevented planting coverage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This subparagraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest); or

(iii) To plant the insured crop after the late planting period (The production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels times 0.50). Production to count for such acreage will be determined in accordance with subsections 11.(c) through (e)).

(2) In addition to the provisions under section 11 (Insurance Period), of the Common Crop Insurance Policy (§ 457.8) the beginning of the insurance period for prevented coverage is the sales closing date designated in the Special Provisions for the insured crop in the county.

(3) Unless we agree in writing, prior to the sales closing date, the acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to the insured crop on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for the insured crop reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that were used to determine your yield;

Unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the actuarial table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for the insured crop in the county and we provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than the insured crop, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and reduced by the number of acres of the insured crop that are timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more acreage of the insured crop under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you report for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to the insured crop in the current crop year.

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

§ 457.102 Wheat crop insurance winter coverage endorsement.

United States Department of Agriculture

Federal Crop Insurance Corporation

Wheat Crop Insurance Winter Coverage Endorsement

(This is a Continuous Endorsement)

(a) In return for payment of the additional premium designated in the Actuarial Table, this endorsement is attached to and made part of your Small Grains Crop Provisions subject to the terms and conditions described herein.

(b) This endorsement is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(c) This endorsement modifies the provisions of sections 7 and 11 of the Small Grains Crop Insurance policy (§ 457.101).

(1) You must have a Small Grains Crop Insurance policy in force and elect to insure wheat under that policy.

(2) You may select either Option A or Option B. Failure to select either Option A or Option B means that you have rejected both Options and this endorsement would be void.

(3) Insurance Period. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(4) The provisions under section 14 of the Common Crop Insurance Policy (§ 457.8) are amended to require that all notices of damage must be provided to us by the spring final planting date designated in the Special Provisions.

Option A (30 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period (see section 3, above), and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may take any one of the following actions:

(a) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 70 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with paragraph 11.(c)(1) of the Small Grains Crop Insurance Provisions (§ 457.101) if such an appraisal results in a greater amount of production. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions under section 11. (Settlement of Claim) of the Small Grains Crop Insurance Provisions (§ 457.101). You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner which results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production.

In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

(b) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option.

(c) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9. (Replanting Payments) of the Small Grains Crop Provisions (§ 457.101). By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option, and the production guarantee for winter wheat will remain in effect.

Option B (With Full Winter Damage Coverage)

Whenever any winter wheat is damaged during the insurance period and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option.

(b) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9. (Replanting Payments) of the Small Grains Crop Provisions (§ 457.101). By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option, and the production guarantee for winter wheat will remain in effect.

(c) Accept our appraisal of the crop on the damaged acreage as production to count against the production guarantee for the damaged acreage, destroy the remaining crop on such acreage, and be eligible for any indemnity due under the terms of the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Provisions (§ 457.101). The appraisal will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions of section 11. (Settlement of Claim) of the Small Grains Crop Insurance Provisions (§ 457.101). You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production.

In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

§ 457.103 Malting barley option.

The Malting Barley Option Provisions for the 1995 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Small Grains Crop Insurance Malting Barley Endorsement

(This is a continuous Endorsement. Refer to section 2 of the Common Crop Insurance Policy)

In return for payment of the additional premium designated in the actuarial table, it is hereby agreed that the Common Crop Insurance Policy (§ 457.8) and Small Grains Crop Provisions (§ 457.101) are amended to incorporate the following terms and conditions:

(a) This Endorsement must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this Option.

(b) You must have a Common Crop Insurance Policy (§ 457.8) and a Small Grains Crop Insurance policy (§ 457.101) in force and elect to insure barley under those policies.

(c) You must provide:

(1) Acceptable records of the sale of malting barley for malting purposes for three of the previous five crop years by the production reporting date; and

(2) Before the acreage reporting date, written contract with a brewery or business that makes or sells malt or processed mash to a brewery, which states the quantity contracted and purchase price or method for determining such price by the acreage reporting date. Our liability under this Option will be limited to the lesser of the number of contracted bushels or your production guarantee.

(d) All barley acreage in the county planted to an approved malting variety in which you have a share will be insured under this Endorsement. All barley acreage of any non-malting variety will be insured under the terms of the Small Grains Endorsement. Malting barley and basic barley acreage will be separate basic units. Further unit division

may be allowed in accordance with the Common Crop Insurance Policy.

(e) Your price election will be provided by the actuarial table.

(f) In lieu of subparagraphs 11.(d)(2)(i)(B) and 11.(d)(1)(ii) of the Small Grains Crop Provisions:

(1) Mature malting barley production will be reduced .12 percent for each one tenth (.1) percentage point of moisture in excess of 13.0 percent; and

(2) Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley will be adjusted by:

(i) Dividing the value per bushel for the insured malting barley by the price election for malting barley; and

(ii) Multiplying the result not to exceed one (1.0) by the number of bushels of such barley.

(3) All grade determination must be made by a grader licensed to inspect barley under the United States Grain Standards Act using samples obtained by a licensed sampler or our loss adjuster. Any production which is not sampled and graded as provided by this section will be considered as malting barley meeting the applicable standards.

(g) As used in the Endorsement:

(1) Applicable standards—For two-rowed and six-rowed malting barley are defined in the Official United States Standards for barley.

(2) Approved malting variety—The varieties specified in the Special Provisions.

(3) Brewery—A facility where malt liquors are commercially produced for human consumption.

(4) Value per bushel means:

(i) The local market price of U.S. No. 2 barley (basic barley) if the insure mature malting barley production, due to insurable causes, grades U.S. No. 4 or better and does not grade smutty, garlicky, or ergoty; or

(ii) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not grade better than U.S. No. 5.

The prices used for this adjustment will be the prices on the earlier of the date such quality-adjusted barley is sold or the date of final inspection for the unit.

Done in Washington, DC, on February 16, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–4230 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–08–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–044–2]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by adding the D-Tec® Brucella A test to the list of official tests for determining the brucellosis disease status of test-eligible cattle and bison. We are taking this action because the D-Tec® Brucella A test has exhibited a high degree of specificity in identifying *Brucella abortus* antibodies. Adding the D-Tec® Brucella A test to the list of official tests for brucellosis in cattle and bison will help prevent the spread of the disease by making available an additional means by which animal health personnel may obtain timely and accurate diagnoses of brucellosis.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is an infectious disease of animals and humans caused by bacteria of the genus *Brucella*. In its principal animal hosts—cattle, bison, and swine—brucellosis is characterized by abortion and impaired fertility. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used to determine the brucellosis disease status of cattle, bison, and swine. The regulations stipulate that certain cattle, bison, and swine must, among other requirements, test negative to an official brucellosis test prior to interstate movement. Official brucellosis tests are also used to determine eligibility for indemnity payments for animals destroyed because of brucellosis. In § 78.1 of the regulations, the definition of official test lists those tests that have been designated as official tests for determining the brucellosis disease status of cattle, bison, and swine.

On September 27, 1993, we published in the **Federal Register** (58 FR 50290–50291, Docket No. 93–044–1) a proposal to amend the regulations by adding the D-Tec® Brucella A test to the list of official tests for determining the brucellosis disease status of test-eligible cattle and bison.

We solicited comments concerning our proposal for a 30-day comment period ending October 27, 1993. We received one comment by that date, from a veterinary medical association. The commenter supported our proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

The rule change will not add any costs for agricultural producers. It will, however, benefit farmers and ranchers who, without access to this or the other available diagnostic tests, quarantine or destroy animals on the basis of "false positive" reactions to presumptive tests. We estimate that between 200 and 300 animals are unnecessarily slaughtered or quarantined each year after having falsely tested positive on presumptive tests. These losses could be prevented by the use of diagnostic tests. The addition of the D-Tec® Brucella A test as an official test will prevent losses to farmers and ranchers if they opt to use it. While losses resulting from false positives affect only a few farmers and ranchers each year, this rule could modestly benefit all those entities that avail themselves of the D-Tec® Brucella A test.

This rule is expected to have a beneficial effect on the producer of the D-Tec® Brucella A test and a negligible negative impact on the only other producer of diagnostic tests. Both producers are small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—[Amended]

2. In § 78.1, in the definition of *official test*, paragraph (a)(11) is redesignated as (a)(12), and a new paragraph (a)(11) is added to read as follows:

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(11) *D–Tec*® Brucella A test. An automated serologic test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by APHIS. The degree of reactivity is measured by the ratio of the average optical density of the sample to that of the Negative Control (S/N) and is expressed as Percent Inhibition (1–S/N) × 100. The brucellosis disease status of the animals is classified according to the following established criteria:

Percent inhibition	Classification
Less than or equal to 40 percent.	Negative.
Greater than 40 percent and less than or equal to 70 percent.	Suspect.
Greater than 70 percent	Reactor.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4487 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 95

[Docket No. 92–135–2]

Importation of Hoofs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal byproduct importation regulations to allow hoofs that have been disinfected in their country of origin to be imported into the United States without further processing. Currently, certain hoofs imported into the United States must be consigned from the port of first arrival to an approved establishment having facilities for their disinfection. We have determined, however, that hoofs that have been adequately disinfected in their country of origin may be imported into the United States without risk of introducing disease. This change in the regulations will give importers of hoofs that require disinfection a choice between importing disinfected hoofs and importing unprocessed hoofs for disinfection in the United States.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 95 (referred to below as "the regulations") contain restrictions on the importation into the United States of certain animal byproducts and hay and straw in order to prevent the introduction of certain animal diseases. Among the regulated animal byproducts are animal hoofs, which, along with bones and horns, may be imported subject to the restrictions contained in §§ 95.11 and 95.12.

On July 13, 1993, we published in the **Federal Register** (58 FR 37669–37670, Docket No. 92–135–1) a proposal to amend the regulations to allow hoofs that have been disinfected in their country of origin, using one of five approved disinfection methods specified in the proposed rule, to be imported into the United States without additional treatment. We proposed to require that the hoofs be accompanied by a certificate issued by the national government of the country of origin and signed by an official veterinary inspector of that country stating that the hoofs have been disinfected and describing the manner in which the disinfection was accomplished.

We solicited comments concerning our proposal for a 60-day comment period ending September 13, 1993. We received one comment by that date, from a veterinary medical association. The comment fully supported our proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes restrictions on the importation of hoofs by allowing hoofs that have been processed in their country of origin to be imported into the United States without further processing. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

We have required certain hoofs imported into the United States to be consigned directly from the port of entry to an approved establishment that has facilities for their disinfection. This rule will allow hoofs to be imported into the United States without further processing

if the hoofs have been disinfected using an approved method in their country of origin. We believe that adding this option will have little or no economic impact on U.S. importers of hoofs because it will not significantly decrease their cost of doing business. The primary impact on these importers will be the added convenience of having two importation options from which to choose.

The primary use of disinfected hoofs appears to be in the production of dog chews, but that industry is still in its infancy and is rather small in terms of production and numbers of producers. Based on information available to the Department, we estimate that there are currently fewer than 10 importers of hoofs and approximately 6 producers of dog chews made from hoofs. Using the Small Business Administration's size criteria of fewer than 100 employees, all of these businesses would be considered small entities.

We believe that a few of these businesses receive hoofs from both foreign and domestic sources. Because the industry is small and relatively new, however, there are no records available concerning the number of hoofs imported into the United States or the levels of dog chew production.

The facilities in which hoofs are disinfected handle a variety of items, with hoofs making up only a small percentage of the total volume of products processed. Therefore, we anticipate that allowing hoofs to be processed in their country of origin will have little, if any, economic impact on domestic processors in terms of lost volume and revenue.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 95

Imports, Livestock, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 95 is amended as follows:

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 95 is revised to read as follows:

Authority: 21 U.S.C. 111, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 95.11 is amended as follows:

a. The section heading is revised as set forth below.

b. The undesignated text of the section is designated as paragraph (a).

c. A new paragraph (b) is added to read as set forth below.

§ 95.11 Bones, horns, and hoofs for trophies or museums; disinfected hoofs.

* * * * *

(b) Clean, dry hoofs disinfected in the country of origin may be imported without other restrictions if the following conditions are met:

(1) The hoofs have been disinfected using one of the following methods:

(i) Dry heat at 180°F (82.2°C) for 30 minutes;

(ii) Soaking in boiling water for 20 minutes;

(iii) Soaking in a 0.1 percent chlorine bleach solution for 2 hours;

(iv) Soaking in a 5 percent acetic acid solution for 2 hours; or

(v) Soaking in a 5 percent hydrogen peroxide solution for 2 hours.

(2) The hoofs are accompanied by a certificate issued by the national government of the country of origin and signed by an official veterinary inspector of that country stating that the hoofs have been disinfected and describing the manner in which the disinfection was accomplished.

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4486 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–16–AD; Amendment 39–8841; AD 94–05–03]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes. This action requires inspections to detect damaged main landing gear (MLG) wheel bearings and replacement of discrepant parts. This amendment is prompted by reports of failure of the MLG wheel bearings. The actions specified in this AD are intended to prevent detachment of a MLG wheel from the airplane.

DATES: Effective March 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before April 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP airplanes.

The CAA advises that reports have been received of failure of the main landing gear (MLG) wheel bearings on Model ATP airplanes. Investigations are under way to determine the cause of these failures. This condition, if not corrected, could result in detachment of a MLG wheel from the airplane.

Jetstream has issued Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994, that describes procedures for performing daily and pre-flight detailed visual inspections to detect damage or discoloration of the main wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels. (This service bulletin references Dunlop Service Bulletin AHA 1663–32–1088, Revision 1, dated January 13, 1994, as the appropriate source of service information.) The CAA classified this service bulletin as mandatory and issued CAA Airworthiness Directive 007–12–93, dated December 22, 1993, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the MLG wheel bearings, which could result in detachment of the MLG wheel from the airplane. This AD requires daily and pre-flight detailed visual inspections to detect damage or discoloration of the main wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels. The actions are required to be accomplished in accordance with the Jetstream service bulletin described previously.

This AD also requires replacement of the entire MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, if any damage or discoloration is detected during any inspection. The replacement is required to be accomplished in accordance with the airplane maintenance manual.

Operators should note that, although Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994, specifies that certain pilots may perform both the daily and pre-flight inspections, it is the FAA's determination that both inspections must be performed by appropriately certificated maintenance personnel, as specified in § 43.3 of the FAR (14 CFR 43.3).

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 AD 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 94–NM–16–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 14 CFR part 39 of the Federal Aviation Regulations 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:

94–05–03 British Aerospace (Commercial Aircraft), Limited: Amendment 39–8841. Docket 94–NM–16–AD.

Applicability: Model ATP series airplanes; constructor's numbers 2001 through 2063 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) wheel bearings, which could result in detachment of a MLG wheel from the airplane, accomplish the following:

(a) Within 24 hours after the effective date of this AD, perform cleaning and a detailed visual inspection to detect damage or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels, in accordance with paragraph 2.A.(1) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994. Thereafter, prior to the first flight of each day, repeat this cleaning and inspection. The cleaning and inspection must be performed by appropriately certificated maintenance personnel as specified in § 43.3 of the Federal Aviation Regulations (FAR). If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings in accordance with the airplane maintenance manual.

(b) Following accomplishment of the initial inspection required by paragraph (a) of this AD, prior to each flight, with the exception of the first flight of each day, perform a pre-flight detailed visual inspection to detect damage or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels, in accordance with paragraph 2.A.(2) of the Accomplishment Instructions in Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994. The pre-flight inspections must be performed by appropriately certificated maintenance personnel, as specified in § 43.3 of the FAR. If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings in accordance with the airplane maintenance manual.

(c) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The cleaning and inspections shall be done in accordance with Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994. 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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 15, 1994.

Issued in Renton, Washington, on February 18, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4275 Filed 2–24–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 774

[Docket No. 931116-3316]

Revisions to the Export Administration Regulations; Elimination of the Certification Requirements for General License GLR

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR), by eliminating the Shipper's Export Declaration (SED) certification requirements for exports and reexports of replacement parts and equipment under General License GLR to Country Groups Q, T, V, W, and Y. These reporting requirements were originally imposed as a tracking system to help determine how well the replacement provisions of General License GLR were working. BXA has determined that placing the symbol GLR on the SED is in itself a certification that the conditions of the general license are understood and that the exporter will comply with the terms of the general license. However, the removal of the certification requirement does not relieve the exporter of any recordkeeping obligations or other export clearance provisions contained in the EAR.

This rule also eliminates the reporting requirement regarding servicing commodities imported from Country Groups Q, W, or Y and eliminates the reporting requirements regarding certain reexports of one-for-one replacements and replacement equipment.

EFFECTIVE DATE: This rule is effective February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: Exporters are reminded that listing General License GLR on the Shipper's Export Declaration (SED) and the presentation of such a SED to the U.S. Government under the clearance procedures of part 786 constitutes a declaration that the export is authorized under General License GLR and that the exporter is committed to the terms and conditions of the one-for-one replacement authority of General License GLR, including, but not limited to, the duty to destroy abroad or return the part to be replaced.

Rulemaking Requirements

1. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), approved by the Office of Management and Budget under control numbers 0694–0018 and 0694–0047. This rule will reduce the reporting burden on the public.

2. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act (EAA) does not require that this rule be published in proposed form because this rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 774 of the Export Administration Regulations are amended as follows:

1. The authority citations for 15 CFR parts 771 and 774 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub, L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51743, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 771—[AMENDED]

2. Section 771.17 is amended by removing paragraph (a)(4) (the Note following (a)(4) is unchanged); by redesignating paragraph (a)(5) as paragraph (a)(4); by revising paragraph (e)(3)(ii) and removing the certification following that paragraph; by adding a new paragraph (e)(3)(iii); by amending paragraphs (f)(2)(i) and (f)(2)(ii) to remove the semicolon at the end of each sentence and replacing the semicolons with a period; by revising paragraphs (f)(2)(iii) and (f)(3)(iii) and removing the certification following each paragraph; and by removing paragraph (f)(3)(iv) as follows:

§ 771.17 General license GLR; return or replacement of certain commodities.

* * * * *

(e) * * *

(3) * * *

(ii) The parts to be replaced shall either be destroyed abroad or returned to the party who supplied the replacement parts, or to a foreign firm that is under the effective control of that party prior to, or promptly after, the shipment of the replacement parts.

(iii) Any export made under paragraph (e)(3) of this section shall be cleared in accordance with the provisions of part 786 of this subchapter.

* * * * *

(f) * * *

(2) * * *

(iii) Any export made under paragraph (f)(2) of this section shall be cleared in accordance with the provisions of part 786 of this subchapter.

(3) * * *

(iii) Any export made under paragraph (f)(3) of this section shall be cleared in accordance with the provisions of part 786 of this subchapter. By making such an export the exporter represents that all the requirements of paragraph (e)(3) have been met and undertakes to destroy or return the replaced parts as set forth in paragraph (f)(3)(ii).

PART 774—[AMENDED]

3. Section 774.2 is amended by revising paragraph (a)(4) to read as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(a) * * *

(4) May be exported directly from the United States to the country of destination under paragraphs (e) or (f) of General License GLR (§ 771.17 of this subchapter). A party reexporting U.S. origin one-for-one replacement parts or replacements for defective or unacceptable U.S. origin equipment shall ensure that the commodities being repaired or replaced were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts or equipment, the replaced parts or equipment are either destroyed or returned to the United States or to the foreign firm in Country Groups T or V, except Iran and Syria that shipped the replacement parts or equipment.

* * * * *

Dated: February 22, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–4357 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DT–P

[2] See § 774.9 for effect on foreign laws.

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 403

RIN 1505–AA42

Implementing Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing in final form amendments to the regulations issued under the Government Securities Act of 1986, as amended (the "Government Securities Act" or "GSA"). The amendments implement a buy-in requirement for mortgage-backed securities that are in a fail to receive status for more than 60 calendar days; and all government securities that are needed to complete a customer sell order (other than a short sale) if the securities have not been received from the customer within 30 calendar days after the settlement date for all government securities except mortgage-backed securities, or 60 calendar days after the settlement date for mortgage-backed securities. The final rule adopts without substantive change the buy-in requirements for mortgage-backed securities in a fail to receive status that were prescribed in the proposed rules published for comment on April 17, 1991. However, the time frames for buy-ins of customer sell orders have been revised in the final rule in response to comments received on the proposed rules. These requirements apply to all entities that are required to register or provide notice of their status as government securities brokers and dealers.

EFFECTIVE DATE: April 29, 1994.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), or Lee Grandy (Government Securities Specialist), Public Debt, Government Securities Regulations Staff, 999 E Street, NW., room 515, Washington, DC 20239–0001, (202) 219–3632. (TDD for hearing impaired: (202) 219–9274.)

SUPPLEMENTARY INFORMATION:

I. Background

The GSA regulations currently require a government securities broker or dealer to take prompt steps to obtain possession or control of customers' fully paid or excess margin securities that have been in a fail to receive status for more than 30 calendar days through a

buy-in procedure or otherwise. However, mortgage-backed securities are not subject to this buy-in requirement since the Department suspended the application of this rule to such securities in the GSA regulations that were issued in July 1987.[1] In addition, the current GSA regulations do not impose a buy-in requirement for customer sell orders where the government securities broker or dealer has not obtained the securities from its customer. A temporary rule imposing such a requirement on registered government securities brokers and dealers was suspended in the July 1987 GSA regulations issued by the Department.[2]

On April 17, 1991, the Department proposed for comment amendments to sections 403.1, 403.4, and 403.5 of the GSA regulations.[3] The proposed amendments prescribed buy-in requirements for: (i) Mortgage-backed securities in a fail to receive status for more than 60 calendar days, and (ii) customer sell orders (other than short sales) in which the securities were not received from the customer within ten business days after the settlement date.

The proposed rule was intended to subject mortgage-backed securities to a 60 calendar day buy-in requirement, rather than the 30 calendar days applicable to other government securities due to the unique nature of the mortgage-backed market, particularly the lengthy settlement cycle. The reader is referred to the preamble to the proposed rule[4] for a more detailed discussion of the Department's reasons for adopting a 60 calendar day time frame for buy-ins of mortgage-backed securities. The proposed rulemaking also included buy-in rules for customer sell orders that would apply to all government securities brokers and dealers, including financial institutions. Specifically, the provisions proposed that if a government securities broker or dealer executes a customer sell order (other than a short sale) and the broker or dealer has not obtained the securities from the customer within ten business days after the settlement date, then the broker or dealer would be required to close out the transaction with the customer by purchasing securities of like kind and quantity. The Department specifically requested comments concerning the appropriateness of the ten-day time frame.

The comment period for the proposed rules closed on June 17, 1991. Only one letter[5] was received in response to the proposed rule changes. The commenter supported the 60-day buy-in time frame for mortgage-backed securities in a fail to receive status but opposed the proposed rule for customer sell orders. However, the commenter suggested modifications to the time frame for buy-ins of customer sell orders if Treasury decided to adopt such a rule.

Treasury did not issue these rules in final form prior to the expiration of its rulemaking authority on October 1, 1991. Treasury's authority under the GSA was permanently reauthorized on December 17, 1993, hence the long delay in finalizing these rules.

II. Section-by-Section Analysis of Proposed Changes

A. Buy-Ins for Fails To Receive

The Department is now adopting without significant change amendments to paragraphs 403.1, 403.4(g) and 403.5(c)(1)(iii) that were proposed in April 1991. These provisions would require all government securities brokers and dealers that are required to register or file notice pursuant to 15C(a)(1) of the Exchange Act to take prompt steps to obtain possession or control of mortgage-backed securities that are in a fail to receive status for more than 60 calendar days through a buy-in procedure or otherwise.[6] The Public Securities Association (PSA), which was the only commenter on the proposed rules, supported the 60 calendar day time frame for buy-ins of mortgage-backed securities, stating that "* * * the proposal is a reasonable approach."[7] This time frame reflects the recommendations made in July 1989 by an industry-wide task force established by the PSA.[8]

As discussed in more detail in the preamble to the proposed rules, the Department is adopting a longer buy-in time frame for fails to receive for mortgage-backed securities than the 30-calendar day time frame in place for other government securities. This longer time period is appropriate given the normally longer settlement cycle for mortgage-backed securities (which is often as long as 30 days),[9] the complexities of these instruments and the scarcity in the market of specified pools. To avoid abnormal settlements,[10] the Department reiterates that any buy-in accomplished pursuant to these rules would be allowed to settle on the next regularly scheduled settlement date for that particular class or pool of mortgage-backed securities.

The Department understands that the PSA will implement buy-in procedures for mortgage-backed securities similar to those in place for other government securities. We believe that reliance on procedures that are already familiar to the broker-dealers should facilitate the implementation of this rule and view efforts to standardize the operational procedures as a positive step.

B. Buy-Ins for Customer Sell Orders

The Department's proposed rules included a requirement to buy-in customer sell orders (other than a short sale) in cases where the government securities broker or dealer had not obtained the securities from the customer within ten business days after the settlement date. For registered government securities brokers and dealers the Department was proposing to add paragraph 403.4(l) which incorporated by reference paragraph (m)

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[1] 52 FR 27910, 27920–21 and 27948–50 (July 24, 1987).

[2] 52 FR 27910, 27921–22 and 27948–50 (July 24, 1987).

[3] See 56 FR 15529 (April 17, 1991). The rule changes to these three sections of the GSA regulations would make the buy-in requirements applicable to all classes of government securities brokers and dealers that were required to register or file notice pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(a)(1)). Section 403.1 would apply to registered brokers and dealers that were required to file notice as government securities brokers and dealers with the Securities and Exchange Commission; section 403.4 would apply to registered government securities brokers and dealers (i.e., those entities that were required to register with the SEC); and section 403.5 would apply to financial institutions that were required to file notice as government securities brokers and dealers with their respective appropriate regulatory agency.

[4] See 56 FR 15529, 15530–31 (April 17, 1991).

[5] Letter from Peter J. Murray, Chairman, Government Securities Operations Committee, Public Securities Association (PSA) and Laura E. LoCosa, Chairperson, Mortgage-Backed Securities Operations Committee, PSA, to Kenneth Papaj, Director, Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, dated June 17, 1991 (hereinafter "June 17, 1991 PSA Letter").

[6] The term mortgage-backed securities includes only those mortgage-backed securities that are included in the definition of "government securities" as set out in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)).

[7] June 17, 1991 PSA Letter, *supra* note 5, at 2.

[8] Letter from Marianna Maffucci, Vice President and Assistant General Counsel, Public Securities Association, to Kenneth Papaj, Director, Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, and Michael Macchiaroli, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated July 10, 1989.

[9] The PSA has developed a system to standardize the settlement process for mortgage-backed securities. See Public Securities Association, "Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities" at 15–1 (1988). This system has proven successful in alleviating operational workloads during the heaviest settlement periods, which has contributed to a reduction in the high fail rates for mortgage-backed securities.

[10] A settlement date other than the regularly scheduled settlement date can be requested, however, the buyer pays a premium for this abnormal settlement.

of SEC Rule 15c3–3 (17 CFR 240.15c3–3(m)), with one modification pertaining to the definition of a short sale.[11] This rule has been suspended by the SEC with respect to exempted securities since 1973, including government securities.[12] A companion buy-in rule for customer sell orders that would apply to financial institutions that are required to file notice as government securities brokers and dealers was also proposed in April 1991 by adding new paragraph 403.5(g) to the GSA regulations.

In its comment letter, the PSA stated that the ten-day buy-in rule for customer sell orders should not be adopted because it has minimal customer protection benefits. The PSA noted that improvements in the settlement processes and the fact that most Treasury, agency and government mortgage-backed securities are now in book-entry form have resulted in increased deliveries and fewer overall fails. For those few fails that may still occur, the PSA stated that "[b]roker-dealers have business incentives to clean up fails to limit their market exposure."[13] For mortgage-backed securities, the ten-day buy-in time frame would be problematic since it would require delivery of securities outside of the regularly scheduled settlement cycles. The PSA suggested that, if Treasury believes a buy-in rule for customer sell orders must be adopted, the time frame should be consistent with the applicable buy-in time frames for fails to receive.

The Department continues to believe that buy-in rules for customer sell orders are needed to strengthen customer protection because a customer's failure to deliver a security to an executing broker or dealer could result in that broker's or dealer's failure to deliver to another counterparty. Further, these rules will prevent customers from taking advantage of market fluctuations by refusing to deliver a security to a broker or dealer when the price rises after a sell order has been executed.

In response to the comments made by the PSA, the Department is revising the buy-in time frame for customer sell orders in new paragraphs 403.4(l) and paragraph 403.5(g), applicable to registered government securities brokers-dealers and financial institution government securities broker-dealers, respectively, from ten business days to 30 calendar days for all government securities, except mortgage-backed securities, and to 60 calendar days for all government mortgage-backed securities.[14] These time frames are consistent with the buy-in requirements for fails to receive addressed above. The Department also modified the customer sell order rules to permit the use of alternatives other than purchasing securities (e.g., securities may be borrowed, substituted or bought back) in closing out orders. Again, this is consistent with the buy-in rules for fails to receive.

The buy-in rules for customer sell orders continue to provide an exemption for short sales, which are the primary cause for non-deliveries. This should significantly reduce the number of fails subject to these requirements. Similar to buy-ins of mortgage-backed securities that are in a fail to receive status, broker-dealers will be allowed to effect buy-ins for customer sell orders of mortgage-backed securities at the next regularly scheduled settlement cycle.[15]

Finally, the Department is also adopting without change redesignated paragraph 403.5(h), which will now grant the appropriate regulatory agencies for financial institutions the authority to extend the 30- and 60-calendar day time frame for buy-ins of customer sell orders if a financial institution broker-dealer requests an extension. No comments were received on this provision.

C. Effective Dates

The final rules become effective April 29, 1994. This will provide sufficient time for all government securities brokers and dealers to become acquainted with the new requirements and to implement operating procedures. Additionally, the lead time will enable the PSA to finalize and distribute buy-in procedures it is developing for the industry.

In its comment letter, the PSA requested that the Treasury's buy-in rules be enacted contemporaneously with the Commission's amendments to Rule 15c3–3(d)(2) and (m). Since Treasury's rules apply to all government securities brokers and dealers, and given the Department's understanding that the buy-in rules to be proposed by the Commission will conform to those adopted herein, the Department believes that there is no compelling reason to defer implementation until the Commission acts.

III. Special Analysis

The Department has determined that this action does not constitute a "significant regulatory action" for the purposes of Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, it was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs, Office of Management and Budget.

In the preamble to the proposed rules, the Department certified that these amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. In reviewing the final rules being adopted herein and after considering the comments received on the proposed rules, the Department has concluded that there is no reason to alter the previous certification that these rules will not have a significant economic impact on a substantial number of small entities.

Since these final rules contain no new collections of information, the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) are inapplicable.

List of Subjects in 17 CFR Part 403

Banks, Banking, Brokers, Government securities.

For the reasons set out in the Preamble, 17 CFR part 403 is amended to read as follows:

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

1. The authority citation for part 403 is revised to read as follows:

Authority: Sec. 101, Public Law 99–571, 100 Stat. 3209; sec. 4(b), Public Law 101–432, 104 Stat. 963; sec. 102, sec. 106, Public Law 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(b)(1)(A), (b)(4)).

2. Section 403.1 is revised to read as follows:

§ 403.1. Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by

[11] The proposed rule also included an amendment to section 403.1 which would make paragraph 403.4(l) apply to registered brokers and dealers that were required to file notice as government securities brokers and dealers with the SEC.

[12] Securities Exchange Act Release No. 10093 (April 10, 1973), 38 FR 12103 (May 9, 1973).

[13] June 17, 1991 PSA Letter, *supra* note 5, at 3.

[14] The Department is also adopting without change, the amendments to section 403.1, which requires registered broker-dealers to comply with paragraph 403.4(l).

[15] The SEC's buy-in requirement for customer sell orders has been suspended with respect to exempted securities. *See* Securities Exchange Act Release No. 10093 (April 10, 1973), 38 FR 12103 (May 9, 1973). It is the Department's understanding that SEC staff intends to recommend to the Commission a proposal to lift the suspension of paragraph (m) of Rule 15c3–3 with respect to exempted securities and amend the provision in a manner that would conform with Treasury's final rule in paragraph 403.4(l) as it relates to government and mortgage-backed securities.

registered brokers or dealers with § 240.8c–1 of this title (SEC Rule 8c–1), as modified by §§ 403.2 (a), (b) and (c), with § 240.15c2–1 of this title (SEC Rule 15c2–1), with § 240.15c3–2 of this title (SEC Rule 15c3–2), as modified by § 403.3, and with § 240.15c3–3 of this title (SEC Rule 15c3–3), as modified by §§ 403.4 (a)–(d), (e)(2)–(3), (f)–(i), and (l), constitutes compliance with this part.

3. Section 403.4 is amended by revising paragraph (g) and by adding new paragraph (l) after paragraph (k) to read as follows:

§ 403.4. Customer protection—reserves and custody of securities.

* * * * *

(g) For the purposes of this section, § 240.15c3–3(d)(2) of this title ismodified to read as follows:

"(2) Securities included on its books or records as failed to receive more than 30 calendar days, or in the case of mortgage-backed securities, more than 60 calendar days, then the government securities broker or government securities dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain possession or control of securities so failed to receive through a buy-in procedure or otherwise; or"

* * * * *

(l) For purposes of this section, the suspension of § 240.15c3–3(m) of this title (38 FR 12103, May 9, 1973) is no longer effective and the paragraph is modified to read as follows: "(m) If a government securities broker or government securities dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the government securities broker or dealer) and if for any reason whatever the government securities broker or government securities dealer has not obtained possession of the government securities, other than mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the government securities broker or government securities dealer shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity. For purposes of this paragraph (m), the term "customer" shall not include a broker or dealer who maintains a special omnibus account with another broker or dealer in compliance with section 4(b) of Regulation T (12 CFR 220.4(b)).

* * * * *

4. Section 403.5 is amended by revising paragraph (c)(1)(iii); by redesignating paragraph (g) as paragraph (h) and revising newly redesignated paragraph (h); and by adding new paragraph (g) to read as follows:

§ 403.5. Custody of securities held by financial institutions that are government securities brokers or dealers.

* * * * *

(c)(1) * * *

(iii) Take prompt steps to obtain possession or control of securities failed to receive for more than 30 calendar days, or in the case of mortgage-backed securities, for more than 60 calendar days; or

* * * * *

(g) If a financial institution executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the financial institution) and if for any reason whatever the financial institution has not obtained possession of the government securities, except mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the financial institution shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity.

(h) The appropriate regulatory agency of a financial institution that is a government securities broker or dealer may extend the period specified in paragraphs (c)(1)(iii) and (g) of this section on application of the financial institution for one or more limited periods commensurate with the circumstances, provided the appropriate regulatory agency is satisfied that the financial institution is acting in good faith in making the application and that exceptional circumstances warrant such action. Each appropriate regulatory agency should make and preserve for a period of not less than three years a record of each extension granted pursuant to this paragraph, which contains a summary of the justification for the granting of the extension.

Dated: February 14, 1994.

Frank N. Newman,

Under Secretary for Domestic Finance.

[FR Doc. 94–4402 Filed 2–25–94; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 16

[Docket No. R–94–1669; FR–3436–F–02]

RIN 2501–AB60

Exemption of System of Records Under Privacy Act of 1974

AGENCY: Office of the Secretary, HUD

ACTION: Final rule.

SUMMARY: This final rule exempts a new system of records entitled "Tenant Eligibility Verification Files" from compliance with the applicable provisions of the Privacy Act. This additional exemption is necessary because on July 12, 1993, the Department created a new system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" to add to the Privacy Act system of records.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Decker, Director, Computer Matching Activities Division, Office of the Public and Indian Housing Comptroller, Room 4122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0099. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Except for the Office of Inspector General, the Department's implementation of the Privacy Act (5 U.S.C. 552a) is set forth in 24 CFR part 16. (The implementation of the Privacy Act for the Office of Inspector General appears in 24 CFR part 2003). The implementation of the Privacy Act includes the publication of a system of records which are exempt from certain requirements of the Privacy Act, as determined by the Secretary under the specific exemption authority of the Act, 5 U.S.C. 552a(k). The specific exemption provision of the Privacy Act authorizes exemption for systems of records from many of the notice and access requirements of the Privacy Act, but does not affect the applicability of the remaining Privacy Act requirements. The Department's specific exemptions appear at 24 CFR 16.15.

The establishment of a new system of records on July 12, 1993 (58 FR 37600), entitled "HUD/PIH–1. Tenant Eligibility Verification Files," and this rule are

necessary as a result of the recent transfer of computer matching/tenant eligibility verification functions from the Office of Inspector General to the Assistant Secretary for Public and Indian Housing. (The transfer affects only housing assistance programs administered by the Assistant Secretary for Public and Indian Housing.)

The tenant records and other records referenced in the new "Tenant Eligibility Verification Files" system of records notice were previously included in the "Investigative Files of the Office of the Inspector General" (HUD/OIG–1, see 57 FR 25070). The Assistant Secretary for Public and Indian Housing will be adding records to the final new system based on computer matching results and verification of those results with tenant case files and records supplied by Federal agencies and private employers.

This final rule also makes changes to § 16.15 to clarify the scope of the exemptions applicable to the Assistant Secretary for Public and Indian Housing's system of records entitled "Tenant Eligibility Verification Files," and provides reasons for the exemptions from particular subsections of the Privacy Act that are more detailed than those currently found at 24 CFR 16.15.

II. Discussion of Public Comments From Proposed Rule

On July 12, 1993 (58 FR 37598), the Department published a proposed rule which would exempt the new system of records entitled "Tenant Eligibility Verification Files" from compliance with applicable provisions of the Privacy Act. The Department received one public comment from a public housing agency in response to this proposed rule. The commenter stressed the need to protect a tenant's privacy, and urged strenuous penalties to prevent misuse of the new system of records. The Department agrees that it is extremely important to prevent the misuse of confidential material concerning a tenant. However, the Department does not believe any changes to the final rule are necessary because both the Privacy Act and the Computer Matching and Privacy Protection Act of 1988 provide sufficient safeguards to protect against the unlawful disclosure of material concerning a tenant from this Privacy Act system of records.

III. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

B. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule only affects the way the Department implements the Privacy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. Specifically, the requirements of this rule are directed to the Department of Housing and Urban Development, and do not impinge upon the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

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

E. Regulatory Agenda

This final rule was listed as item no. 1444 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56410) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 16

Privacy.

Accordingly, 24 CFR part 16 is amended to read as follows:

PART 16—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 42 U.S.C. 3535(d).

2. Section 16.15 is amended by adding new paragraphs (c) and (d) as follows:

§ 16.15 Specific exemptions.

* * * * *

(c) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of investigatory material compiled for law enforcement purposes. Relevant records will be used by appropriate Federal, state or local agencies charged with the responsibility for investigating or prosecuting violations of law. Therefore, to the extent that information in the system falls within the coverage of subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), the system is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of an accounting of disclosures to an individual who may be the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1) because release of the records to an individual who may become or has become the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2) because amendment or correction of the records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the office that maintains the records to continuously retrograde its verifications of tenant eligibility attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1) because it is often impossible to determine

relevance or necessity of information in pre-investigative early stages. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the Assistant Secretary for Public and Indian Housing, or investigators, may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Assistant Secretary for Public and Indian Housing, or investigators, should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining the evidence, information may be provided which relates to matters incidental to the main purpose of the inquiry or investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(d) The system of records entitled "HUD/PIH–1. Tenant Eligibility Verification Files" consists in part of material that may be used for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal 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. Therefore, to the extent that information in this system falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of the following subsection of the Privacy Act, for the reasons stated below.

(1) From subsection (d)(1) because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: February 15, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–4482 Filed 2–25–94; 8:45 am]

BILLING CODE 4210–32–P

24 CFR Parts 792 and 892

[Docket No. R–94–1708; FR–3487–F–01]

RIN 2501–AB65

Implementation of Section 129 of the Housing and Community Development Act of 1992

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for public housing agencies and Indian housing authorities (HAs) to follow to permit HAs to retain a portion of certain section 8 fraud recoveries from tenants and owners for use in section 8 programs. Section 129 of the Housing and Community Development Act of 1992 expands HA retention of section 8 fraud recoveries to include recoveries obtained through administrative repayment agreements, as well as litigation (including settlement of a lawsuit) or a court-ordered restitution. This rule applies to the section 8 rental certificate, rental voucher, moderate rehabilitation programs, and private owner/HA new construction and substantial rehabilitation projects subject to an Annual Contributions Contract.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: For the Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation Programs: Madeline Hastings, Director, Rental Assistance Division, Office of Assisted Housing, room 4226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1842. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0850.

For issues concerning computer matching/tenant income verification matters: David L. Decker, Director, Computer Matching Activities Division, room 4122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–0099. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0850.

For Section 8 private owner/HA new construction and substantial rehabilitation projects subject to an ACC between HUD and an HA: James Tahash, Director, Planning and Procedures Division, Office of Insured Multifamily Housing Development, room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–3944. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594.

(The telephone numbers cited above are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background:

Some tenants receiving section 8 assistance submit false statements which underreport income to obtain excessive housing assistance. Similarly, some owners also commit fraud in order to receive section 8 rental assistance payments to which they are not entitled. Examples of owner fraud include billing for vacant dwelling units, charging more rent for assisted units than unassisted units in the same building, receiving sidepayments from assisted tenants, and knowingly admitting ineligible tenants into section 8 substantial rehabilitation and new construction projects. Through various methods, such as direct observation, informants, investigative action and computer matches, HAs discover that tenants and owners have committed fraud in order to receive either benefits or payments for which they were not entitled.

In 1981, Congress enacted legislation aimed at stemming this fraud and abuse. Section 326(d)(1) of the Housing and Community Development Amendments of 1981 (Pub. L. 97–35; hereafter referred to as "1981 HCD Act") allowed HAs to retain "out of judgments obtained by them in recovering amounts wrongfully paid as a result of fraud and abuse" a portion of the fraud recoveries to encourage HAs to recover amounts overpaid as a result of such fraud and abuse. On August 20, 1986 (51 FR 29633), the Department published a final rule implementing section 326(d)(1) of the 1981 HCD Amendments. In the final rule, HUD construed the term "judgments" to allow HAs to retain amounts recovered by means of litigation, including a settlement of litigation.

However, most section 8 fraud recoveries result from administrative repayment agreements between the HA and the families, or between the HA and the owner. As such, nearly all tenant and owner fraud recoveries have gone to HUD, and HAs have had little monetary incentive to identify tenant and owner fraud and pursue repayment.

Section 129 of the Housing and Community Development Act of 1992, (Pub. L. 102–550, approved October 28, 1992; hereafter referred to as "1992 HCD Act"), allows HAs to retain a portion of rental assistance fraud recoveries obtained through litigation, court-ordered restitutions, and administrative repayment agreements pursuant to an administrative grievance procedure except in cases where HUD is the

principal party initiating or sustaining the recovery action. By allowing HAs to retain a portion of the monies recovered under administrative repayment agreements, the Act provides an additional incentive for HAs to aggressively pursue cases of suspected fraud.

Under the Act and this regulation, an HA can retain the greater of: (1) 50 percent of the amount collected or (2) the actual, reasonable, and necessary expenses related to the collection, including the cost of investigation, legal fees and collection fees. The recoveries may be obtained through litigation (including settlement of a lawsuit), a court-ordered restitution, or an administrative repayment agreement pursuant to an administrative grievance procedure. The rule applies to the Section 8 Rental Certificate, Rental Voucher, Moderate Rehabilitation Programs and private owner/HA new construction and substantial rehabilitation projects subject to an Annual Contributions Contract (ACC) between HUD and an HA.

Finally, in August of 1986, the Department added a final rule implementing section 326(d)(1) of the 1981 HCD Amendments as a new part 892. This final rule transfers the requirements of 892 to a new part 792, and removes part 892. The rule also changes the reference from public housing agency (PHA) to housing agency (HA) to recognize definitional changes resulting from the Indian Housing Act of 1988 (Pub. L. 100–358).

II. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule increases the amount a housing agency may recover in fraud and abuse cases. As such, the rule will not impinge on the relationship between the Federal and state and local governments, and the rule is not subject to review under the order.

C. Executive Order 12606, the Family

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

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the number of recoveries by housing agencies is expected to be small and so the number of small public housing agencies affected will be small. In any event, the effect on small entities is expected to be positive rather than negative.

E. Paperwork

The changes made by this final rule to the regulatory text in 24 CFR part 892, which now appears as 24 CFR part 792, will not add any additional information collection burden than that already approved by the Office of Management and Burden under the Paperwork Reduction Act and assigned OMB approval number 2577–0053.

F. Regulatory Agenda

This rule was listed as item no. 1655 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56453) in accordance with Executive Order 12991 and the Regulatory Flexibility Act.

G. Justification for Final Rulemaking

In general, the Department publishes rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides 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 this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because the changes being made to part 892, which now appears as part 792, merely implement statutory amendments that do not involve the exercise of any discretion by the Department.

H. The Catalog of Federal Domestic Assistance program number(s) are 14.156, Lower Income Housing Assistance Programs.

List of Subjects in 24 CFR Parts 792 and 892

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

Accordingly, for the reasons set forth in the preamble, title 24 of the Code of Federal Regulations is amended by redesignating part 892 as part 792 and by revising the newly designated part 792 to read as follows:

PART 792—HOUSING AGENCY SECTION 8 FRAUD RECOVERIES

Subpart A—General Provisions

Sec.

792.101 Purpose.
792.102 Applicability.
792.103 Definitions.

Subpart B—Recovery of Section 8 Funds

792.201 Conduct of litigation.
792.202 HA retention of proceeds.
792.203 Application of amounts recovered.
792.204 Recordkeeping and reporting.

Authority: 42 U.S.C. 1437f note; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 792.101 Purpose.

The purpose of this part is to encourage public housing agencies and Indian housing authorities (HAs) to investigate and pursue instances of tenant and owner fraud and abuse in the operation of the section 8 housing assistance payments programs.

§ 792.102 Applicability.

(a) This part applies to an HA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the HA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud

recoveries are obtained through litigation brought by the HA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of an HA administrative grievance procedure pursuant to, or incorporating the requirements of, § 882.216 or 887.405. This part does not apply to cases of owner fraud in HA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the HA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a criminal proceeding obtained on or after October 8, 1986, and to all tenant and owner fraud recoveries obtained through administrative repayment agreements signed on or after October 28, 1992.

§ 792.103 Definitions.

Fraud and abuse. Fraud and abuse means a single act or pattern of actions:

(1) That constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead; and

(2) That results in payment of section 8 program funds in violation of section 8 program requirements.

HA (Housing Agency). HA (Housing Agency) means any State, county, municipality, or other governmental entity or public body, including any Indian Housing Authority, acting as a section 8 contract administrator under an annual contributions contract with HUD.

Judgment. Judgment means a provision for recovery of section 8 program funds obtained through fraud and abuse, by order of a court in litigation or by a settlement of a claim in litigation, whether or not stated in a court order.

Litigation. A lawsuit brought by a HA to recover section 8 program funds obtained as a result of fraud and abuse.

Principal party in initiating or sustaining an action to recover. Principal party in initiating or sustaining an action to recover means the party that incurs more than half the costs incurred in:

(1) Recertifying tenants who fraudulently obtained section 8 rental assistance;

(2) Recomputing the correct amounts owed by tenants; and

(3) Taking needed actions to recoup the excess benefits received, such as initiating litigation.

Costs incurred to detect potential excessive benefits in the routine day-to-day operations of the program are excluded in determining the principal party in initiating or sustaining an action to recover. For example, the cost of income verification during an annual recertification would not be counted in determining the principal party in initiating or sustaining an action to recover.

Repayment agreement. Repayment agreement means a formal document signed by a tenant or owner and provided to an HA in which a tenant or owner acknowledges a debt, in a specific amount, and agrees to repay the amount due at specific time period(s).

Subpart B—Recovery of Section 8 Funds

§ 792.201 Conduct of litigation.

The HA must obtain HUD approval before initiating litigation in which the HA is requesting HUD assistance or participation.

§ 792.202 HA retention of proceeds.

(a) Where the HA is the principal party initiating or sustaining an action to recover amounts from tenants that are due as a result of fraud and abuse, the HA may retain, the greater of:

(1) Fifty percent of the amount it actually collects from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 882.216 or § 887.405; or

(2) Reasonable and necessary costs that the HA incurs related to the collection from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 882.216 or § 887.405. Reasonable and necessary costs include the costs of the investigation, legal fees and collection agency fees.

(b) If HUD incurs costs on behalf of the HA in obtaining the judgment, these costs must be deducted from the amount to be retained by the HA.

§ 792.203 Application of amounts recovered.

(a) The HA may only use the amount of the recovery it is authorized to retain in support of the section 8 program in which the fraud occurred.

(b) The remaining balance of the recovery proceeds (i.e., the portion of recovery the HA is not authorized to retain) must be applied as directed by HUD.

§ 792.204 Recordkeeping and reporting.

To permit HUD to audit amounts retained under this part, an HA must maintain all records required by HUD, including:

(a) Amounts recovered on any judgment or repayment agreement;

(b) The nature of the judgment or repayment agreement; and

(c) The amount of the legal fees and expenses incurred in obtaining the judgment or repayment agreement and recovery.

(Approved by the Office of Management and Budget under Control Number 2577–0053)

Dated: February 17, 1994.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 94–4484 Filed 2–25–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8491]

RIN 1545–AN15

Regulations Under Section 446 of the Internal Revenue Code of 1986; Application of Section 446 With Respect to Notional Principal Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (TD 8491), which were published in the **Federal Register** for Thursday, October 14, 1993 (58 FR 53125). The final regulations relate to the timing of income and deductions with respect to notional principal contracts.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Alan B. Munro, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 446(b) (relating to general rules for methods of accounting) and 1092(d) (relating to definitions and special rules with respect to straddles) of the Internal Revenue Code of 1986.

Need for Correction

As published, TD 8491 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8491), which were the subject of FR Doc. 93–25192, is corrected as follows:

1. On page 53132, § 1.446–3(f)(4), the last table on the page following paragraph (a) of *Example 6*, in the last column under the column heading "Principal component", the language

Loan balance	Time value component	Principal component
* * * *		*
		$6,105,100

is corrected to read

Loan balance	Time value component	Principal component
		$ 0
		0
* * * *		*
		0
		0
		6,105,100

2. On page 53135, column 2, § 1.446–3(h)(5), paragraph (b) of *Example 3*, second line from the bottom of the paragraph, the language "unamortized payment with respect the" is corrected to read "unamortized payment with respect to the".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–4494 Filed 2–25–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG72

To Amend the Travel Authority for Beneficiaries Who Are in Receipt of Pension

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the regulations that govern its program to provide for the transportation of claimants and beneficiaries to VA health care facilities. The amendments will correct an inadvertent error made when the Department last promulgated regulations pertaining to this program in 1991. This amendment will delete an inaccurate reference to beneficiaries who are in receipt of pension as not subject to a travel deductable.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Monica J. Wilkins, Policies and Procedures Division (161B1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Phone (202) 535–7439.

SUPPLEMENTARY INFORMATION: On October 21, 1991, the Department of Veterans Affairs amended its regulations governing the beneficiary travel program to implement changes in law made by Public Law 100–322. Generally, that law authorized the Government to pay for travel for certain categories of veterans but imposed a "deductible" on the amount of the benefit. Other categories of veterans could receive travel benefits without having to pay the deductible. The 1991 amendments to the implementing regulations correctly provided that a veteran in receipt of pension benefits was required to pay a deductible. (See: 38 CFR 17.100(b)(3)). However, in another place, the same regulation inadvertently provided that a veteran in receipt of VA pension benefits could receive transportation expenses without being subject to the deductible. (See: 38 CFR 17.100(c)(3)). The latter provision is inconsistent with the law, and this amendment will correct that error.

The Secretary of the Department of Veterans Affairs hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

This regulation concerned the provision of beneficiary travel to a specified category of eligible veterans. No paperwork, administrative or other regulatory burdens are imposed upon small entities.

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.010 and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: November 24, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reason set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

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

Authority: 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

§ 17.100 [Amended]

2. In § 17.100, paragraph (c) (3) is removed.

[FR Doc. 94–4480 Filed 2–25–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/R2034; FRL–4742–8]

RIN 2070–AB78

Pesticide Tolerances for Permethrin, Cypermethrin, Fenvalerate/Esfenvalerate, Tralomethrin, Bifenthrin, Cyfluthrin, and Lambda-Cyhalothrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends tolerances for the residues of the seven synthetic pyrethroids—permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, bifenthrin, cyfluthrin, and lambda-cyhalothrin (collectively referred to as the synthetic pyrethroids)—in or on certain raw agricultural commodities. This rule to extend the effective date for tolerances for maximum permissible levels of residues of these synthetic pyrethroids in or on these commodities was requested by FMC Corp. (FMC), Zeneca Ag Products, E.I. DuPont de Nemours & Co., Inc., Hoechst-Roussel Agri-Vet Co., and Miles, Inc. (collectively called the industry's Pyrethroid Working Group (PWG)).

EFFECTIVE DATE: This regulation becomes effective February 28, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 6F3453, and 6F3318/R2034], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division

(7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 20, 1993 (58 FR 54093), EPA issued a proposed rule to amend 40 CFR part 180 by extending to November 15, 1994, tolerances for the residues of the seven synthetic pyrethroids in or on certain commodities. The Pyrethroid Working Group had requested the extension.

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

The data submitted in conjunction with the extension request and in previous extensions for the synthetic pyrethroids have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance extensions will protect the public health. Therefore, the tolerance extensions are established as set forth below.

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

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

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

List of Subjects in 40 CFR Parts 180, 185, and 186

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

Dated: January 8, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. In § 180.378, by revising the introductory text of paragraph (a), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) Tolerances, to expire on November 15, 1994, are established for residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in or on the following raw agricultural commodities:

* * * * *

c. In § 180.379 by amending the table in paragraph (a) by adding a footnote to the entry for cottonseed as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methethyl) benzeneacetate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cottonseed	[1]0.2
* * * * *	

[1] The tolerance for cottonseed expires on November 15, 1994.

* * * * *

§ 180.418 [Amended]

d. By amending § 180.418 *Cypermethrin; tolerances for residues* in the introductory text by changing "July 1, 1993," to read "November 15, 1994,"

e. In § 180.422, by revising the introductory text to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

f. In § 180.436, by amending the table therein by adding a footnote to the entry for cottonseed as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cottonseed	[1]1.0
* * * * *	

[1] The tolerance for cottonseed expires on November 15, 1994.

g. In § 180.438, the section designation "(a)" is removed, the introductory text is revised, and the

table is amended by adding a footnote to the entry for cottonseed as follows:

§ 180.438 [1 α-(S*),3 α (Z)]-(±-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

Tolerances are established for the combined residues of the insecticide [1 α-(S*),3 α (Z)]-(±)-cyano(3-penoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * * *	
Cottonseed	[1]0.05
* * * * *	

[1] The tolerance for cottonseed expires on November 15, 1994.

h. In § 180.442 by revising the introductory text, to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

Tolerances, to expire on November 15, 1994, are established for residues of the pyrethroid bifenthrin, (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following commodities:

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, by revising paragraph (a), to read as follows:

§ 185.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 69359-37-5) in cottonseed oil resulting from application of the insecticide to cottonseed.

* * * * *

c. In § 185.5450, by revising the introductory text to read as follows:

§ 185.5450 Tralomethrin.

Tolerances, to expire on November 15, 1994, are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6]) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, by revising paragraph (a), to read as follows:

§ 186.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1994, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 68359-37-5) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

[FR Doc. 94–4209 Filed 2–25–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 92–28; FCC 93–547]

Mobile-Satellite Service at 1610–1626.5 and 2483.5–2500 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order allocates the 1610–1626.5 and 2483.5–2500 MHz bands on a co-primary basis to the mobile-satellite service (MSS). This action responds to seven petitions for rule making that were filed with the Commission and conforms to the international frequency allocation that was adopted at the World Administrative Radio Conference (WARC–92) last year. Further, this action is taken to accommodate the need for additional mobile-satellite spectrum that can be used to provide many new services both domestically and internationally.

DATES: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 653–8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 92–28 adopted on December 13, 1993 and released January 12, 1994. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Public Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Summary of Report and Order

1. In this Report and Order the Commission allocates 33 MHz of spectrum, the 1610–1626.5 and 2483.5–2500 MHz bands, for the mobile-satellite service (MSS). A total of 16.5 MHz, 1610–1626.5 MHz, is provided for primary space-to-Earth (uplink) operations and 16.5 MHz, 2483.5–2500 MHz, is provided for primary Earth-to-space (downlink) operations. Also, 12.7 MHz, 1613.8–1626.5 MHz, is allocated for secondary MSS space-to-Earth (downlink) operations. In addition, the Commission elevates the radio astronomy service allocation in the 1610.6–1613.8 MHz band from secondary to co-primary status.

2. The 1610–1626.5 and 2483.5–2500 MHz bands currently are allocated to a number of other services. The radiodetermination satellite service (RDSS), is allocated in these bands on a primary basis but only interim RDSS systems have been authorized. *See* Newcomb Communications, Inc., 8 FCC Rcd 3631 (1993); and letter to Counsel, Mobile Data Communications, Inc. from Chief, Domestic Facilities Division (August 19, 1993). Currently, the 1610–1626.5 MHz band is allocated to the aeronautical radionavigation service on a co-primary basis, and the 1610.6–1613.8 MHz segment of this band also is allocated to the radio astronomy service (RAS) on a secondary basis. Frequencies adjacent to the 1610–1626.5 MHz band are allocated to aeronautical radionavigation satellite and maritime mobile satellite services.

3. The 2483.5–2500 MHz band is authorized for co-primary use by the broadcast auxiliary service, the terrestrial fixed service, and the industrial, scientific and medical (ISM) service. Additionally, the frequencies adjacent to this band are allocated on a primary basis to the instructional television fixed service (ITFS), the multi-channel multi-point distribution service (MMDS), fixed services, mobile services and for industrial, scientific, and medical (ISM) equipment, and to the radiolocation service on a secondary basis.

4. On August 5, 1992, we proposed to allocate these bands to the mobile-satellite service systems, shared on a co-primary basis with the RDSS. See 57 FR 43434 (September 21, 1992).

5. Based on the record in this proceeding, we find that there is substantial interest in using both LEO and GEO technologies to provide new voice and data MSS services in the subject bands. As we indicated in the Notice, MSS LEO systems will offer significant new benefits to both domestic and international communications users. MSS LEO systems potentially can provide a universally available world-wide cellular-like radiotelephone service offering voice, data, and facsimile service. In addition, radiolocation and radionavigation applications also can be provided.

6. Some of the new applications envisioned include: (1) personal locator services that could be used to locate accident victims or persons stranded because of weather or injury; (2) fleet management and tracking services that would permit more efficient shipping and transportation of goods, including the tracking of hazardous wastes and material; (3) public safety services that would allow state and local governments to use MSS to extend health and emergency services to rural and remote areas currently unserved by traditional communications facilities; and (4) International Services that would permit global MSS and make modern telephone communications available to remote and underserved areas throughout the world.

7. Further, the Commission determined that although the specific method for sharing among systems remains to be determined, based on the record, bi-directional operations in the 1613.8–1626.5 MHz band is feasible, and accordingly the Commission is providing for a secondary allocation for space-to-Earth operations in this band.

8. The Commission also concluded that MSS operations in the 1610–1626.5 and 2483.5–2500 MHz bands should be subject to the e.i.r.p. and power flux density levels set forth in the international Radio Regulations. In addition, such MSS operations will be subject to the coordination and notification procedures set forth in Resolution 46.

9. We continue to believe that, at least initially, the existing FSS bands are sufficient to accommodate MSS feeder links. We note that there may be difficulties in using FSS bands that generally are congested with significant numbers of geostationary fixed-satellite systems (GEO FSS). Consequently, because of the significant coordination difficulties arising from the global nature of LEO operations, MSS LEO feeder links would need to operate in FSS frequency bands that are not heavily used by GEO FSS systems. We are also including the inter-satellite service bands at 24.45–24.65 and 24.65–24.75 GHz and the already allocated inter-satellite service band at 22.55–23 GHz in the United States Table of Frequency Allocations for non-government use.

10. In view of the important health issues involved, the fact that no general manufacture of consumer equipment for MSS in these bands has yet begun, and our intent to provide for the expeditious initiation of the services for which this spectrum is being allocated, we believe the ANSI/IEEE guidelines (IEEE C95.1–1991) should be used when evaluating the potential for harm to public health from exposure to RF emissions of MSS user devices. If we modify the ANSI/IEEE guidelines in ET Docket No. 92–62, those guidelines will be applied to MSS equipment. We will require that all hand-held devices comply with the ANSI/IEEE specifications for "uncontrolled" environments because the new MSS service as envisioned would include consumer use that would be within the "uncontrolled" definition.

11. Further, in the Notice and Tentative Decision, 57 FR 43434, September 21, 1992 *supra*, we dismissed a petition for rule making filed by CELSAT to use the RDSS frequency band for a hybrid satellite and terrestrial ground personal communications service (PCS). CELSAT had an alternative request for spectrum in the 2120–2129 and 2410–2428 MHz bands, including a pioneer's preference request which remains pending. On October 5, 1992, CELSAT filed a Petition for Reconsideration of the Commission's Notice and Tentative Decision in which it argues that the Commission incorrectly dismissed its proposed spectrum allocation because the terrestrial element of its proposal was incompatible with WARC–92. TRW filed a petition to dismiss the CELSAT Petition for Reconsideration. The Commission grants TRW's petition but accepts CELSAT's petition as late filed comments. The Commission continues to believe that for the purpose of international coordination it is important that our domestic allocation be compatible with the WARC–92 spectrum allocation. Thus we continue to hold that terrestrial operations in these bands is inappropriate. For this reason, we accept CELSAT's Petition for Reconsideration as a comment in this proceeding.

12. In the Notice and Tentative Decision we noted that the proposal was analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. No comments were received regarding the Paperwork Reduction Act.

13. Further, in the Notice and Tentative Decision we invited comments on the impact of the proposed allocation in accordance with the Regulatory Flexibility Act of 1980. No comments were received in response to our analysis of this allocation as required by the Regulatory Flexibility Act.

14. Accordingly, *it is ordered*, that Part 2 of the Commission's Rules and Regulations is amended as specified below, effective March 30, 1994. *It is further ordered* that TRW's Motion to Dismiss CELSAT's Petition for Reconsideration is granted in part; and that the Petition for Reconsideration filed by CELSAT is accepted as a comment. This action is taken pursuant to Sections 4(i), 303 (c), (f), (g), and (r), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 (c), (f), (g), and (r).

List of Subjects in 47 CFR Part 2

Frequency allocation, General rules and regulations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

I. Part 2 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

1. The authority citations in Part 2 continues to read:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. The International Footnotes at the end of the Table of Frequency Allocations, § 2.106 is amended to remove footnotes 731A, 731B, 731C, 731D, 753E, 877, 878, 890 and 891; revise footnotes 733A, 733E, 734, 753, 753C, 882E, 882F, and 882G; and add footnotes 731E, 731F, 753F, 881A, and 881B. Footnote US319 in the United States footnotes is also revised.

3. Section 2.106, the Table of Frequency Allocations, is revised for the 1610–1626.5 MHz, 2483.5–2500 MHz, 22.5–23 GHz, and 24.25–24.75 GHz bands, in accordance with the following:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-Use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
1610–1610.6 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space).	1610–1610.6 Aeronautical Radionavigation. Radiodetermination satellite (Earth-to-space). Mobile Satellite (Earth-to-space).	1610–1610.6 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space). Radiodetermination-Satellite (Earth-to-space).	1610–1610.6 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space)	1610–1610.6 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space).	Aviation (87). Satellite Communication (25).	
722 727 730 731 731E 732 733 733A 733B 733E 733F	722 731E 732 733 733A 733C 733D 733E	722 727 730 731E 732 733 733A 733B 733E	722 731E 732 733 733A 733E US208 US260 US319	722 731E 732 733 733A 733E US208 US260 US319		
*	*	*	*	*	*	*
1610.6–1613.8 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space). Radio-Astronomy.	1610.6–1613.8 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Radio-Astronomy.	1610.6–1613.8 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space). Radio-Astronomy. Radiodetermination Satellite (Earth-to-space).	1610.6–1613.8 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Radio-Astronomy.	1610.6–1613.8 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space)	Aviation (87). Satellite communication (25).	
722 727 730 731 731E 732 733 733A 733B 733E 733F 734	722 731E 732 733 733A 733C 733D 733E 734	722 727 730 731E 732 733 733A 733B 733E 734	722 731E 732 733 733A 733E 734 US208 US260 US319	722 731E 732 733 733A 733E 734 US208 US260 US319		
*	*	*	*	*	*	*
1613.8–1626.5 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radionavigation. Mobile-Satellite (Earth-to-space). Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	1613.8–1626.5 Aeronautical Radionavigation. Radiodetermination Satellite (Earth-to-space). Mobile-Satellite (Earth-to-space). Mobile-Satellite (space-to-Earth).	Aviation (87). Satellite Communication (25).	
722 727 730 731 731E 731F 732 733 733A 733B 733E 733F	722 731E 731F 732 733 733A 732C 733D 733E	722 727 730 731E 731F 732 733 733A 733B 733E	722 731E 731F 732 733 733E US208 US260 US319	722 731E 731F 732 733 733E US208 US260 US319		

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-Use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
2483.5–2500 Fixed. Mobile. Mobile-Satellite (space-to-Earth). Radiolocation.	2483.5–2500 Fixed. Mobile. Radiodetermination satellite (space-to-Earth) 753A. Radiolocation.	2483.5–2500 Fixed. Mobile. Radiolocation. Mobile-Satellite (space-to-Earth).	2483.5–2500 Radiodetermination satellite (space-to-Earth) 753A. Mobile-Satellite (space-to-Earth).	2483.5–2500 Radiodetermination satellite (space-to-Earth) 753A. Mobile-Satellite (space-to-Earth).	Satellite Communication (25).	
	Mobile-Satellite (space-to-Earth).	Radiodetermination-Satellite (space-to-Earth). 753A.				
733F 752 753 753A 753B 753C 753F	752 753D 753F	752 753C 753F	752 753F US41 US319	752 753F US41 US319 NG147		
*	*	*	*	*	*	*
22.5–22.5			22.5–22.55	22.5–22.55		
	Fixed		Fixed	Fixed	Domestic public fixed (21).	
	Mobile		Mobile	Mobile	Private operational fixed microwave (94).	
22.55–23			US211 22.55–23	US211 22.55–23		
	Fixed		Fixed	Fixed	Domestic public fixed (21).	
	Inter-satellite		Inter-satellite	Inter-satellite	Private operational fixed microwave (94).	
	Mobile		Mobile	Mobile	Satellite communications (25).	
	879		879 US278	879 US278		
*	*	*	*	*	*	*
24.25–24.45 fixed	Radionavigation	Radionavigation	24.25–24.45 Radionavigation		Aviation (87).	
		Fixed Mobile				
24.45–24.65 Fixed Inter-Satellite	24.45–24.65 Radionavigation Inter-satellite	24.45–24.65 Radionavigation Fixed Inter-satellite Mobile	24.45–24.65 Inter-satellite Radiolocation-satellite (Earth-to-space)		Satellite communication (25).	
Inter-satellite	Inter-satellite	Fixed Inter-satellite. Mobile.	Radionavigation			
	882E	882E	882E			
24.65–24.75 fixed. Inter-satellite	24.65–24.75 Inter-satellite. Radio-location-satellite (Earth-to-space)	24.65–24.75 Fixed. Inter-satellite. Mobile	24.65–24.75 Inter-satellite. Radiolocation-satellite (Earth-to-space)		Satellite communication (25).	
		882E 882F				
24.75–25.25 Fixed	24.75–25.25 Fixed-satellite (Earth-to-space) 882G	24.75–25.25 Fixed Fixed-satellite (Earth-to-space) 882G 882F	24.75–25.25 Radionavigation		Aviation (87).	

* * * * *

International Footnotes

* * * * *

731A—Removed.

731B—Removed.

731C—Removed.

731D—Removed.

* * * * *

731E—The use of the band 1610–1626.5 MHz by the mobile-satellite service (Earth-to-

space) and by the radiodetermination-satellite service (Earth-to-space) is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). A mobile earth station operating in either of the services in this band shall not produce an e.i.r.p. density in excess of −15 dB (W/4 kHz) in the part of the band used by systems operating in accordance with the provisions of No. 732, unless otherwise agreed by the affected administrations. In the part of the band where such systems are not operating, a value of −3 dB (W/4 kHz) is applicable. Stations of the mobile-satellite service shall not cause harmful interference to, or claim protection from, stations in the aeronautical radionavigation service, stations operating in accordance with the provisions of No. 732 and stations in the fixed service operating in accordance with the provisions of No. 730.

731F—The use of the band 1613.8–1626.5 MHz by the mobile-satellite service (space-to-Earth) is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92).

* * * * *

733A—With respect to the radiodetermination-satellite and mobile-satellite services the provisions of No. 953 do not apply in the frequency band 1610–1626.5 MHz.

* * * * *

733E—Harmful interference shall not be caused to stations of the radio astronomy service using the band 1610.6–1613.8 MHz by stations of the radiodeterminaton-satellite and mobile-satellite services. (No. 2904 applies.)

734—In making assignments to stations of other services, administrations are urged to take all practicable steps to protect the radio astronomy service in the band 1610.6–1613.8 MHz from harmful interference. Emissions from space or air-borne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 343 and 344 and Article 36).

* * * * *

753—*Different category of service:* in France, the band 2450–2500 MHz is allocated on a primary basis to the radiolocation service (see No. 425). Such use is subject to agreement with administrations having service operating or planned to operate in accordance with the Table of Frequency Allocations which may be affected.

* * * * *

753C—*Different category of service:* in Angola, Australia, Bangladesh, Burundi, China, Cote d'Ivoire, Ethiopia, India, the Islamic Republic of Iran, Israel, Italy, Jordan, Kenya, Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua, New Guinea, Senegal, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Zaire and Zambia, the allocation of the band 2483.5–2500 MHz to the radiodetermination-satellite service (space-to-Earth) is on a primary basis (see No. 425) subject to agreement obtained under the procedure of Article 14 with other countries not listed in this provision.

* * * * *

753E—Removed.

753F—The use of the band 2483.5–2500 MHz by the mobile-satellite and the radiodetermination-satellite services is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). Coordination of space stations of the mobile-satellite and radiodetermination-satellite services with respect to terrestrial services is required only if the power flux-density produced at the Earth's surface exceeds the limits in No. 2566. In respect of assignments operating in this band, the provisions of Section II, paragraph 2.2 of Resolution 46 (WARC–92) shall also be applied to geostationary transmitting space stations with respect to terrestrial stations.

* * * * *

877—Removed.

878—Removed.

* * * * *

881A—Use of the 25.25–27.5 GHz band by the inter-satellite service is limited to space research and Earth exploration-satellite applications, and also transmissions of data originating from industrial and medical activities in space.

881B—Space services using non-geostationary satellites operating in the inter-satellite service in the band 27–27.5 GHz are exempt from the provisions of No. 2613.

* * * * *

882E—The inter-satellite service shall not claim protection from harmful interference from airport surface detection equipment stations of the radionavigation service.

882F—*Additional allocation:* in Japan, the band 24.65–25.25 GHz is also allocated to the radionavigation service on a primary basis until 2008.

882G—In the band 24.75–25.25 GHz, feeder links to stations of the broadcasting-satellite service shall have priority over other users in the fixed-satellite service (Earth-to-space). Such other uses shall protect and shall not claim protection from existing and future operating feeder-link networks to such broadcasting satellite stations.

* * * * *

890—Removed.

891—Removed.

* * * * *

United States (US) Footnotes

* * * * *

US319—In the 137–138, 148–149.9, 149.9–150.05, 399.9–400.05, 400.15–401, 1610–1626.5, and 2483.5–2500 MHz bands, Government stations in the mobile-satellite service shall be limited to earth stations operating with non-Government space stations.

* * * * *

NG147—Stations in the broadcast auxiliary service and private radio services licensed as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, may continue to operate on a radiodetermination satellite service.

* * * * *

[FR Doc. 94–4409 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 32

[CC Docket No. 89–360, FCC 94–28]

Statement of Financial Accounting Standards No. 96, Accounting for Income Taxes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order to incorporate the liability method of accounting for income taxes into the Uniform System of Accounts for Telecommunications Companies. This action brings the method of accounting for income taxes in line with the generally accepted method of accounting for income taxes prescribed for the American business community.

EFFECTIVE DATE: August 29, 1994.

FOR FURTHER INFORMATION CONTACT: Thaddeus Machcinski, Common Carrier Bureau, Accounting and Audits Division, 202–634–1861.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Docket No. 89–360, adopted January 31, 1994 and released February 8, 1994. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This Report and Order amends part 32 to incorporate the new accounting procedures for income taxes prescribed in Statement of Financial Accounting Standards No. 109 (SFAS–109) and it also establishes new accounts to properly implement those procedures.

2. This Report and Order adds three new accounts to the Uniform System of Accounts to incorporate the requirements of SFAS–109 into part 32. The new accounts are Account 1437, Deferred Tax Regulatory Asset; Account 4341, Net Deferred Tax Liability Adjustments; and Account 4361, Deferred Tax Regulatory Liability. These new accounts will reflect the adjustments to existing carrier deferred tax balances that are necessary as a result of adopting SFAS–109.

3. The type of SFAS–109 adjustments that will be shown in the above accounts relate to changes in tax rates, recording tax liabilities for items that

were previously accounted for under the flow through method, and recording taxes on items that were formerly considered permanent differences by the accounting profession.

4. The Report and Order will be effective six months after it is published in the **Federal Register**. However, the Report and Order permits carriers to adopt SFAS–109 for federal accounting purposes on January 1, 1993 if the carriers so desire.

5. Finally, the new accounts that are established in the Report and Order will be excluded from interstate rate base and revenue requirement determinations. This insures that the adoption of SFAS–109 for federal accounting purposes will not increase or decrease the interstate revenue requirement.

Rule Changes

6. Accordingly, *it is ordered that,* Pursuant to sections 1, 4(i), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)201–205, 218, 220, 403, part 32 is amended as set forth below.

7. *It is further ordered that,* Pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(g) and § 1.427(c) of the Commission's Rules, 47 CFR 1.427(c), the amendments to part 32 of the Commission's Rules, 47 CFR 32.1 *et seq.*, as set forth below, shall be effective August 29, 1994.

8. *It is further ordered that,* Pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), § 32.16 of the Commission's rules 47 CFR 32.16 is waived to the extent that it requires the filing of a revenue requirement study in regard to SFAS–109.

9. *It is further ordered that,* Carriers may implement SFAS–109 for federal regulatory purposes prior to the effective date of the new rules.

10. *It is further ordered that,* The Secretary shall provide a copy of this Report and Order to each state utility commission.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 32 of title 47 of the CFR is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

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

Authority: Secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j), and 220 unless otherwise noted.

2. Section 32.22 (a), (c), (d), and (f) is revised to read as follows:

§ 32.22 Comprehensive interperiod tax allocation.

(a) Companies shall apply interperiod tax allocation (tax normalization) to all book/tax temporary differences which would be considered material for published financial report purposes. Furthermore, companies shall also apply interperiod tax allocation if any item or group of similar items when aggregated would yield debit or credit entries which exceed or would exceed 5 percent of the gross deferred income tax expense debits or credits during any calendar year over the life of the temporary difference. The tax effects of book/tax temporary differences shall be normalized and the deferrals shall be included in the following accounts:

4100, Net Current Deferred Operating Income Taxes;
4110, Net Current Deferred Nonoperating Income Taxes;
4340, Net Noncurrent Deferred Operating Income Taxes;
4350, Net Noncurrent Deferred Nonoperating Income Taxes.

In lieu of the accounting prescribed herein, any company shall treat the increase or reduction in current income taxes payable resulting from the use of flow through accounting in prior years as an increase or reduction in current tax expense.

* * * * *

(c) Subsidiary records shall be used to reduce the deferred tax assets contained in the accounts specified in paragraph (a) of this section when it is likely that some portion or all of the deferred tax asset will not be realized. The amount recorded in the subsidiary record should be sufficient to reduce the deferred tax asset to the amount that is likely to be realized.

(d) The records supporting the activity in the deferred income tax accounts shall be maintained in sufficient detail to identify the nature of the specific temporary differences giving rise to both the debits and credits to the individual accounts.

* * * * *

(f) The tax differentials to be normalized as specified in this section shall also encompass the additional effect of state and local income tax changes on Federal income taxes produced by the provision for deferred state and local income taxes for book/tax temporary differences related to such income taxes.

* * * * *

3. Section 32.103 is amended by adding account 32.1437 to the list of accounts to read as follows:

§ 32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained.

BALANCE SHEET ACCOUNTS

Account title	Class A account	Class B account
* * *	*	*
Deferred Tax Regulatory Asset	1437	1437
* * *	*	*

* * * * *

4. Section 32.1437 is added to read as follows:

§ 32.1437 Deferred tax regulatory asset.

(a) This account shall include amounts of probable future revenue for the recovery of future increases in taxes payable. As reversals occur, amounts recorded in this account shall be reduced with a credit entry and a debit entry to Account 4341, Net Deferred Tax Liability Adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance. If the cumulative effect of such adjustments reduce the account to a net credit balance, such balance shall be reclassified to Account 4361.

5. Section 32.4000 is amended by adding accounts 32.4341 and 32.4361 to the list of accounts to read as follows:

§ 32.4000 Instructions for balance sheet accounts—liabilities and stockholders' equity.

Liabilities and Stockholders' Equity Accounts to be Maintained by Class A and Class B telephone companies:

Account title	Class A account	Class B account
* * *	*	*
Net Deferred Tax Liability Adjustments	4341	4341
* * *	*	*
Deferred Tax Regulatory Liability	4361	4361

Account title	Class A account	Class B account
* * * * *		

* * * * *

6. Section 32.4100(d) is revised to read as follows:

§ 32.4100 Net current deferred operating income taxes.

* * * * *

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary differences.

* * * * *

7. Section 32.4110(g) is revised to read as follows:

§ 32.4110 Net current deferred nonoperating income taxes.

* * * * *

(g) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary differences.

* * * * *

8. Section 32.4340 (a) and (d) are revised to read as follows:

§ 32.4340 Net noncurrent deferred operating income taxes.

(a) This account shall include the balance of income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation related to temporary differences that arise from regulated operations.

* * * * *

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary difference.

* * * * *

9. Section 32.4341 is added to read as follows:

§ 32.4341 Net deferred tax liability adjustments.

(a) This account shall include the portion of deferred income tax charges and credits pertaining to Accounts 32.1437, Deferred Tax Regulatory Asset, and 32.4361, Deferred Tax Regulatory Liability.

(b) This account shall be used to record adjustments to the accumulated deferred tax liabilities recorded in Accounts 4100 and 4340 for:

(1) Tax effects of temporary differences accounted for under the flow-through method or treated as permanent differences.

(2) Reclassification attributable to changes in tax rates (Federal, state and local). As tax rates increase or decrease, the offsetting debit or credit will be recorded in Account 1437 and/or 4361 as required by paragraph (a) of this section.

(3) The tax effects of carryforward net operating losses and carryforward investment tax credits expected to reduce future taxes payable that are reported in published financial statements.

(4) Reversals of the tax effects of carryforward net operating losses and carryforward investment tax credits previously recorded in this account at the time they become recognized as reductions in current taxable income and current taxes payable on tax returns.

(c) This account shall be exempt from the vintage year detail record requirements of § 32.22(e)(2).

10. Section 32.4350 (a) and (g) are revised to read as follows:

§ 32.4350 Net noncurrent deferred nonoperating income taxes.

(a) This account shall include the balance of income tax expense (Federal, state, and local) that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating differences.

* * * *

(g) The classificaiton of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary difference.

* * * * *

11. Section 32.4361 is added to read as follows:

§ 32.4361 Deferred tax regulatory liability.

(a) This account shall include amounts of probable future revenue reductions attributable to future decreases in taxes payable. As reductions occur, amounts recorded in this amount shall be reduced with a debit entry and a credit entry to Account 4341, Net Deferred Tax Liability Adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance. If the cumulative effect on such adjustments reduces the account to a net debit balance, such balance shall be reclassified to Account 1437.

[FR Doc. 94–4408 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 99

[GEN Docket No. 90–314; FCC 93–550]

Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Third Report and Order, the Commission makes final decisions on 50 pioneer's preference requests related to broadband 2 GHz Personal Communications Services (PCS). The Commission awards pioneer's preferences to three applicants and denies the remaining 47 requests. This action guarantees a license to each pioneer in 30 megahertz of spectrum in a Major Trading Area (MTA) if the applicant is otherwise eligible to hold such a license and subject to any changes upon reconsideration in GEN Docket No. 90–314 that affect service areas or spectrum blocks. The action is intended to appropriately reward the three parties that pioneered new PCS services and technologies.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order adopted December 23, 1993, and released February 3, 1994. This action will not change the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Third Report and Order

1. In the Tentative Decision and Memorandum Opinion and Order (Tentative Decision) (57 FR 57458, December 4, 1992) in this proceeding, the Commission proposed to award pioneer's preferences to American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint) and to deny 53 other requests. Subsequently, in the First Report and Order (58 FR 42681, August 11, 1993) in GEN Docket No. 90–314 and ET Docket No. 92–100, six of these 53 requests were found to address 900 MHz narrowband services and therefore final action on these six was taken in that proceeding. The Commission adopted final rules for broadband 2 GHz PCS in the Second Report and Order (58 FR 59174, November 8, 1993) in this proceeding. Seven blocks of spectrum were allocated for licensed 2 GHz PCS encompassing 120 megahertz at 1850–1890, 1930–1970, 2130–2150, and 2180–2200 MHz. Regional and local PCS service areas based upon MTAs and Basic Trading Areas (BTAs) also were adopted.

2. The Commission's pioneer's preference rules provide preferential treatment in its licensing process to parties that demonstrate their responsibility for developing new communications services and technologies. To be granted a pioneer's preference, an applicant must demonstrate that it has developed the new service or technology; *e.g.*, that it has developed the capabilities or possibilities of the technology or service or has brought them to a more advanced or effective state. The applicant also must demonstrate the technical feasibility of the new service or technology, either by submitting a technical feasibility showing or at least preliminary results of an experiment. Finally, a preference will be granted only if the rules adopted are a reasonable outgrowth of the proposal and lend themselves to grant of a preference. An applicant meeting this standard will be placed on a pioneer's preference track, will not be subject to competing applications, and if otherwise qualified will receive a license. Other applicants will compete for additional licenses on a separate track. The pioneer's preference rules are intended to foster development of new services and improve existing services by reducing the delays and risks innovators otherwise would face with the Commission's licensing process.

3. In the Tentative Decision, the Commission proposed to grant APC, Cox, and Omnipoint a pioneer's preference and to deny 53 requests that is tentatively concluded did not merit preferences. After opportunity for additional comment and replies focused on the Tentative Decision, the Commission found that APC, Cox, and Omnipoint meet the pioneer's preference standard and therefore merit award of preferences; and that the remaining applicants do not meet this standard and therefore do not merit award of preferences.

4. APC was granted a pioneer's preference for its development and demonstration of technologies that facilitate spectrum sharing by PCS facilities and microwave systems at 2 GHz. APC's analysis and testing demonstrated that there exists unused spectrum in the 1850–1990 MHz band sufficient to allow immediate initiation of PCS services without first having to relocate existing microwave operations. Its study changed the focus of attention from relocating fixed microwave operations before initiating PCS to initially implementing PCS while sharing the spectrum with the existing microwave operations. This study, and the transition plan presented in comments submitted by APC, have elements in common with the transition plan adopted in ET Docket No. 92–9 to facilitate making 2 GHz spectrum available for emerging technologies, including PCS. Further, APC developed Frequency Agile Sharing Technology (FAST) and demonstrated that it provides a practical means to transition from fixed services to shared fixed and mobile services in this spectrum.

5. As explained by APC, FAST is a frequency planning and management tool used to predict (and avoid) interference both between private operational fixed service (POFS) and PCS systems, and within a PCS system. The FAST system utilizes theoretical interference analyses verified by signal strength measurements to determine frequency assignments to PCS base stations. This function is accomplished by a Channel Utilization Controller (CUC), which monitors and determines the channels each PCS base station may use. The CUC monitors coverage and interference; analyzes and integrates measured data; integrates supporting data bases; and supports data communications links to each PCS base station. For each PCS base station the CUC calculates theoretical interference values and areas for every POFS station in its data base. Both PCS-to-POFS and POFS-to-PCS interference is calculated. The CUC then compiles a list of available channels for each base station. The theoretical interference analysis is recalculated when PCS and/or POFS systems are changed.

6. APC states that FAST technology can be used with any relatively narrow band PCS system channel architecture employing a channel bandwidth of 5 megahertz or less. In particular, APC states that the FAST system can be used in conjunction with code division multiple access (CDMA), time division multiple access, time division duplexed, and frequency division duplexed systems that use various transmit-receive frequency separations. APC asserts that testing of its FAST/CDMA system verified the ability of its technology to complete PCS calls without causing interference to existing microwave operations.

7. Cox was granted a preference for having developed and demonstrated PCS/cable plant interface technology and equipment that interfaces existing cable plant with new PCS wireless applications, resulting in spectrum-efficient applications for PCS. Cox first proposed using cable systems to provide backbone functions for PCS (instead of using the existing telephone or fixed microwave networks), applied to the Commission for a PCS experimental license, and successfully developed and tested equipment. Through experiments, Cox demonstrated cost-effective integration of PCS and cable networks that makes more efficient use of existing cable plant without impairing existing cable services. Cox designed, developed, and tested multi-backhaul configurations and multi-PCS radio systems with hand-off capability, centralized modulation, and distributed antenna configurations. These capabilities were realized through its design and development work, the key to which is its "cable microcell integrator" that Cox developed to connect PCS handsets to its embedded cable plant.

8. Using the existing cable plant in PCS network design permits economical and rapid deployment of PCS systems and substitution of existing infrastructure for increasingly scarce spectrum. The efforts of Cox advanced PCS system design by demonstrating the feasibility of integrating cable networks with full-featured PCS systems. Its developments potentially permit offering efficient PCS service in a timely, cost efficient manner with no impairment to existing cable services.

9. Omnipoint was granted a preference for its development of 2 GHz equipment that uses advanced techniques that will facilitate continued development and implementation of PCS services and technologies. Omnipoint was the first to produce

practical, working 2 GHz equipment for PCS. It engaged in radio frequency engineering and related spread spectrum product design, development, miniaturization, and manufacture of 2 GHz equipment.

10. Omnipoint designed and manufactured equipment that uses direct sequence spread spectrum access techniques in a 5 or 10 megahertz channel. The original work of Omnipoint contributed significantly to the development and testing of PCS services and design concepts that will facilitate initial implementation of PCS in the 2 GHz band on a sharing basis with fixed microwave licensees. Omnipoint has demonstrated that its 2 GHz PCS equipment uses innovative technology, combining spread spectrum and time division techniques. Further, Omnipoint has demonstrated the capability of providing PCS service using its equipment. Finally, the use of Omnipoint's handsets by other parties to develop PCS experimental systems has fostered the development of PCS.

11. By receiving a pioneer's preference, APC, Cox, and Omnipoint, if otherwise qualified, will not be subject to competing license applications in Channel Block A, a 30 megahertz MTA in the 1850–1865 and 1930–1945 MHz bands. APC, Cox, and Omnipoint argued that a 30 megahertz MTA grant was necessary to permit implementation of the systems they proposed.

12. Cablevision Systems Corporation (Cablevision), Southwestern Bell Corporation (SBC), and Fidelity Investments and Cylink Corporation (Fidelity/Cylink) disagreed that a 30 megahertz MTA license should be awarded pioneers. Cablevision contended that a 20 megahertz BTA block would permit the grantees to use the band in which they have conducted experiments, while not conveying a windfall 30 megahertz MTA block that could have a preclusive effect on other licensees. SBC concurred, stating that a 20 megahertz BTA block would be enough spectrum to provide adequate PCS service. Fidelity/Cylink argued that a 10 megahertz BTA block at 2130–2200 MHz would be adequate because such a block would enable the provision of full-featured PCS, as well as many specialized PCS services.

13. The Commission found the arguments of APC, Cox, and Omnipoint persuasive. Each applicant conducted experiments in the 1850–1990 MHz band, not in the 2130–2200 MHz band. An award in the lower band is appropriate to ensure that the grantees can implement the services they have proposed. While the Commission continues to believe that the upper band has the potential to provide a variety of important PCS services, APC, Cox, and Omnipoint have designed their systems and conducted their experiments in the 1850–1990 MHz band. Further, the Commission is not convinced that a 20 megahertz BTA grant would be adequate, given the nature of the systems proposed. Accordingly, the Commission awarded each pioneer a 30 megahertz MTA block in the service area each requested.

14. The Commission instructed the licensing bureau to condition licenses issued as a result of these pioneer's preference grants upon construction of PCS systems that substantially use the design and technologies upon which the preference awards are based and upon each licensee holding its license for a minimum of three years or until the construction requirements applicable to the five-year build-out period specified in Section 99.206 of the Commission's Rules have been satisfied, whichever, is earlier. APC's service area is the MTA that includes Washington, DC and Baltimore, Maryland; Cox's service area is the MTA that includes San Diego, California; and Omnipoint's service area is the MTA that includes northern New Jersey. The Commission noted that both PCS channel blocks and service areas are the subject of petitions for reconsideration and clarification. Should either PCS channel blocks or service areas be amended on reconsideration, the pioneer's preferences will be modified accordingly.

15. Finally, the Commission stated that the 47 pioneer's preference requests that were found not to have met the pioneer's preference standard were denied for a variety of reasons. Some of these requests were incompatible with the rules adopted in the Second Report and Order in this proceeding, some did not demonstrate the feasibility of the proposed technologies, some did not demonstrate innovation, and some did not demonstrate the capabilities or possibilities of specific identifiable PCS technologies or services or show how these technologies or services had been brought to a more advanced or effective state.

16. Accordingly, *it is ordered* that the requests for pioneer's preference filed by American Personal Communications; Cox Enterprises, Inc.; and Omnipoint Communications, Inc. are granted. *It is further ordered* That the relevant licensing bureau shall impose the following conditions on the licenses received by American Personal Communications; Cox Enterprises, Inc.; and Omnipoint Communications, Inc. pursuant to their pioneer's preference awards: (1) Each licensee must build a system that substantially uses the design and technologies upon which its preference award is based; and (2) Each licensee must hold its license for a minimum of three years or until the construction requirements applicable to the five-year build-out period specified in Section 99.206 of the Commission's Rules have been satisfied, whichever is earlier. *It is further ordered* That the requests for pioneer's preference filed by Adelphia Communications Corp.; Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc.; American Portable Telecommunications, Inc.; American Telephone and Telegraph; American TeleZone; Ameritech; Associated PCN Corporation; Atlantic Cellular Company, L.P.; Bell Atlantic Personal Communications, Inc.; Broadband Communications Corporation; Cable USA, Inc.; Cablevision Systems Corporation; Cellular Service, Inc.; Comcast PCS Communications, Inc.; Corporate Technology Partners; Freeman Engineering Associates; Grand Broadcasting Corporation; Iowa Network Services, Inc.; Linkatel Communications, Inc.; LiTel Telecommunications Corporation; Nextel Communications, Inc.; Omnipoint Corporation, Oracle Data Publishing, Inc.; and McCaw Cellular Communications, Inc.; Omnipoint Mobile Data Company; Pacific Bell; PacTel Corporation; PageMart, Inc.; Panhandle Telephone Cooperative, Inc.; PCN America, Inc.; PCN Communications, Inc.; PerTel, Inc.; Personal Communications Network Services of New York; Pulson Communications Corporation; Qualcomm Incorporated; Satcom, Inc.; Sharecom-Austin, L.P.; SM Tek, Inc.; Southwestern Bell Personal Communications, Inc.; Spatial Communications; Suite 12 Group; Tele-Communications, Inc.; Tel/Logic Inc.; Telmarc Telecommunications; Time Warner Telecommunications, Inc.; TRX Transportation Telephone Co.; US West NewVector Group, Inc.; Vanguard Cellular Systems, Inc.; and Viacom International, Inc. *are denied.*

List of Subjects in 47 CFR Part 99

Personal Communications Services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–4407 Filed 2–25–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 930955–4039; I.D. 092493C]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS implements a regulatory amendment that prohibits the retention of groundfish caught with unauthorized gear in the exclusive economic zone (EEZ) off Alaska. In addition, this action implements a technical amendment that organizes all fishing gear definitions as paragraphs under the single definition of "authorized fishing gear". This action is necessary to prevent fishing with unauthorized gear and associated preemption of fishing grounds and gear conflicts, and undermining prohibited species bycatch measures in the groundfish fishery. It is intended to support the goals and objectives contained in the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI).

EFFECTIVE DATE: March 30, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this regulatory amendment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the EEZ of the GOA and the BSAI is managed by the Secretary of Commerce according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This regulatory action amends 50 CFR 672.7 and 675.7 to prohibit the retention of groundfish caught with other than authorized fishing gear types. Authorized fishing gear are all fishing gear types currently defined at §§ 672.2 and 675.2.

A proposed rule was published in the **Federal Register** on November 12, 1993 (58 FR 59980). A complete description of, and justification for, changes to regulations that prohibit the retention of groundfish caught with other than authorized fishing gear types were discussed in the proposed rule.

Public comment on the proposed rule was invited through December 13, 1993. One letter opposing and one letter supporting the proposed action were received within the comment period and are summarized and responded to below in the "Response to Comment" section.

Upon reviewing the reasons for and the comments on this action, NMFS has determined that this rule is necessary for fishery conservation and management and has approved it.

Response to Comments

Comment 1: Prohibiting fishing gear types not defined in the regulations will stifle gear innovations and development by the industry.

Response: This rule will not stifle gear innovations or the development of new fishing gear by the industry. Gear innovations and development can be accomplished within existing regulations governing experimental fishing at §§ 672.6 and 675.6.

Under an experimental fishing permit, otherwise unauthorized gear could be assessed relative to fishing efficiency, bycatch mortality rates, and the effects on the biological and physical environment. Fishing gear types assessed under this process could be subsequently authorized under future regulatory amendments.

Comment 2: Prohibiting gear types not defined in the regulations is supported because new gear types should be thoroughly tested. However, the proposed rule did not assess and does not prevent the use of imported gear, in particular the use of pair trawls, as an authorized gear type.

Response: The purpose of this action is to limit the fishing gear types employed in the groundfish fisheries off Alaska to those traditionally used, including pair trawls. Any vessels participating in a fishery with pair trawls are subject to observer requirements by §§ 672.27 and 675.25. The use of imported gear would be inconsistent with regulations unless it conforms to the authorized fishing gear definition. NMFS will continue to obtain information from observers about performance of each authorized fishing gear type used in the groundfish fisheries.

Technical Amendment

The rule by technical amendment moves existing definitions of fishing gear types from alphabetic locations at §§ 672.2 and 675.2 and reorganizes them under a new definition, *Authorized fishing gear.* Although the final rule does not change existing definitions from the proposed rule, it redesignates the fishing gear definitions by removing them from their alphabetical order and placing them as paragraphs under this new definition. Three definitions, *Trawl, Non-trawl,* and *Longline* are modified to provide consistency in the fishing gear definitions in the GOA and BSAI regulations.

Classification

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: February 22, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.2, the definitions for *Hook-and-line, Jig, Longline, Longline Pot, Nonpelagic trawl, Pelagic trawl, Pot-and-line,* and *Trawl* are removed and a new definition for *Authorized fishing gear* is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Authorized fishing gear means hook-and-line, jig, longline, longline pot, nonpelagic trawl, non-trawl, pelagic trawl, pot-and-line, and trawl gear; defined as follows:

(1) *Hook-and-line* means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device;

(2) *Jig* means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device;

(3) *Longline* means a stationary, buoyed, and anchored line with hooks or pots (other than king or Tanner crab pots) attached, or the taking of fish by means of such a device;

(4) *Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device;

(5) *Nonpelagic trawl* means a trawl other than a pelagic trawl;

(6) *Non-trawl gear* means hook-and-line, jig, longline, and pot-and-line gear;

(7) *Pelagic trawl* means a trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the foot rope or fishing line;

(iii) Except for the small mesh allowed under paragraph (7)(ix) of this definition:

(A) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or greater than one half the vessel's length overall; or

(B) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one half the vessel's length overall;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (7)(iii) of this definition for a distance equal to or greater than one half the vessel's length overall;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (7) (iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 feet (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sounder device); and

(x) May have weights on the wing tips;

(8) *Pot-and-line* means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device; and

(9) *Trawl* means a conical-shaped net that is towed through the water for catching fish. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

* * * * *

3. In § 672.7, paragraph (n) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(n) Retain groundfish taken with other than Authorized fishing gear as defined at § 672.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

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

5. In § 675.2, the definitions for *Hook-and-line, Jig, Longline, Longline pot, Nonpelagic trawl, Non-trawl gear, Pelagic trawl,* and *Trawl* are removed, and the definition for *Authorized fishing gear* is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Authorized fishing gear means fishing gear types defined as "authorized fishing gear" at § 672.2 of this chapter.

* * * * *

6. In § 675.7, paragraph (o) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(o) Retain groundfish taken with other than *Authorized fishing gear* defined at § 675.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

[FR Doc. 94–4442 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 39
Monday, February 28, 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

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Pesticide Residue Testing

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to establish a new testing service under the United States Grain Standards Act (USGSA) for pesticide residues in wheat. The new service will be provided, upon request, using gas chromatography/mass spectrometry. The cost of the testing will be recovered by fees charged to the applicant. Testing will be conducted at the USDA–FGIS Technical Center, Kansas City, Missouri.

DATES: Comments must be received on or before March 30, 1994.

ADDRESSES: Written comments must be submitted to George Wollam, USDA, FGIS, Room 0624 South Building, P.O. Box 96454, Washington, DC 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in Room 0624 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

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

Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons who perform those services do not meet the requirements of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in part 800 have been previously approved by OMB under control number 0580–0013.

Background

Since the early 1980s, FGIS has provided official service under the Agricultural Marketing Act (AMA) to test grain and processed grain products for the residue of three pesticides, carbon tetrachloride, methylbromide, and ethylene dibromide. This service has been available upon request from FGIS' Commodity Testing Laboratory in Beltsville, MD.

FGIS is now proposing to expand its pesticide residue testing program to include testing wheat for 29 additional pesticides under the authority of the United States Grain Standards Act. The service will be performed on a request basis; it will not be required for either domestic or export shipments. All samples will be tested at the Kansas City Technical Center. A minimum of 500 grams of wheat will be required for testing. The residues (routine compounds) that will be certified are as follows: Aldrin, Azinphos-methyl, Alpha-BHC, Beta-BHC, Delta-BHC, Carbofuran, Chlorpyrifos, Chlorothalonil, Chlorpyrifos Methyl, P.P'-DDD, P.P'-DDE, P.P'-DDT, Diclofop-methyl, Dieldrin, Dimethoate, Endosulfan, Endrin, Esfenvalerate, Fenitrothion, Fenthion, Folpet, Lindane, Malathion, Methidathion, Methoxychlor, Parathion, Parathion-methyl, Pirimiphos-methyl, and Triallate. These compounds will be analyzed by gas chromatography/mass spectrometry.

Laboratory analytical results will be provided to the applicant as soon as practicable. Generally the testing requires a minimum of 48 hours.

The proposed fees will be set forth in § 800.71(a), Schedule A. The proposed fee is $200 for each sample tested during a regular workday and $300 for each sample tested during a non-regular workday. The proposed fees are intended to cover, as nearly as practicable, the FGIS operating cost including related supervisory and administrative costs. Testing for additional residues (special compounds) within FGIS capabilities may be requested at a proposed rate of $100 per hour during a regular workday and $150 per hour during a nonregular workday. The testing fee does not include charges for sampling. Sampling service fees, if required, will be assessed in accordance with the sampling rates in § 800.71(a), Schedule A. Testing of other grains will be provided as a service at a later date.

Major importers of U.S. wheat such as Japan, China, Mexico, and Korea have indicated a strong interest in having U.S. grain tested for the presence of specific pesticide residues. FGIS is proposing to offer certification of these specific pesticide residue levels for export and domestic wheat. The anticipated volume of requests for this service is 500 samples per year or 10 per week. This represents a generated income of approximately $100,000 per year which will cover the costs of providing the service.

Proposed Action

FGIS proposes to revise § 800.71(a), Schedule A, to establish new fees for testing pesticide residues.

List of Subjects in 7 CFR Part 800

Administrative practices and procedures, Grain.

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

PART 800—GENERAL PROVISIONS

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

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

2. In § 800.71(a), Schedule A, is revised to read as follows:

(a) * * *

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES, PERFORMED IN THE UNITED STATES [1]

Inspection & weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing: [2]		
(i) Contract (per hour per service representative)	$31.50	$43.10
(ii) Noncontract (per hour per service representative)	41.90	57.00
(2) Reinspection, appeal inspection, Board appeal inspection, and review of weighing services: [3] [4]		
(i) Grading service:		
(A) Grade and factors (per sample)	61.10	79.50
(B) Protein test (per sample)	15.30	19.90
(C) Factor determination (per factor)	30.60	39.75
(D) Vomitoxin Test (per test) Qualitative	35.00	44.00
Quantitative	40.00	50.00
(ii) Sampling services (per hour per service representative)	61.10	79.50
(iii) Review of weighing service (per hour per service representative)	61.10	79.50
(3) Extra copies of certificates (per copy)	3.00	3.00
(4) Official track scale testing service	44.00	59.90
(5) Pesticide Residue Testing: [5]		
(A) Routine Compounds (per sample)	200.00	300.00
(B) Special Compounds (per hour per service representative)	100.00	150.00

[1] Official inspection and weighing services include, but are not limited to: grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] For vomitoxin tests, a charge of $7.50 per qualitative test and a charge of $12.00 per quantitative test will be assessed in addition to the applicable hourly rate for original inspection service.

[3] Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection, except that for vomitoxin tests, a charge of $7.50 per qualitative test and a charge of $12.00 per quantitative test will be assessed in addition to the applicable hourly rate. If additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[4] If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

[5] Testing fees are applicable to any level of service (original inspection, reinspection, appeal inspection, or Board appeal inspection) and do not include a sampling service fee which, if applicable will be assessed separately in accordance with the fees in this schedule.

* * * * *

Dated: January 31, 1994.

David R. Galliart,

Acting Administrator.

[FR Doc. 94–4421 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 982

[Docket No. AO–205–A7; FV94–982–1]

Filberts/Hazelnuts Grown in Oregon and Washington; Hearing on Proposed Further Amendment of Marketing Agreement and Order No. 982, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 982 (order). The order regulates the handling of filberts/hazelnuts grown in Oregon and Washington. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order. The proposed amendments would make changes in order provisions regarding: Volume control; nomination and membership of the Filbert/Hazelnut Marketing Board (Board); collecting assessments; and the administration and operation of the program. The proposed amendments were submitted by the Board, the agency responsible for local administration of the order, to make the order more consistent with current industry conditions and needs. The Fruit and Vegetable Division, Agricultural Marketing Service (AMS), proposes other conforming and necessary changes.

DATES: The hearing will begin at 9 a.m. in Newberg, Oregon, on March 8, 1994, and if necessary, it will continue the next day.

ADDRESSES: The hearing will take place at the Shiloh Inn, 501 Sitka Avenue in Newberg, Oregon.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2724, FAX (503) 326–7440; or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524–S, Washington, DC 20250–0200; telephone: (202) 720–6862, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action also is governed by the provisions of §§ 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) seeks to ensure that

within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small business. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The Board proposes several amendments to the order's volume control provisions. The Board recommends an amendment that would expand the primary (domestic) market by adding Hawaii to the distribution area that currently is the continental United States (including Alaska) (§ 982.16). In addition, the Board proposes an amendment that would allow the Board, with the approval of the Secretary of Agriculture, to make future changes in the primary market's distribution area (§ 982.16). The Board proposes another amendment designed to provide the Board with additional flexibility to release up to 15 percent of the average volume acquired by the trade for the primary market for the preceding three years' rather than the mandatory 15 percent release specified in the current order (§ 982.40). The Board recommends an amendment that would allow the Board to establish identification standards for inspected and certified lots of hazelnuts rather than the current order requirement which specifies seals, stamps, tags or other identification (§ 982.46).

The Board recommends several proposed amendments regarding nomination and Board membership. The Board proposes an amendment to change the length of the term of office to two years from the current one-year period with a corresponding change limiting the consecutive terms to three two-year terms rather than the current six consecutive one-year terms (§ 982.33). A corresponding amendment would establish the qualifications for nominating handler Board members based on the handlers' previous two years' volume handled rather than the previous one year volume handled, as currently required (§ 982.30). Similarly, the Board recommends a conforming change to the qualification period for weighing handler votes to the previous two marketing years rather than the previous one year marketing year (§ 982.32). The Board proposes that a change be made in the voting procedures when calculating handler voting qualifications by changing the minimum weighted volume to one ton rather than the current one percent (§ 982.32). The Board also proposes that a clarification be added to voting procedures to make it clear that eligible handlers vote for only one member and one alternate member (§ 982.32).

The Board recommends several amendments to the administrative procedures and operations of the order's programs. The Board recommends changing the name of the regulated product from "filberts" or "filberts/hazelnuts" to the single name "hazelnuts" (§ 982.4). Another amendment would allow telephone votes taken by the Board to remain unconfirmed until the next Board meeting rather than being confirmed in writing by individual members immediately after the vote (§ 982.37). Also, the Board proposes an amendment to remove the requirement that "verbatim" reports be made of Board proceedings on marketing policy meetings (§ 982.39). One amendment would remove an incorrect word in the current order language which determines handler credit for ungraded product (§ 982.51). The Board has recommended an amendment which would provide that, when the Board establishes bonding rates for handlers who temporarily defer meeting their restricted obligations, the Board would use the estimated value of restricted credits rather than the estimated product value of a handler's deferred restricted obligation (§ 982.54). Further, the Board recommends that defaulted bond payments should be used by the Board to purchase excess restricted credits from handlers rather than purchasing certified merchantable product which has already met restricted obligations (§ 982.54). Also, the Board recommends a corresponding change that such restricted credits should be used by the handlers to liquidate their restricted obligation rather than be disposed of as restricted product (§ 982.54).

The Board proposes two amendments to the assessment provision to allow the Board to accept advance assessment payments (and provide discounts to those handlers who make advanced payments) and borrow money. Advance payments and borrowed moneys would be used only for meeting administrative obligations before current year assessment payments are available (§ 982.61). The Board also proposes a new provision that would allow the Board to accept voluntary contributions from willing individuals. Such contributions would be used only for production research, marketing research and development, and marketing promotion, including paid advertising (new § 982.63).

Finally, the Board proposes that a clarification be added to the exemption provision of the order to make it perfectly clear that mail order sales to destinations outside the area of production are not exempt from order requirements (§ 982.57).

These proposals were submitted by the Board which works with the Department in administering the order. The Fruit and Vegetable Division, AMS, proposes conforming changes to further clarify and assure consistency with existing provisions of the order. The Board's proposed amendments have not received the approval of the Secretary of Agriculture.

The public hearing is held for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determining whether there is a need for the proposed amendments to the order; and (3) determining whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final

decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except designated employees of the Office of General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Division, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals: Proposals Submitted By The Filbert/Hazelnut Marketing Board.

Proposal No. 1

In part 982, all references to "filbert(s)", "filbert(s) (hazelnut(s)" or "filbert(s)/hazelnut(s)" are revised to read "hazelnut(s)".

Revise § 982.4 to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus.

Proposal No. 2

Revise § 982.16 to read as follows:

§ 982.16 Inshell Trade Acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

Proposal No. 3

In § 982.30, revise paragraphs (a) and (b) to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) * * *

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

* * * * *

In § 982.32, revise paragraphs (a), (b), (c) and (f) to read as follows:

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b)(1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee, for the respective position.

* * * * *

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

* * * * *

In § 982.33, revise paragraph (b) to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective successors are selected and have qualified: *Provided,* That beginning with the 199__–9__ marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

* * * * *

Proposal No. 4

In § 982.37, revise paragraph (b) to read as follows:

§ 982.37 Procedure.

* * * * *

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

Proposal No. 5

In § 982.39, revise paragraph (i) to read as follows:

§ 982.39 Duties.

* * * * *

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

Proposal No. 6

In § 982.40, revise paragraph (c)(2) to read as follows:

§ 982.40 Marketing policy and volume regulation.

* * * * *

(c) * * *

(1) * * * (2) *Interim final and final percentages.* On or before November 15, the Board shall meet to recommend to the Secretary the interim final and final free and restricted percentages, including the portion of the restricted supply that may be shelled or exported. The interim final percentages shall release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell hazelnuts for desirable carryout. If the trade acquisitions during any or all of these years were abnormal, the Board may use a prior year or years in determining this three-year average. The final free and restricted percentages shall become effective 30 days prior to the end of the marketing year, or earlier as may be recommended by the Board and approved by the Secretary. The recommendations to the Secretary shall include the following:

* * * * *

Proposal No. 7

In § 982.46, revise paragraph (b) to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

* * * * *

Proposal No. 8

Revise § 982.51 by removing the word "percent" at the end of the first sentence of paragraph (a).

Proposal No. 9

In § 982.52, revise paragraph (b) to read as follows:

§ 982.52 Disposition of restricted hazelnuts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent reimportation into the area designated in § 982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

* * * * *

Proposal No. 10

In § 982.54, revise paragraphs (b), (c), (d), (e) and (f) to read as follows:

§ 982.54 Deferment of restricted obligation.

* * * * *

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums, which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

* * * * *

Proposal No. 11

In § 982.57, revise paragraph (b) to read as follows:

§ 982.57 Exemptions.

* * * * *

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards and require such reports, certifications, and other conditions, as are necessary to ensure

that such hazelnuts are disposed of only as authorized. Mail order sales to destinations outside the area of production are not considered to be exempt sales under this part.

Proposal No. 12

In § 982.58, revise the last sentence of paragraph (a) to read as follows:

§ 982.58 Research, promotion, and market development.

(a) * * * The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

* * * * *

Revise § 982.61 by designating the present text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 982.61 Assessments.

(a) * * *

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

Add a new § 982.63 to read as follows:

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

Proposal No. 13

The Fruit and Vegetable Division, Agricultural Marketing Service, proposes to make such changes to the order as may be necessary to conform with any amendment thereto that may result from the hearing.

Dated: February 24, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–4609 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 34 and 150

RIN 3150–AE07

Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing industrial radiography. The proposed rule would include additional safety requirements to enhance the level of protection of radiographers and the public and would clarify the regulations so that licensees may have a better understanding of what is expected in radiographic operations. The proposed rule includes a number of updated radiography regulations that have been adopted by the Agreement States. The major changes in the proposed rule include requirements for: (1) Two qualified individuals to be present whenever radiography occurs at a temporary jobsite, (2) mandatory certification of radiographers, (3) permanent radiographic installations, and (4) a radiation safety officer. The format of the radiography regulations would be revised to place requirements into descriptive categories.

DATES: Submit comments by May 31, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm on Federal workdays.

Examine comments received, the environmental impact, and the regulatory analysis at: The NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. Nellis or Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555; Telephone: (301) 492–3628 or 492–3886.

SUPPLEMENTARY INFORMATION:

I. Background

Part 34 of Title 10 of the Code of Federal Regulations was first published in 1965 (30 FR 8192) as part of the recodification of parts 30 and 31 for the purpose of simplifying and clarifying the format of the then-current requirements on radiography so that persons subject to byproduct material licensing regulations could conveniently use and understand them. Numerous modifications to the original part 34 have been made since 1965, many of which have been directed toward the safety aspects of field radiography. These modifications include performance requirements on radiography equipment and requirements for the use of alarming ratemeters published in 1990 (55 FR 843; January 10, 1993).

There are approximately 200 NRC radiography licensees with an additional 500 Agreement State licensees. Radiography licensees often conduct business under both NRC and Agreement State jurisdiction.

The NRC has not initiated an overall revision of part 34 in many years. However, a number of Agreement States have updated their radiography regulations. The decision to develop an overall revision to 10 CFR part 34 was made with the intent of establishing new safety requirements for radiography licensees and clarifying the regulation so that licensees will have a better understanding of what is expected in radiographic operations. The format of the radiography regulations would be revised to place requirements into descriptive categories that better describe the type of requirements found in the subpart.

The NRC solicited recommendations on radiography issues at the 1991 Agreement States' meeting in Sacramento, CA, as well as from NRC regional offices, radiography equipment manufacturers, and radiography licensees. Public comments were solicited on the issue of radiographer certification at the May 19, 1991, annual meeting of the Conference of Radiation Control Program Directors (CRCPD), Inc. in Wichita, Kansas, and a public workshop on radiographer certification was held May 27–28, 1992, in Mobile, Alabama. A separate workshop was held on November 18, 1992, in Dallas, Texas, to discuss recommendations received from the Agreement States and licensees on revision of the radiography regulations. The transcripts of these meetings, which are available for inspection and copying in the NRC Public Document Room, were reviewed

in further developing the proposed revision. The NRC utilized part E of the "Suggested State Regulations for Control of Radiation" developed by the CRCPD, part 31 of the Texas Regulations for Control of Radiation, Chapter 5 of the Louisiana regulations, and the Canadian "Atomic Energy Control Regulations," that apply to radiography in developing this proposed revision of part 34.

II. Petition for Rulemaking

A petition was received on October 15, 1992, from the International Union of Operating Engineers (IUOE), Local No. 2, requesting an amendment to the radiography regulations to require a minimum of two radiographic personnel when performing industrial radiography at temporary jobsites. The petition was published in the **Federal Register** on December 4, 1992 (57 FR 57392). Thirty-eight comment letters were received, 35 were in favor of granting the petition. Resolution of this petition has been addressed in this proposed revision to part 34.

The IUOE petition offered three options for the makeup of the two-person crew: (1) Two radiographers; (2) one radiographer and one radiographer's assistant; and (3) one radiographer and one trainee, with the trainee having completed 40 hours of approved radiation safety training and passed an examination. The petitioners identified a number of problems associated with the use of licensed material by one radiographer at temporary jobsites. These problems included: (1) Difficulty keeping the area under constant surveillance while radiographic operations are ongoing; (2) difficulty in maintaining surveillance when working in trenches; and (3) difficulty in obtaining assistance in the event of an emergency if there is only one individual. The petitioners believe that the suggested change is necessary to ensure a safe working environment.

The comments received raised concerns regarding the combination of a radiographer and a trainee as a two-person team. Many stated that the trainee is an unskilled individual that may or may not achieve radiographer status and spending the time and money for 40 hours training may not be financially feasible for some radiography companies.

This proposed rule, if adopted, would constitute a partial granting of the petition in that it proposes to require, at a minimum, a two-person crew whenever radiographic operations are being conducted outside of a permanent radiographic installation. The NRC has decided not to adopt the term "radiographer trainee," and is proposing that the second person be another qualified radiographer or an individual who has met, at a minimum, the requirements for a radiographer's assistant. The NRC recognizes that, in Agreement States, the training of those individuals designated as trainees would meet the NRC's training requirements for a radiographer's assistant.

The estimated cost of requiring the two-person crew could be significant for licensees who send only one radiographer to a temporary jobsite. However, the current regulation requires direct surveillance of the operation to prevent unauthorized entry into a high radiation area. To comply with this regulation most licensees already must use more than one qualified individual in many situations. For certain circumstances where a licensee could demonstrate that adequate surveillance can be maintained by one radiographer, the Commission could consider granting an exemption through the process described in the proposed § 34.111. The Commission is concerned that this requirement could cause a significant impact on a number of small entities which currently do not use two-person crews, and is soliciting comments on the potential impact. Furthermore, the Commission is interested in receiving proposals for alternatives to the two-person requirement which would achieve comparable enhancements in safety with less of a burden on licensees.

In summary, the Commission believes that by requiring at least two qualified individuals to always be present when radiographic operations are being conducted, there will be a significant increase in assurance that operational safety measures and emergency procedures will be effectively implemented. The expectation is that violations involving failures to perform adequate radiation surveys of radiographic exposure devices and the surrounding area, failures to adequately post and monitor the restricted area, and failures to lock and secure the camera when not in use will become less frequent. Furthermore, if an incapacitating injury to a radiographer should occur at a remote location, the presence of a second individual could be an important factor in preventing unnecessary radiation exposures. The Commission is considering amending the Enforcement Policy as a result of this proposed rulemaking to provide, as an example of a Severity Level III violation, the conduct of radiography operations without the required second radiographer or individual with, at least, the qualifications of a radiographer's assistant as provided in the proposed § 34.41.

III. General Discussion of Proposed Rule Changes

The proposed amendments contain requirements which are intended to improve radiography safety. The first major change is a proposal to require, at a minimum, two qualified individuals (two radiographers or a radiographer and an individual who has met, at least, the requirements to be a radiographer's assistant) to be present any time radiographic operations occur outside of a permanent radiographic installation. This issue has already been addressed under Section II. Petition for Rulemaking.

On March 19, 1991 (56 FR 11504), the NRC published a final rule which provided for a voluntary third-party radiographer certification program through the American Society for Nondestructive Testing (ASNT), as discussed further in Section IV. Several Agreement States have adopted mandatory radiographer state administered examination programs. The promulgation of these programs, as well as other changes in their radiography regulations, have contributed to an overall improvement in safety and a decrease in serious overexposures in these Agreement States.

The proposed rule would recognize other certifying organizations who meet the requirements outlined in Appendix A of the proposed rule. Independent certifying organizations would be required to meet all of the requirements listed in Appendix A, while Agreement States that wish to become certifying entities would only be required to meet the requirements listed in part II and III of the Appendix. The NRC plans to publish annually in the **Federal Register** an updated list of certifying entities and to provide the list with license application forms. The NRC also plans to investigate the feasibility of establishing a toll-free telephone number whereby licensees could obtain information on approved certifying entities.

Another issue involves the definition of a permanent radiographic installation. The proposed rule changes the definition of a "permanent radiographic installation" to mean an enclosed shielded room, cell, or vault in which radiography is performed. The terms "designed or intended for radiography" and "regularly performed" have been removed from the definition to reduce any ambiguity as to what is intended. Under the existing rule, if a licensee has a room, cell, or vault that

meets the definition of a "permanent radiographic installation", then it must meet the special safety requirements of § 34.33. The proposed rule adds two additional requirements: (1) To perform a daily check of the visible and audible signals, and (2) to list all permanent facilities on the license. Under the proposed rule, radiography can only be performed in one of two ways: (1) In a permanent radiographic installation with a qualified radiographer, or (2) at any other location with at least two qualified individuals. The special safety requirements of § 34.33 would not apply to the use of a shielded room at a temporary jobsite, although licensees would be permitted to submit a license amendment requesting approval to use a shielded room which meets the requirements of § 34.33 as a permanent radiographic installation.

The proposed rule includes requirements specifying the qualifications and duties of the Radiation Safety Officer (RSO). The RSO is the key licensee individual charged with the responsibility to ensure that the requirements in the license are followed. These requirements have been based on similar commitments previously included in specific license conditions on a case-by-case basis. The proposed rule would require additional special training for RSOs. The Commission is considering permitting existing RSOs to obtain the additional training within 2 years from the effective date of the rule and is specifically requesting comment on this proposed requirement.

IV. An Independent Certifying Entity (ASNT)

The current ASNT program for certifying industrial radiographers was approved by its Board of Directors in March 1990 and offers certification for either isotope or x-ray users. The NRC staff has extensively reviewed this program, which includes a written examination developed by the State of Texas.

The application to become a certified radiographer requires documentation of 40 hours of classroom training in radiation safety topics specified by ASNT including those topics listed in the proposed § 34.43(f), documentation of 520 hours of direct hands-on experience with radiography sources and devices under the control of an NRC or Agreement State licensee, and proof of successful completion of a practical examination on safety procedures administered by an ASNT-recognized institution. Recognized institutions, generally the candidates' employers, have been licensed by NRC or an Agreement State for the use of radiography sources.

After ASNT's approval of an application, a candidate radiographer takes the written examination. The examination is administered by ASNT or the Conference of Radiation Control Program Directors, Inc. (CRCPD) and subsequently sent to the State of Texas for grading. The results of the examination are forwarded to ASNT. The written examination covers the fundamental radiation safety principles outlined in 10 CFR part 34, pertinent Federal and State regulations, basic radiographic equipment operation, general operating and emergency procedures, radiation detection instrumentation, and radiation safety procedures applicable to industrial radiography. In addition, candidates are required to sign a pledge that they will abide by the ASNT Rules of Conduct. On successful completion of the required examinations and other requirements, a certified individual is provided with a wallet card identifying him/her as an ASNT-certified radiographer.

ASNT certification is valid for 3 years, unless suspended or revoked for cause. Renewal of certification may be accomplished either with or without reexamination. A candidate for renewal without reexamination must document continuous active full-time employment in radiography for at least 6 of the last 12 months. In addition, the candidate must document at least 8 hours, each year, of classroom refresher training covering basic radiation safety principles, equipment operations, emergency procedures, new safety regulations, license requirements, and other pertinent information. If these criteria are not met, the candidate must retake the written examination.

The ASNT Rules of Conduct require certified individuals to comply with NRC and Agreement State regulations and the employer's procedures for radiation safety, routine and emergency operations, and to act in a professional manner in matters pertaining to industrial radiography or to the ASNT certification.

The certification program also contains complaint and hearing procedures. For example, written allegations of unauthorized practice by an ASNT-certified individual are reviewed by the ASNT Ethics Subcommittee. In some cases a formal hearing may be held. If the ASNT Ethics Subcommittee determines that an unauthorized practice has been committed, the subcommittee may take one of the following actions:

1. Revoke the individual's certification for a minimum of 1 year.
2. Suspend the individual's certification for 30 to 180 days.
3. Formally reprimand the individual.

More detailed information on the ASNT certification program is available from the American Society for Nondestructive Testing, Inc., 1711 Arlingate Plaza, P.O. Box 28518, Columbus, Ohio 43228–0518.

V. Discussion of the Proposed Rule

Table of Contents

The new Table of Contents contains eight subparts. The organization is as follows:

Subpart A—General Provisions
Subpart B—Specific Licensing Provisions
Subpart C—Equipment
Subpart D—Radiation Safety Requirements
Subpart E—Recordkeeping Requirements
Subpart F—Notifications
Subpart G—Exemptions
Subpart H—Violations
Appendix A

This organization follows the same general format used in 10 CFR part 39 concerning radiation safety requirements for well logging.

Subpart A—General Provisions

This subpart covers items of a general nature, such as listing definitions and OMB approvals. It also describes the purpose and scope of the rule.

Section 34.1, Purpose and scope, is basically unchanged from the existing regulation. Other NRC regulations that apply to radiography licenses are referenced in this section.

Section 34.3, Definitions, contains the following new terms: ALARA, Annual safety review, Becquerel, Certifying entity, Collimator, Control (drive) cable, Field station, Gray, Independent certifying organization, Radiographer certification, Radiation Safety Officer, Sievert, S-tube, and Temporary jobsite. These definitions were added to define terms used in requirements not previously addressed in Part 34. The term ALARA, which means as low as reasonably achievable, has been added to describe a key element of the revised part 20, "Standards for Protection Against Radiation," that licensees must implement by January 1994. The term Annual safety review was added to describe this activity in the proposed rule. The terms Becquerel, Gray, and Sievert were added to define the metric units used in all new or revised regulations. The terms Certifying entity, Independent certifying organization, and Radiographer certification were added to describe terms associated with revised requirements for verification of

radiographer training. The terms Collimator and Control (drive) cable were added to the proposed rule to describe pieces of equipment that is often used in conducting radiography operations. The term S-tube was added to describe this component of a radiographic exposure for which there are new requirements in the proposed rule. The terms Field station and Temporary jobsite were added to clarify the meaning of these terms in the proposed rule. The term Field station is being used to designate those locations where radiography equipment is stored and from which equipment is dispatched. The term Temporary jobsite is being used to describe locations not authorized on the license where radiography is conducted. The term Radiation Safety Officer (RSO) was added to describe the role of this individual in the proposed rule.

The terms Associated equipment, Control tube, Exposure head, Field examination, Projection sheath, Radiographic Operations, Shielded position, and Source assembly, while used in the existing regulation, were not previously defined. Both licensees and Agreement State representatives requested clarification of these terms. Changing the definition of radiographer's assistant was discussed at the November 1992 workshop in Dallas, Texas. Some Agreement States use the term "trainee" to refer to a radiographer's assistant and require training similar to that required of a radiographer. The NRC has decided to retain the term radiographer's assistant and has proposed upgrading the training requirements to provide additional assurance that radiographers' assistants are sufficiently knowledgeable of NRC regulations. Although the NRC is not adopting the term "trainee," the proposed rule has been written to provide the flexibility for the second person to have training beyond that of a radiographer's assistant. This position could then equally be filled by a "trainee."

The definition of a permanent radiographic installation was modified to remove ambiguities in the previous definition. The definitions of storage area and storage container were modified to remove references to transportation. Specific transportation requirements are addressed in § 34.35.

Section 34.5, Interpretations, is standard regulatory language to state that only the General Counsel of the NRC has the authority to provide interpretations of the regulations which will be binding on the Commission.

Section 34.8, Information collection requirements: OMB approval, is unchanged from the current regulation, except for changing the section numbers to conform to the new format of the proposed rule and to list any new requirements that require OMB approval. The Commission has submitted the proposed rule for OMB clearance. Final OMB clearance will be obtained before publication of a final rule.

Subpart B—Specific Licensing Provisions

This proposed subpart provides the basic requirements for submittal of a license application. The sections in this proposed subpart are basically unchanged from those in the current subpart A of part 34.

Section 34.11, Application for a specific license, is worded the same as § 34.3 in the current part 34.

Section 34.13, Specific license for radiography, has several changes from § 34.11 in the current part 34. A proposed § 34.13(c) would specify requirements for establishing procedures to verify the certification status of radiographers. The requirement for verifying an individual's certification would only apply to previously certified radiographers whom a licensee might hire. A licensee would already know an individual's status if the individual is employed by the licensee at the time of certification. However, the licensee would be required to ensure that all radiographers are certified.

Section 34.13(e) proposes a reduction in the frequency of field inspections of radiographers and radiographer's assistants from quarterly to annually for individuals regularly conducting radiographic operations. For individuals who have not performed radiographic operations for more than six months, an inspection of job performance would be required at the time they next participate in a radiographic operation. This reduction is possible due primarily to the proposed two-person rule, adoption of mandatory certification for radiographers, and upgraded radiographer assistants training which would reduce the need for inspection of job performance. The basic requirements for conducting the field inspections have been relocated to § 34.43(d) to more accurately reflect its role in the training program. In addition, a requirement for conducting annual safety reviews has also been added in § 34.13(b)(1) and § 34.43(c) to clarify the intent of the current § 34.11(b) which requires periodic training. Section 34.13(g) is proposed to require the licensee to designate an individual on the license to fulfill the duties of the RSO. The qualifications and duties of this individual are specified in § 34.42.

Section 34.13(i) is a new paragraph which, as proposed, would require a list and description of all permanent radiographic installations and all field stations to be included in the license application.

Section 34.13(j) is a new paragraph which, as proposed, would permit licensees to have the option to use certified radiographers before the proposed rule is adopted in final form and becomes effective.

Subpart C—Equipment

This proposed subpart describes the requirements for radiographic equipment performance and use. Some of the requirements in this proposed subpart are changed from the current part 34 as described below.

Section 34.20, Performance requirements for radiography equipment, is slightly changed from § 34.20 of the current rule. Section 34.20(b)(3) is revised to prohibit modification of any exposure device. The proposed rule was modified to remove any ambiguity regarding permission to modify safety components. The term Source assembly was added to § 34.20 (c) and (e) to make clear that it is one of the pieces of equipment that must meet the requirements of § 34.20. Section 34.20(f) is added to require labeling of all associated equipment acquired after January 10, 1996, to identify that the components have met the requirements of this section.

Section 34.21, Limits on levels of radiation for radiographic exposure devices, storage containers, and source changers, is basically unchanged from § 34.21 of the current rule with the following exceptions. Metric equivalents to the values previously cited have been included. While it is recognized that radiation exposure instruments currently use units of roentgens to measure radioactivity, the rule has been modified to use the terms millisieverts and millirems. Rather than making the transition from roentgens to coulombs per kilogram (in air), the terms millisieverts and millirems were chosen because a quality factor of 1 is appropriate in dealing with gamma-ray emitting radiography sources. Under the proposed rule measurements taken in roentgens may continue to be recorded in terms of roentgens, provided the limits described in the rule, expressed in millisieverts or millirems, are not exceeded.

Section 34.23, Locking and relocation of radiographic exposure devices, storage containers, and source changers,

is slightly changed from § 34.22 of the current rule, as described below. Section 34.23(a) describes locking of radiographic exposure devices. A requirement to remove the key of any keyed-lock is proposed. Should the key remain in the radiographic exposure device, there is an increased likelihood of the accidental or intentional removal of the sealed source when the radiographic device is unattended. The word "manually" is added to clarify what is meant by securing the source assembly for radiographic exposure devices manufactured before January 10, 1992. Section 34.23(b) is added which specifies requirements for ensuring that the sealed source is in the shielded position before moving the device and associated equipment because a number of overexposures have occurred while radiographic devices were being moved from one location to another.

Section 34.25, Radiation survey instruments, replaces § 34.24 in the current rule and has been updated to reflect current calibration standards for different types of survey meters. This is to specify requirements to address the variety of survey instruments currently available. An additional requirement to perform an operability check before use is proposed. While this is routinely part of all survey instrument specifications, a failure to determine whether an instrument was operable before use has been a contributing factor in overexposures during radiographic operations.

In § 34.27, Leak testing and replacement of sealed sources, the words "repair, tagging, opening, and modification" of sealed sources have been removed because these activities are only approved for individuals specifically licensed to do so. It was never intended that radiographers would be permitted to perform these activities without special authorization from the Commission or an Agreement State. Section 34.31 was modified to include a specific prohibition on the opening, repair, or modification of sealed sources. Most of the language in the proposed rule is the same as § 34.25 of the existing rule. However, the organization has been modified for purposes of clarification. The requirement that performance of a source exchange or a leak test must be done by persons approved by the Commission has been modified to include Agreement States. Recordkeeping requirements have been moved to § 34.67.

Section 34.27(f) is proposed to require surveys for depleted uranium (DU) contamination in the "S" tube of radiographic devices at least once every 12 months. Depleted uranium is used as a shielding material in most radiographic devices and replaces the lead shielding that was used in older models. The presence of DU contamination in the "S" tube may be an indication that the control cable has worn a groove through the "S" tube into the DU shielding. This condition could cause binding of the control cable in the groove with the resultant inability to retract the source, and could result in unwarranted exposures. Recordkeeping requirements may be found in § 34.67.

Section 34.29, Quarterly inventory, is basically unchanged from the existing regulation with the exception of moving all recordkeeping requirements to § 34.69.

Section 34.31, Inspection and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers, includes several proposed changes from § 34.28 in the current rule. The term associated equipment has been included in the proposed rule, and includes various items used for specific tasks which may not be supplied with the radiographic device. Experience has shown that defects in associated equipment can have an effect on safety. Therefore, associated equipment must be included in an inspection and maintenance program. Section 34.31(a) has been revised to clarify the intent of the daily visual check and the required actions if defects are found. In § 34.31(b), the term routine maintenance is now used to clarify that licensees are not required to perform all maintenance. Many equipment repairs may require returning the device to the manufacturer. Language has been added to specify that defective equipment must be removed from service until repaired and that a record of the defect, as well as corrective actions taken, must be made. While this appears obvious, there have been numerous instances where the use of defective equipment continued and overexposures of personnel occurred as a direct result of the defects. Recordkeeping requirements have been moved to § 34.73. The records required to be kept would now be specified in the rule, and include: Date of check, individual performing check, equipment involved, any defects found, and repairs made.

Section 34.33, Permanent radiographic installations, is basically unchanged from the existing requirements in part 34, with the exceptions noted below. Section 34.33(a) has been revised to clarify which entrance controls are required by incorporating the appropriate language from 10 CFR 20.1601 into part 34. Section 34.33(b) is revised to require an alarm system check at the beginning of each day of use. This is to be performed by checking the warning light and audible alarm with the source exposed before using the room each day. A defective alarm would require repair before radiographic operations could resume. This requirement is included because there have been instances where failures in alarm systems have resulted in personnel overexposures upon entry into a high radiation area.

Section 34.35, Labels, storage, and transportation precautions, is a proposed new section that would place requirements that specify labeling and security precautions for radioactive material storage and transportation in part 34. Section 34.23 of the current rule describes storage precautions for exposure devices and storage containers but does not address transportation or labeling requirements. In § 34.35 of the proposed rule, labeling requirements for source changers and storage containers are specified. The proposed rule contains specific requirements to lock and physically secure transport packages. The proposed rule would also require licensees to store licensed material in a manner which minimizes the danger from explosions or fire. The requirement for a Quality Assurance (QA) program, as described in § 71.105, has been added to the proposed rule. While radiography licensees have always had to comply with § 71.105, there have been numerous cases where radiography licensees were unaware of this requirement and, therefore, failed to comply. The addition of requirements addressing labeling and transportation is necessary because in the past personnel and public exposures have occurred from the failure to properly safeguard radioactive material during storage and transportation.

Subpart D—Radiation Safety Requirements

This subpart describes basic radiation safety requirements for radiographic operations and includes training, safety procedures, personnel monitoring and surveys. New requirements describing the duties of the radiation safety officer are proposed.

Section 34.41, Conducting radiographic operations, would be added to address the practice of conducting radiography at sites where the special safety features of a shielded facility are not available. The proposed requirement specifies that, as a minimum, either two radiographers or a radiographer and an individual who has met the requirements to be a radiographer's assistant must be present

any time radiographic operations occur outside a permanent installation. The basis for this proposed requirement is to ensure that, in the absence of the safety features outlined in § 34.33, there will be a significant increase in assurance that operational safety measures will be implemented effectively. The expectation is that violations involving failures to perform adequate radiation surveys of radiographic exposure devices and the surrounding area, failures to adequately post and monitor the restricted area, and failures to lock and secure the camera when not in use will become less frequent. Furthermore, if an incapacitating injury to a radiographer should occur at a remote location, the presence of a second individual could be an important factor in preventing unnecessary radiation exposures. Section 34.41(b) is proposed to require that radiographic operations conducted at locations listed on the license be conducted in a permanent radiographic installation. If licensees would need to perform radiography outside of a permanent facility due to some unique circumstances Commission authorization would be required, and the requirements of § 34.41(a) would need to be met.

Section 34.42, Radiation Safety Officer (RSO), lists the qualifications and duties of the RSO. This section would be added to place in the regulations the requirements for this key individual. Previously, these requirements were referenced in regulatory guides and included as license conditions on a case-by-case basis, but not specified in the regulations. The NRC believes that the RSO is the key individual for ensuring safe operations. The qualifications listed for the RSO in the proposed rule include: (1) Completion of the training required for a radiographer as described in part 34; and (2) 2000 hours of documented experience in industrial radiography with at least 40 hours of formal classroom training with respect to the establishment and maintenance of radiation protection programs. It is anticipated that most existing RSOs already meet these requirements. It is proposed that licensees would have two years from the effective date of the rule to meet this 40 hour training requirement for existing RSOs. A key duty of the RSO is to ensure the safe conduct of operations and to stop unsafe operations and institute corrective actions. Other duties of the RSO in the proposed rule include overseeing procedure implementation and employee training, and monitoring radiation surveys, leak tests, and personnel monitoring results.

Section 34.43, Training, contains several new requirements. Section 34.43(a) has been revised to require radiographers to be certified by a certifying entity meeting the criteria specified in Appendix A of the proposed rule. To be recognized as a certifying entity, an independent organization meeting the criteria specified in part I of appendix A would have to apply as specified in § 34.43(a)(2). Certifying programs would be periodically reviewed by the NRC to ensure that the conditions of approval are being met. A list of approved certifying entities would be made available to licensees on request by contacting the appropriate regional office listed in appendix D to 10 CFR part 20, and would be published annually in the **Federal Register**. Under the proposed rule licensees would have 2 years to implement the proposed change. The change in the verification of training requirements was included in the proposed rule to provide assurance of the quality of radiographers' training in the safe handling of radioactive material. NRC and Agreement States must reciprocally recognize valid radiographer certifications issued by either an independent certifying entity approved by the NRC or an Agreement State certification program meeting the requirements of appendix A, parts II and III, of the proposed rule. Also included in this section is training in §§ 30.7, 30.9, and 30.10, applicable sections of 10 CFR part 71, and some instructions in applicable Department of Transportation (DOT) regulations as referenced in 10 CFR part 71 in addition to other parts of NRC regulations.

Section 34.43(b), which lists training requirements for radiographers' assistants, has been revised to require training in §§ 30.7, 30.9, 30.10, and parts 19, 20, 34, 71, and instructions in applicable DOT regulations as referenced in 10 CFR part 71, in addition to the licensee's operating and emergency procedures. These changes are to ensure that radiographers and radiographers' assistants are knowledgeable of the safety requirements applicable to handling radioactive material in the conduct of radiography. In § 34.43(b)(3) the option of providing an oral test has been omitted. The proposed rule would only allow a written test to be given. Section 34.43(c) describes a proposed requirement to conduct annual safety reviews of radiographers and radiographers' assistants. In the current rule, periodic training is required but required topics to be addressed are not included. Because a number of violations involving personnel overexposures have resulted from licensees' failures to provide adequate training, the proposed amendment for annual safety reviews includes training on revised operating and emergency procedures, new equipment, and safety issues.

Section 34.43(d) has been relocated from § 34.11(d), and describes the requirements for routine inspections of job performance for radiographers and radiographers' assistants. The proposed rule reduces the frequency of these inspections from quarterly to annually. The NRC is proposing to reduce the frequency of inspections of job performance for individuals regularly conducting radiographic operations. For individuals who have not performed radiographic operations for more than six months, an inspection of their job performance would be required at the time of their next participation in a radiographic operation. With several of the other requirements proposed in this rulemaking, such as, certification of radiographers, and having at least two individuals at a temporary jobsite, the Commission believes that the frequency of inspection of job performance can be reduced from quarterly to annually.

Proposed § 34.43(e) specifies that recordkeeping requirements can be found in § 34.79. The requirements for records are unchanged from the current part 34 except for the addition of records verifying the certification status of radiographers. Proposed § 34.43(f) contains the subjects currently listed in Appendix A of part 34. Several additional requirements are proposed. These include: Pictures or models of source assemblies; training in storage, control, and disposal of licensed materials; and pertinent Federal regulations, i.e., Department of Transportation. A new § 34.43(g) would be added which would allow licensees to continue to permit uncertified individuals to act as radiographers for a 2-year period after the proposed rule becomes final.

In § 34.45, Operating and emergency procedures, minor changes were made to include procedures for source recovery if the licensee intends to perform emergency source recovery. These were added because many of the steps in a source recovery would be the same in any circumstance and, in the past, a number of personnel overexposures have occurred during emergency source recovery operations because basic radiation protection precautions were overlooked. Additional requirements are proposed

for transportation procedures to include placarding of vehicles, and reference to the DOT regulations. A number of violations have resulted from licensees failing to follow DOT regulations in the transportation of radioactive material. Section 34.45(b) is proposed which specifies that the recordkeeping requirements can be found in § 34.81. Sections 34.89 and 34.91 specify that copies of current operating and emergency procedures are to be maintained at field stations, permanent installations, and temporary jobsites, to ensure that adequate documents are available where radiographic operations occur.

Section 34.46, Supervision of radiographers' assistants, is unchanged from § 34.44 of the current rule.

In § 34.47, Personnel monitoring, several changes are proposed. The existing requirement specifies that pocket dosimeters have a range from zero to at least 200 milliroentgens. The proposed rule has dropped the term "at least," to limit the range to be only from 0–200. This is to prevent the use of pocket dosimeters with very high ranges where the users would be unable to properly determine their exposure. Use of pocket dosimeters with a range higher than 200 milliroentgens will be considered on a case-by-case basis. Additional requirements are proposed on the replacement frequency for film and TLDs. The existing regulation does not specify the replacement frequency for film and TLDs. The high intensity sources used in radiography necessitate frequent monitoring. Monthly replacement is judged to be an appropriate frequency to adequately track an individual's exposure. With the new lower limits for occupational dose, less frequent monitoring could result in a worker receiving an overexposure.

Section 34.47(b) addresses the use of pocket dosimeters. A requirement to read dosimeters at the beginning and end of each shift is proposed. This is added to ensure that the dose is correctly estimated. The existing regulation only specifies a daily reading and does not provide sufficient instruction on how licensees should handle any readings which remain on the pocket dosimeter after recharging. Because it is nearly impossible to recharge a pocket dosimeter to zero, licensees must take a reading before and after use and determine the difference to determine the dose accurately. Section 34.47(d) addresses an off-scale pocket dosimeter. The proposed rule would require that, in the case of a pocket dosimeter being off-scale, the individual will not be permitted to work with licensed material until the RSO or a designee of the RSO makes a determination of the worker's radiation exposure. The current rule requires that the worker's film badge or TLD be sent for processing, but does not specify when the individual can return to work. The proposed revision provides the criteria that must be met before permitting the individual to return to work. A provision is included which will permit the individual to return to work when the circumstances are clearly known and justified by the RSO that there was no possibility of overexposure.

Section 34.47(e) is proposed to require that a worker cease work whenever a film badge or TLD is lost or damaged until a replacement is available. This is added to ensure that there is a means to accurately determine the worker's radiation dose.

Section 34.47(g) has a proposed revision to require alarm ratemeters to be capable of alerting the wearer regardless of the environmental conditions. In a recent radiography overexposure incident, a licensee reported that a radiographer who was wearing ear protection due to high workplace noise levels was overexposed because he was unaware that his ratemeter was alarming. For use in high ambient noise areas, ratemeters could be supplied with either a vibrating alarm that could be felt by the wearer or a small speaker built into hearing protectors to meet this requirement. NRC expects its licensees to determine the need for alarm ratemeters that incorporate these additional protective measures.

In § 34.49, Radiation surveys, there are several proposed changes. The existing regulation requires a survey of the circumference of the radiographic exposure device and the guide tube. A number of violations of NRC requirements have occurred due to a failure to comply with the requirement to survey the full circumference of the camera. In reviewing the regulation, the NRC has decided to revise the survey requirements to specify that a survey be conducted of the radiographic exposure device to determine that the sealed source has returned to the shielded position, and specify that the radiographer conduct a survey as he/she approaches the guide tube to exchange film, reposition the collimator, or dismantle equipment. The proposed rule places the responsibility with the licensee for ensuring that an adequate survey is conducted. In the majority of cases, a survey of the radiographic exposure device's ports should be adequate to make this determination. A proposed requirement to survey storage areas when radioactive material is initially placed in storage, during each quarterly inventory, and whenever changes occur which could increase radiation levels, is added.

Section 34.51, Surveillance, is basically unchanged from § 34.41 of the current rule. References to part 20 have been updated to reflect the proposed revisions in § 34.33.

Section 34.53, Posting, is basically unchanged from § 34.42 of the current rule except to incorporate current references to part 20.

Subpart E—Recordkeeping Requirements

This subpart does not appear in the current part 34. This subpart is proposed to place all recordkeeping and notification requirements in one location. Most of the recordkeeping requirements are unchanged from those contained in the existing part 34. Proposed changes are discussed below.

Section 34.61, Specific license for radiography, requires the licensee to maintain a copy of the license until it is terminated by the Commission.

Section 34.63, Records of receipt and transfer of sealed sources, is added to provide a record showing the disposition of sources.

Section 34.65, Records of radiation survey instruments, is proposed as currently written in Section 34.24. Licensees would be required to maintain calibration records for radiation survey instruments for 3 years after the record is made.

Section 34.67, Records of leak testing and replacement of sealed sources is proposed as currently written in § 34.25(c) and requires licensees to maintain records of leak tests for 3 years after the record is made.

Section 34.69, Records of quarterly inventory is proposed as currently written § 34.26 and requires licensees to maintain records of quarterly inventories for 3 years after the record is made.

Section 34.71, Utilization logs, is proposed much as currently written in § 34.27. This section would require licensees to maintain utilization logs for 3 years after the record is made. The proposed rule has added several additional pieces of information to the logs including the serial number of the device in which the sealed source is located, the radiographer's signature, and the dates the device is removed and returned to storage. This information is necessary in order to verify location of sources.

Section 34.73, Records of inspection and maintenance of radiographic exposure devices, storage containers,

associated equipment, and source changers, is proposed much as currently written in § 34.28(b). This section requires licensees to maintain inspection and maintenance records for 3 years after the record is made. The proposed rule would specify the information that must be included in the inspection records: Date of check, name of inspector, equipment inspected, any defects found, and repairs made.

Section 34.75, Records of alarm system checks at permanent radiographic installations, is proposed as currently written in § 34.29(c) and requires licensees to maintain records of alarm system checks for 3 years after the record is made.

Section 34.79, Records of training, is proposed as currently written in § 34.31(c) with proposed additional requirements for maintaining records of radiographer certification and annual safety reviews. This paragraph would require licensees to maintain records verifying radiographer certification status. For annual safety reviews, the records would include copies of tests, dates administered, names of instructors and attendees, and the topics covered. Under the proposed rule, records of the annual inspections would include a list of items checked, and any non-compliances observed by the RSO.

Section 34.81, Copies of operating and emergency procedures, is proposed as currently written in § 34.32 and requires licensees to maintain copies of emergency and operating procedures until the Commission terminates the license.

Section 34.83, Records of personnel monitoring, is proposed as currently written in § 34.33(b), and requires licensees to maintain records of alarm ratemeter calibrations, pocket dosimeter readings, and operability checks for 3 years from the date the record was made, and to maintain records of film badge or TLD reports until the Commission terminates the license.

Section 34.85, Records of radiation surveys, is proposed as currently written in § 34.43(d) and requires records of the exposure device surveys for 3 years from the date the record was made.

Section 34.87, Form of records, is proposed as currently written in § 34.4 and specifies how records must be maintained, including permitting records to be stored in electronic media.

Section 34.89, Documents and records required at field stations and permanent installations, would be added to list documents and records required at field stations and permanent installations. This section is necessary to ensure that licensees have available sufficient records to demonstrate compliance with NRC regulations. Field stations and permanent installations may be far removed from the home office. Therefore, records necessary to conduct operations safely should be readily available. These records include a copy of the current license, copies of pertinent regulations, copies of operating and emergency procedures, instrument calibration records, leak test results, inventory records, utilization logs, training and survey records. These records are those required for licensees to safely handle radioactive material, and are a subset of the records required at a licensee's normal place of business.

Section 34.91, Documents and records required at temporary jobsites and use or storage locations exceeding 180 days, would be added to list documents and records required at temporary jobsites and locations where radioactive material will be in use or storage for more than 180 days. This section is necessary to ensure that licensees have available sufficient records to demonstrate compliance with NRC regulations and those records necessary to maintain safe operations. The records listed are a smaller subset of the records required for a field station or permanent installation. These records include copies of pertinent regulations, evidence of latest instrument calibrations, latest survey records, shipping papers, and NRC license or Agreement State license if operating under reciprocity. These records are those required for licensees to safely handle radioactive material.

Subpart F—Notifications

This subpart is basically unchanged from § 34.30 with the exception of an additional requirement. Section 34.101(c) would require licensees to notify the appropriate NRC regional office in writing before using or storing radioactive material in one location for more than 180 days. This notification would be required within 30 days of exceeding the 180-day timeframe. This provision would be added to provide the NRC with information in a timely manner to permit inspection of radioactive material at these locations.

Subpart G—Exemptions

This subpart addresses exemptions and is basically the same as § 34.51 in the current part 34 with the exception of minor wording changes to make it consistent with current language used in other parts of the rule. See § 39.91.

Subpart H—Violations

This subpart addresses violations and is basically the same as § 34.61 and § 34.63 in the current part 34 with the exception of minor wording changes to make the sections referenced consistent with the proposed rule.

Appendix A to Part 34

This appendix is new. The requirements in appendix A to the current part 34 have been relocated to § 34.43(f). Part I of the new appendix A provides the proposed requirements for an independent certifying organization, and does not apply to Agreement States choosing to become a certifying entity. Parts II and III of the new appendix A provide the proposed requirements for certification programs and written examinations for a certifying entity, which would include Agreement States. The proposed appendix A would not impose new requirements on NRC's radiography licensees.

NRC is proposing that an independent certifying organization would have to be a national society or association involved in setting national standards of practice for industrial radiography or non-destructive testing to be recognized. Membership in the organization could not be restricted because of race, color, religion, sex, age, national origin or handicap and the organization's certification program would need to be open to nonmembers. The independent certifying organization would need to:

(1) Be incorporated;

(2) Have a permanent full-time staff;

(3) Be nationally recognized;

(4) Have a policy and decision-making review board;

(5) Be governed by written organizational by-laws and policies; and

(6) Have a viable system of financing its operations.

An independent certifying organization would also need to have:

(1) A committee to review and approve certification guidelines and procedures and to advise the organization's staff in implementing its certification program;

(2) A committee to review complaints against certified individuals;

(3) Written procedures describing its certification program; and

(4) An agreement to exchange information about certified individuals with the Commission and the Agreement States.

For a certification program to be acceptable, NRC is proposing that it include provisions requiring individuals to receive training in the topics listed in § 34.43(f), complete a written examination, complete a practical examination or equivalent, and require a minimum period of on-the-job experience. The program would also have to include procedures that ensure

due process whenever an individual's certification may need to be revoked, suspended, or restricted for willful or significant failure to comply with his or her employer's operating or emergency procedures, or the Commission's or an Agreement State's regulations.

For the written examination, NRC is proposing that it be: (1) Designed to test knowledge and understanding of the subjects listed in § 34.43(f); (2) written for a ninth-grade reading comprehension level; and (3) scientifically analyzed to ensure that the questions are not biased or misleading.

Agreement State Compatibility

The rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. With regard to basic radiation equipment specifications, standards, and definitions identified as matters of Division 1 level of compatibility, the Agreement States will be expected to adopt, essentially verbatim, the proposed part 34 standards and definitions into their equivalent regulations. However, the NRC also recognizes that certain terms, such as radiographer's assistant, may not be used in present Agreement State regulations. Continued use of alternative terms, such as "trainee" will be considered acceptable so long as the underlying requirements of the position are consistent with those proposed by the Commission. The remainder of the rule will be a Division 2 level of compatibility allowing the Agreement State regulators the flexibility to adopt similar or more stringent requirements based on their radiation protection experience, professional judgments, and community values.

Appendix A of proposed 10 CFR part 34 provides the requirements for certifying entities to be acceptable to NRC. The Commission reserves the right to make this determination and therefore this is a Division 4 item of compatibility. Because it concerns a regulatory function that will be reserved for the Commission pursuant to 10 CFR part 150, the Agreement States will not need to implement this provision of the proposed rulemaking. A new section proposed for part 150 would make clear the Commission's intent to reserve this function and also to reserve the right to set minimum radiographer certification standards.

Agreement States that wish to develop radiographer certification programs would be expected to implement parts II and III of the proposed appendix A. The definitions and the requirements for certification programs and written examinations contained in this rulemaking must be the same for all NRC and Agreement State licensees to maintain consistency. In practice, States that develop certification programs must develop regulatory language and regulations that implement appendix A, parts II and III criteria. States would be permitted to include additional administrative requirements (such as State-issued cards). States that do not develop certification programs would not be expected to implement appendix A. NRC or an Agreement State must reciprocally recognize valid radiographer certifications issued by either an independent certifying entity approved by the NRC or by an Agreement State certification program meeting the requirements of appendix A, parts II and III, of the proposed rule. Agreement States would be expected to submit their proposed program for NRC review and evaluation prior to implementing their certification program.

Implementation

The Commission intends to have different implementation dates for particular requirements of this proposed rule. The proposed requirements would become effective 90 days after publication of the final rule in the **Federal Register**. For the proposed requirements in § 34.41 to use, as a minimum, a two-person crew for radiographic operations not conducted in a permanent facility, licensees would have 1 year from the effective date of the rule to comply. Licensees would be required to affirm that all radiographers have met the certification requirements of 34.43(a)(1) within 2 years from the effective date of the rule. This would allow radiography licensees operating in NRC jurisdiction 2 years to obtain certification for their employees who act as radiographers. This requirement would include radiographers employed by Agreement State licensees operating in non-Agreement States under reciprocity pursuant to 10 CFR 150.20. The Commission notes that the State of Texas currently provides a 90-day grace period for non-Texas licensees operating in that State under reciprocity (TRC 31.90). However, because this proposed rule will be a matter of compatibility, the requirement for mandatory certification would apply to radiography licensees nationwide.

Licensees would have one year from the effective date of the rule to comply with the additional training requirements specified in § 34.43(b). Licensees could consider combining this training with the annual safety review.

For the proposed revision to § 34.47(g) that would require alarm ratemeters be capable of alerting the wearer regardless of environmental conditions, licensees would have 1 year to obtain or modify a sufficient number of additional alarm ratemeters to meet anticipated needs.

For use/storage locations not previously identified on the license (e.g., field stations, permanent radiographic installations, and temporary jobsites exceeding 180 days) licensees must request amendments or notify the NRC, as appropriate, by the effective date of the rule. Few amendment requests are anticipated.

All current RSOs would be granted a two-year extension to meet the proposed additional RSO training requirements specified in § 34.42(a).

The Commission requests that persons commenting on this proposed rulemaking particularly address any hardships that would result if the proposed rule were adopted and also address any hardships that would result if the proposed implementation schedule were adopted. The NRC is particularly interested in suggestions for alternative implementation schedules.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the rule, if adopted, would not be a major Federal action; therefore, an impact statement is not required. The revision of 10 CFR part 34 should have no environmentally significant impact because radiography only involves the use of sealed sources, and no environmental impact will be involved. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington DC.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 108 hours per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0007 and 3150–0120), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Analysis

The NRC has prepared an initial regulatory analysis of the impact of this proposed rule on small entities. A summary of this analysis appears as Appendix A to this document. A copy of the analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Donald O. Nellis or Mary L. Thomas, Division of Regulatory Application, Office of Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301)–492–3785. The NRC is seeking public comment on the initial regulatory flexibility analysis. The NRC is particularly seeking comment from small entities (i.e., small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities which offer comments on how the regulations could be modified to take into account the differing needs of small entities should specifically discuss the following items:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety. The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule. The proposed rule does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 34

Byproduct material, Criminal penalties, Nuclear material, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 150

Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 34.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for part 34 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

2. The existing headings for subparts A and B and each of the existing undesignated center headings are removed.

3. A new heading for subpart A, consisting of §§ 34.1–34.8, is added to read as follows:

Subpart A—General Provisions

4. Section 34.1 is revised to read as follows:

§ 34.1 Purpose and scope.

This part prescribes requirements for the issuance of licenses for the use of sealed sources containing byproduct material and radiation safety requirements for persons using these sealed sources in industrial radiography. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the requirements and provisions of parts 19, 20, 21, 30, 71, 150, 170, and 171 of this chapter apply to applications and licenses subject to this part. This rule does not apply to medical uses of byproduct material.

§ 34.3 [Removed]

5. Section 34.3 is removed.

6. Section 34.2 is redesignated as § 34.3, and the new § 34.3 is revised to read as follows:

§ 34.3 Definitions.

ALARA (acronym for as low as reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits specified in part 20 as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

Annual safety review means a review conducted or provided by the licensee for its employees on radiation safety aspects of radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, accidents or errors that have been observed, and opportunities for employees to ask safety questions.

Associated equipment means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that

drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop, "J" tube).

Becquerel (Bq) means one disintegration per second.

Certifying entity means an independent certifying organization meeting the requirements in Appendix A of this part or an Agreement State meeting the requirements in Appendix A, parts II and III of this part.

Collimator means a device used to limit the size, shape, and direction of the primary radiation beam.

Control (drive) cable means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

Control tube means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

Exposure head means a device that locates the gamma radiography sealed source in the selected working position. (An exposure head is also known as a source stop.)

Field examination means a demonstration through practical application of the safety rules and principles in radiography including use of all appropriate equipment and procedures.

Field station means a facility where licensed material may be stored or used and from which equipment is dispatched.

Gray means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 Joule/kilogram. It is also equal to 100 rads.

Independent certifying organization means an independent organization that meets all of the criteria in Appendix A of this part.

Permanent radiographic installation means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed.

Projection sheath (guide tube) means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the radiographic exposure device to the exposure head or working position.

Radiation Safety Officer means an individual named by the licensee who has knowledge of, responsibility for, and authority to ensure compliance with appropriate radiation protection rules, standards, and practices on behalf of the licensee and who meets the requirements of § 34.42.

Radiographer means any individual who meets the requirements of § 34.43, is in attendance at the site where the sealed source or sources are being used, personally supervises radiographic operations and who is responsible to the licensee for ensuring compliance with the requirements of the Commission's regulations and the conditions of the license.

Radiographer certification means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety training, testing, and experience criteria.

Radiographer's assistant means any individual, who under the personal supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in radiography.

Radiographic exposure device (also called a camera or a projector) means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

Radiographic operations means all activities associated with the presence of radioactive sources in a radiographic exposure device during transport and use of the device, to include surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries.

Radiography means the examination of the structure of materials by nondestructive methods, utilizing sealed sources of byproduct materials.

S-tube means a tube (typically made of a hard metal, such as, titanium) through which the radioactive source travels in a radiographic exposure device.

Sealed source means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

Shielded position means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement. (In this position the radiation exposure will be at a minimum. This position incorporates maximum shielding for the radioactive source.)

Sievert means the SI unit of any of the quantities expressed as dose equivalent. The absorbed dose in grays multiplied by the quality factor is equal to the dose equivalent in Sieverts. For comparison 1 Sv=100 rems.

Source assembly means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.

Source changer means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

Storage area means any location, facility, or vehicle which is used to store or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

Storage container means a device in which sealed sources are stored.

Temporary jobsite means a place where radiographic operations are conducted other than the location(s) of use authorized on the license.

§ 34.4 [Removed]

7. Section 34.4 is removed.

8. Section 34.5 is added to read as follows:

§ 34.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

9. Section 34.8 is revised to read as follows:

§ 34.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0007.

(b) The approved information collection requirements contained in this part appear in §§ 34.13, 34.20, 34.25, 34.27, 34.29, 34.31, 34.33, 34.35, 35.41, 34.43, 34.45, 34.47, 34.49, 34.61, 34.63, 34.65, 34.67, 34.69, 34.71, 34.73, 34.75, 34.79, 34.81, 34.83, 34.85, 34.87, 34.89, 34.91, 34.101, and Appendix A.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. The information collection requirement and the control number under which it is approved are as follows:

(1) In § 34.11, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

10. A new heading for subpart B, consisting of §§ 34.11–34.13, is added to read as follows:

Subpart B—Specific Licensing Provisions

11. Section 34.11 is revised to read as follows:

§ 34.11 Application for a specific license.

A person may file an application for specific license for use of sealed sources in radiography, in duplicate, on NRC Form 313, "Application for Material License," in accordance with the provisions of § 30.32 of this chapter.

12. Section 34.13 is added to read as follows:

§ 34.13 Specific license for radiography.

The Commission will approve an application for a specific license for the use of licensed material in radiography if the applicant meets the following requirements:

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter for byproduct material, as appropriate, and any special requirements contained in this part.

(b) The applicant shall develop an adequate program for training radiographers and radiographers' assistants that meets the requirements of § 34.43, and submit to the Commission a description of this program which specifies the—

(1) Initial training;

(2) On-the-job training;

(3) Annual safety reviews; and

(4) Means the applicant will use to demonstrate the radiographer's and radiographer's assistant's knowledge and understanding of and ability to comply with the Commission's regulations and licensing requirements and the applicant's operating and emergency procedures.

(c) The applicant shall establish and submit to the Commission a description of its procedures for verifying and documenting the certification status of its radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

(d) The applicant shall submit to the Commission written operating and emergency procedures as described in § 34.45.

(e) The applicant shall establish and submit to the Commission its program for annual inspections of the job performance of each radiographer and radiographer's assistant as described in § 34.43(d).

(f) The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in radiography, including specified delegations of authority and responsibility.

(g) The applicant shall designate and identify a Radiation Safety Officer responsible for implementing the licensee's radiation safety program. The Radiation Safety Officer shall meet the qualifications and duties described in § 34.42.

(h) If an applicant intends to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the applicant intends to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the Commission. The description must include the—

(1) Instruments to be used;

(2) Methods of performing the analysis; and

(3) Pertinent experience of the person who will analyze the wipe samples.

(i) The applicant shall identify the location(s) of, and describe, all field stations and permanent radiographic installations.

(j) From (insert effective date of final rule) to (Insert date 2 years after the final rule is published in the **Federal Register**):

(1) A license applicant may affirm that all individuals acting as radiographers will be certified in radiation safety by a certifying entity before commencing duties as radiographers. This affirmation is instead of describing its initial training program for radiographers in the subjects outlined in § 34.43(f) and the means used to determine the radiographer's knowledge and understanding of these subjects, and;

(2) A licensee may substitute radiographer certification in place of the description of the means to determine the radiographer's knowledge and understanding of the subjects outlined in § 34.43(f).

(3) After (Insert date 2 years after the final rule is published in the **Federal Register**), a license applicant and licensee shall comply with the requirement of § 34.43(a)(2).

13. A new heading for subpart C, consisting of §§ 34.20–34.35, is added to read as follows:

Subpart C—Equipment

14. Section 34.20 is revised to read as follows:

§ 34.20 Performance requirements for radiography equipment.

Equipment used in industrial radiographic operations must meet the following minimum criteria:

(a) Each radiographic exposure device and all associated equipment must meet the requirements specified in American National Standard N432–1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136, issued January 1981). This publication has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, Telephone (212) 642–4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Library, 7920 Norfolk Avenue, Lower Level, Bethesda, Maryland, 20814. A copy of the document is also on file at the Office of the Federal Register, 800 North Capitol Street NW., Washington, DC 20408.

(b) In addition to the requirements specified in paragraph (a) of this section, the following requirements apply to radiographic exposure devices and associated equipment.

(1) Each radiographic exposure device must have attached to it by the user, a durable, legible, clearly visible label bearing the—

(i) Chemical symbol and mass number of the radionuclide in the device;

(ii) Activity and the date on which this activity was last measured;

(iii) Model number and serial number of the sealed source;

(iv) Manufacturer of the sealed source and

(v) Licensee's name, address, and telephone number.

(2) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 10 CFR Part 71.

(3) Modification of radiographic exposure devices and associated equipment is prohibited.

(c) In addition to the requirements specified in paragraphs (a) and (b) of this section, the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the source to be moved out of the device for routine operation.

(1) The coupling between the source assembly and the control cable must be designed in such a manner that the

source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(2) The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(3) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

(4) Each sealed source or source assembly must have attached to it or engraved on it, a durable, legible, visible label with the words:

"DANGER—RADIOACTIVE".

The label must not interfere with the safe operation of the exposure device or associated equipment.

(5) The guide tube must have passed the crushing tests for the control tube as specified in ANSI N432 and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use.

(6) Guide tubes must be used when moving the source out of the device.

(7) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations.

(8) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432.

(9) Source changers must provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

(d) All newly manufactured radiographic exposure devices and associated equipment acquired by licensees after January 10, 1992, must comply with the requirements of this section.

(e) All radiographic exposure devices, source assemblies, and associated equipment in use after January 10, 1996, must comply with the requirements of this section.

(f) All associated equipment acquired after January 10, 1996, must be labelled to identify that the components have met the requirements of this section.

15. Section 34.21 is revised to read as follows:

§ 34.21 Limits on levels of radiation for radiographic exposure devices, storage containers, and source changers.

(a) Radiographic exposure devices measuring less than 10 centimeters (4 inches) from the sealed source storage position to any exterior surface of the device must not have a radiation level in excess of 0.5 millisieverts (50 millirems) per hour at 15 centimeters (6 inches) from any exterior surface of the device. Radiographic exposure devices measuring a minimum of 10 centimeters (4 inches) from the sealed source storage position to any exterior surface of the device, and all storage containers for sealed sources or for radiographic exposure devices, must not have a radiation level in excess of 2 millisieverts (200 millirems) per hour at any exterior surface, and 0.1 millisieverts (10 millirems) per hour at 1 meter from any exterior surface. The radiation levels specified are with the sealed source in the shielded (i.e., "off") position.

(b) Paragraph (a) of this section applies to all equipment manufactured before January 10, 1992. After January 10, 1996, radiographic equipment other than storage containers and source changers must meet the requirements of § 34.20. Section 34.21 applies only to storage containers.

§ 34.22 [Removed]

16. Section 34.22 is removed.

17. Section 34.23 is revised to read as follows:

§ 34.23 Locking and relocation of radiographic exposure devices, storage containers and source changers.

(a) Locked radiographic exposure devices and storage containers must be physically secured to prevent tampering.

(1) Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked (and if a keyed-lock, with the key removed at all times), when not under the direct surveillance of a radiographer or a radiographer's assistant or as otherwise may be authorized in § 34.51. In addition, during radiographic operations the sealed source assembly must be manually secured in the shielded position each time the source is returned to that position, in those exposure devices manufactured before January 10, 1992.

(2) Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked (and if a keyed-lock, with the key removed at all times) when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

(b) Radiographic exposure devices, source changers, and storage containers, before being moved from one location to another, must have the guide tubes and control cables disconnected, safety plugs or covers applied, locked and physically secured to prevent accidental loss, tampering or removal of licensed material, and must be surveyed to assure that the sealed source is in the shielded position.

§ 34.24 [Removed]

18. Section 34.24 is removed.

19. Section 34.25 is revised to read as follows:

§ 34.25 Radiation survey instruments.

(a) The licensee shall keep sufficient calibrated and operable radiation survey instruments at each location where radioactive material is present to make the radiation surveys required by this part and by part 20 of this chapter. Instrumentation required by this section must be capable of measuring a range from 0.02 millisieverts (2 millirems) per hour through 0.01 Sievert (1 rem) per hour. Survey instruments must be checked for operability before use each day. This may be accomplished by evaluating the instrument response to the previously measured fields at the projection sheath port or the control cable sheath port on a radiographic exposure device.

(b) The licensee shall have each radiation survey instrument required under paragraph (a) of this section calibrated—

(1) At intervals not to exceed 6 months and after instrument servicing, except for battery changes;

(2) For linear scale instruments, at two points located approximately one-third and two-thirds of full-scale on each scale; for logarithmic scale instruments, at midrange of each decade, and at two points of at least one decade; and for digital instruments, at 3 points between 0.02 and 10 mSv (2 and 1000 millirems) per hour; and

(3) So that an accuracy within plus or minus 20 percent of the calibration standard can be demonstrated at each point checked.

(c) The licensee shall maintain records of the results of the instrument calibrations in accordance with § 34.65.

§ 34.26 [Removed]

20. Section 34.26 is removed.

21. Section § 34.27 is revised to read as follows:

§ 34.27 Leak testing and replacement of sealed sources.

(a) The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing of any sealed source must be performed only by persons specifically authorized by the Commission or an Agreement State to do so.

(b) Testing and recordkeeping requirements.

(1) Each licensee who uses a sealed source shall have the source tested for leakage at intervals not to exceed 6 months.

(2) The licensee shall maintain records of the leak tests in accordance with § 34.67.

(3) In the absence of a certificate from the transferor that a leak test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(c) Method of testing. The wipe of a sealed source must be performed using a leak test kit or method approved by the Commission or an Agreement State. The wipe sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcurie) of radioactive material on the test sample and must be performed by a person specifically authorized by the Commission or an Agreement State to perform the analysis.

(d) Any test conducted pursuant to paragraphs (b) and (c) of this section which reveals the presence of 185 Bq (0.005 microcurie) or more of removable radioactive material must be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of, in accordance with Commission regulations. A report must be filed with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 5 days of any test with results that exceed the threshold in this subsection, describing the equipment involved, the test results, and the corrective action taken. A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in Appendix D of part 20 of this chapter "Standards for Protection Against Radiation."

(e) A sealed source which is not fastened to or contained in a radiographic exposure device must have permanently attached to it a durable tag at least one (1) inch square bearing the prescribed radiation caution symbol in conventional colors, magenta, purple or black on a yellow background, and at least the instructions: "Caution (or Danger)—Radioactive Material—Do Not Handle—Notify Civil Authorities (or Name of Company)."

(f) Each exposure device using depleted uranium (DU) shielding and an "S" tube configuration must be periodically tested for DU contamination. This test can be performed by the licensee using available test kits or method approved by the Commission or an Agreement State, or the exposure device could be returned to the manufacturer for such testing. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample and must be performed by a person specifically authorized by the Commission or an Agreement State to perform the analysis. This test must be undertaken at intervals not to exceed 12 months and should such testing reveal the presence of DU contamination, the exposure device must be removed from use and arrangements for repair or proper disposal in a facility licensed under 10 CFR part 61 must be made. A record of the DU leaktest must be made in accordance with § 34.67.

§ 34.28 [Removed]

22. Section 34.28 is removed.

23. Section 34.29 is revised to read as follows:

§ 34.29 Quarterly inventory.

(a) Each licensee shall conduct a quarterly physical inventory to account for all sealed sources received and possessed under this license. (b) The licensee shall maintain records of the quarterly inventory in accordance with § 34.69.

§ 34.30 [Removed]

24. Section 34.30 is removed.

25. Section 34.31 is revised to read as follows:

§ 34.31 Inspection and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers.

(a) The licensee shall visually check for obvious defects in radiographic exposure devices, storage containers, associated equipment, and source changers before use each day the equipment is used to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the equipment must be removed from service until repaired, and a record must be made in accordance with § 34.73.

(b) Each licensee shall have a program for inspection and routine maintenance of radiographic exposure devices, source changers, associated equipment and storage containers at intervals not to exceed 3 months or before the first use thereafter to ensure the proper functioning of components important to safety. Records of these inspections and maintenance performed must be made in accordance with § 34.73. If defects are found, the equipment must be removed from service until repaired, and a record must be made in accordance with § 34.73.

(c) The opening, repair, or modification of any sealed source must be performed by persons specifically authorized to do so by the Commission or an Agreement State.

§ 34.32 [Removed]

26. Section 34.32 is removed.

27. Section 34.33 is revised to read as follows:

§ 34.33 Permanent radiographic installations.

(a) Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation must have either

(1) Entrance controls of the type described in § 20.1601(a)(1) of this chapter; or

(2) Both visible and audible warning signals to warn of the presence of radiation. The visible signal must be actuated by radiation whenever the source is exposed. The audible signal must be actuated when an attempt is made to enter the installation while the source is exposed.

(b) The alarm system must be tested for proper operation at the beginning of each day the installation is used for radiographic operations. The test must include a check of the visible and audible signals by turning on the exposure device before using the room. Entrance control devices must be tested monthly. If a control device or alarm is operating improperly, it must be immediately labeled as defective and repaired before industrial radiographic operations are resumed. Test records must be maintained in accordance with § 34.75.

28. Section 34.35 is added to read as follows:

§ 34.35 Labels, storage, and transportation precautions.

(a) Labels.

(1) The licensee may not use a source changer or container to store licensed material unless the source changer or the container has securely attached to it a durable, legible, and clearly visible label. The label must contain the radiation symbol specified in § 20.1904 of this chapter and the wording

Caution (or Danger) Radioactive Material—Do Not Handle Notify Civil Authorities (or Name of Company)

(2) The licensee may not transport licensed material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with regulations set out in 10 CFR Part 71, including documentation of the Quality Assurance (QA) program requirements outlined in § 71.105 of this chapter.

(b) Security precautions during storage and transportation.

(1) Locked radiographic exposure devices and storage containers must be physically secured to prevent tampering or removal by unauthorized personnel in accordance with the requirements in § 34.23. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(2) The licensee shall lock and physically secure the transport package containing licensed material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

29. A new heading for subpart D, consisting of §§ 34.41–34.57, is added to read as follows:

Subpart D—Radiation Safety Requirements

30. Section 34.41 is revised to read as follows:

§ 34.41 Conducting radiographic operations.

(a) Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of § 34.43(b). The additional qualified individual(s) shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

(b) All radiographic operations conducted at locations of use authorized on the license must be conducted in a permanent radiographic installation, unless specifically authorized by the Commission.

31. Section 34.42 is revised to read as follows:

§ 34.42 Radiation Safety Officer.

The Radiation Safety Officer (RSO) shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program.

(a) The RSO's qualifications must include:

(1) Completion of the training and testing requirements of § 34.43(a); and

(2) 2000 hours of documented experience in industrial radiographic operations, with at least 40 hours of formal classroom training with respect to the establishment and maintenance of a radiation protection program.

(b) The specific duties of the RSO include, but are not limited to, the following:

(1) To establish and oversee operating, emergency, and ALARA procedures as required by part 20 of this chapter, and to review them regularly to ensure that the procedures are current and conform with these rules;

(2) To oversee and approve all phases of the training program for radiographic personnel so that appropriate and effective radiation protection practices are taught;

(3) To ensure that required radiation surveys and leak tests are performed and documented in accordance with these rules, including any corrective measures when levels of radiation exceed established limits;

(4) To ensure that personnel monitoring devices are calibrated and used properly by occupationally exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by § 20.2203 of this chapter; and

(5) To ensure that operations are conducted safely and to assume control and have the authority to institute corrective actions including stopping of operations when necessary in emergency situations or unsafe conditions.

32. Section 34.43 is revised to read as follows:

§ 34.43 Training.

(a) The licensee may not permit any individual to act as a radiographer until the individual—

(1) Has been instructed in the subjects outlined in paragraph (f) of this part.

(2) Is certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Appendix A of this part. An independent organization that would like to be recognized as a certifying entity shall submit its request to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. 20555.

(3) Has received copies of and instruction in the requirements described in NRC regulations contained in this part; in §§ 30.7, 30.9, and 30.10 of this chapter; in the applicable sections of parts 19, 20, and 71 of this chapter, in applicable DOT regulations as referenced in 10 CFR part 71, in the NRC license(s) under which the radiographer will perform radiography, and the licensee's operating and emergency procedures;

(4) Has demonstrated understanding of NRC regulations, the licensee's license, and the licensee's operating and emergency procedures by successful completion of a written examination.

(5) Has demonstrated competence in the use of the licensee's radiographic exposure devices, sealed sources, related handling tools, and survey instruments; and

(6) Has demonstrated understanding of the instructions in paragraph (a)(3) and (a)(5) of this section by successful completion of a field examination.

(b) The licensee may not permit any individual to act as a radiographer's assistant until the individual—

(1) Has received copies of and instruction in the requirements described in NRC regulations contained in this part; in §§ 30.7, 30.9, and 30.10 of this chapter; in the applicable sections of parts 19, 20, and 71 of this chapter, in applicable DOT regulations as referenced in 10 CFR part 71, in the NRC license(s) under which the radiographer's assistant will perform radiography, and the licensee's operating and emergency procedures;

(2) Has demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and

(3) Has demonstrated understanding of the instructions provided under paragraph (b)(1) of this section by successfully completing a written test and a field examination on the subjects covered.

(c) The licensee shall provide annual safety reviews for radiographers and radiographer's assistants at least once during each calendar year.

(d) The licensee shall conduct an annual inspection program of the job

performance of each radiographer and radiographer's assistant to ensure that the Commission's regulations, license requirements, and the applicant's operating and emergency procedures are followed. The inspection program must:

(1) Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed 12 months; and

(2) Provide that, if a radiographer or a radiographer's assistant has not participated in a radiographic operation for more than 6 months since the last inspection, the individual's performance must be observed and recorded when the individual next participates in a radiographic operation.

(e) The licensee shall maintain records of the above training to include certification documents, written and field examinations, annual safety reviews and annual inspections of job performance in accordance with § 34.79.

(f) The licensee shall include the following subjects in the training required in paragraph (a)(1) of this section:

(1) Fundamentals of radiation safety including—

(i) Characteristics of gamma radiation;

(ii) Units of radiation dose and quantity of radioactivity;

(iii) Hazards of exposure to radiation;

(iv) Levels of radiation from licensed material; and

(v) Methods of controlling radiation dose (time, distance, and shielding);

(2) Radiation detection instruments including—

(i) Use, operation, calibration, and limitations of radiation survey instruments;

(ii) Survey techniques; and

(iii) Use of personnel monitoring equipment;

(3) Equipment to be used including—

(i) Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtails).

(ii) Storage, control, and disposal of licensed material; and

(iii) Maintenance of equipment.

(4) The requirements of pertinent Federal regulations; and

(5) Case histories of accidents in radiography.

(g) The licensee may, until (Insert date 2 years after the final rule is published in the **Federal Register**), allow an individual who has not met the certification requirements of paragraph (a)(2) of this section to act as a radiographer after the individual has received training in the subjects outlined in paragraph (f) of this section and demonstrated understanding of those subjects by successful completion of a written examination that was previously submitted to and approved by the Commission.

§ 34.44 [Removed]

34. Section 34.44 is removed.

35. Section 34.45 is added to read as follows:

§ 34.45 Operating and emergency procedures.

(a) Operating and emergency procedures must include, as a minimum, instructions in at least the following:

(1) The handling and use of licensed sealed sources and radiographic exposure devices to be employed such that no person is likely to be exposed to radiation doses in excess of the limits established in part 20 of this chapter "Standards for Protection Against Radiation";

(2) Methods and occasions for conducting radiation surveys;

(3) Methods for controlling access to radiographic areas;

(4) Methods and occasions for locking and securing radiographic exposure devices, storage containers and sealed sources;

(5) Personnel monitoring and the use of personnel monitoring equipment;

(6) Transporting sealed sources to field locations, including packing of radiographic exposure devices and storage containers in the vehicles, placarding of vehicles, when needed, and control of the sealed sources during transportation (refer to 49 CFR parts 171 through 173);

(7) The inspection and maintenance of radiographic exposure devices and storage containers;

(8) Steps that must be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms;

(9) The procedure(s) for identifying and reporting defects and noncompliance, as required by part 21 of this chapter;

(10) The procedure for notifying proper persons in the event of an accident;

(11) Minimizing exposure of persons in the event of an accident;

(12) Source recovery procedure if licensee will perform source recovery; and

(13) Maintenance of records.

(b) The licensee shall maintain copies of current operating and emergency procedures in accordance with § 34.81.

36. Section 34.46 is added to read as follows:

§ 34.46 Supervision of radiographers' assistants.

Whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by § 34.49(b) to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include:

(a) The radiographer's personal presence at the site where the sealed sources are being used;

(b) The ability of the radiographer to give immediate assistance if required; and

(c) The radiographer's watching the assistant's performance of the operations referred to in this section.

37. Section 34.47 is added to read as follows:

§ 34.47 Personnel monitoring.

(a) The licensee may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears a direct reading pocket dosimeter, an operating alarm ratemeter, and either a film badge or a thermoluminescent dosimeter (TLD). At permanent radiography installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

(1) Pocket dosimeters must have a range from zero to 2 millisieverts (200 millirems) and must be recharged at the start of each shift.

(2) Each film badge and TLD must be assigned to and worn by only one individual.

(3) Film badges and TLDs must be replaced at least monthly.

(4) After replacement, each film badge or TLD must be promptly processed.

(b) Pocket dosimeters must be read and the exposures recorded at the beginning and end of each shift, and records must be maintained in accordance with § 34.83.

(c) Pocket dosimeters must be checked at periods not to exceed 12 months for correct response to radiation, and records must be maintained in accordance with § 34.83. Acceptable dosimeters must read within plus or minus 30 percent of the true radiation exposure.

(d) If an individual's pocket dosimeter is found to be off-scale and the possibility of radiation exposure cannot be ruled out as the cause, the individual's film badge or TLD must be sent immediately for processing. In

addition, the individual may not work with licensed material until a determination of the individual's radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in the records maintained in accordance with § 34.83.

(e) If a film badge or TLD is lost or damaged, the worker shall cease work immediately until a replacement film badge or TLD is provided and the exposure is calculated for the time period from issuance to loss or damage of the film badge or TLD. The results of the calculated exposure and the time period for which the film badge or TLD was lost or damaged must be included in the records maintained in accordance with § 34.83.

(f) Reports received from the film badge or TLD processor must be retained in accordance with § 34.83.

(g) Each alarm ratemeter must—

(1) Be checked to ensure that the alarm functions properly (sounds) before using at the start of each shift;

(2) Be set to give an alarm signal at a preset dose rate of 5 mSv/hr (500 mrem/hr); with an accuracy of plus or minus 20 percent of the true radiation dose rate.

(3) Be adequate to alert the individual regardless of the environmental conditions (e.g., high ambient noise levels).

(4) Require special means to change the preset alarm function; and

(5) Be calibrated at periods not to exceed 12 months for correct response to radiation. The licensee shall maintain records of alarm ratemeter calibrations in accordance with § 34.83.

38. Section 34.49 is added to read as follows:

§ 34.49 Radiation surveys.

The licensee shall:

(a) Conduct surveys with a calibrated and operable radiation survey instrument that meets the requirements of § 34.25.

(b) Conduct an adequate survey of the radiographic exposure device with a radiation survey instrument after each exposure to determine that the sealed source has been returned to its shielded position.

(c) Conduct a survey when approaching the guide tube before exchanging films, repositioning the collimator, or dismantling equipment.

(d) Conduct an adequate survey with a radiation survey instrument any time the source is exchanged and whenever a radiographic exposure device is placed in a storage area (as defined in § 34.3) to ensure that the sealed source is in its shielded position.

(e) Conduct a survey of the storage area to ensure that radiation levels do not exceed the limits specified in 10 CFR 20.1301. These surveys must be performed initially with radioactive material present in the storage location and thereafter at the time of the quarterly inventory and whenever storage conditions change (i.e., increases in radioactive material present or changes in shielding or arrangement of the radioactive material).

(f) Maintain records in accordance with § 34.85.

39. Section 34.51 is revised to read as follows:

§ 34.51 Surveillance.

During each radiographic operation the radiographer or radiographer's assistant shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in part 20 of this chapter, except at permanent radiographic installations where all entryways are locked and the requirements of § 34.33 are met.

40. Section 34.53 is added to read as follows:

§ 34.53 Posting.

Areas in which radiography is being performed must be conspicuously posted as required by § 20.1902(a) and (b) of this chapter. Exceptions listed in § 20.1903 of this chapter do not apply to radiographic operations.

41. A new heading for subpart E, consisting of §§ 34.61–34.91, is added to read as follows:

Subpart E—Recordkeeping Requirements

42. Section 34.61 is revised to read as follows:

§ 34.61 Records of specific license for radiography.

Each licensee shall maintain a copy of its license, license conditions, documents incorporated by reference, and amendments to each of these items until superseded by new documents or until the Commission terminates the license.

43. Section 34.63 is revised to read as follows:

§ 34.63 Records of receipt and transfer of sealed sources.

(a) Each licensee shall maintain records showing the receipts and transfers of sealed sources and retain each record for 3 years after it is made.

(b) These records must include the date, the individual making the record, the radionuclide, number of becquerels (curies), and make, model, and serial number of each sealed source and device, as appropriate.

44. Sections 34.65—34.91 are added to subpart E to read as follows:

§ 34.65 Records of radiation survey instruments.

Each licensee shall maintain records of the calibrations of its radiation survey instruments and retain each record for 3 years after it is made.

§ 34.67 Records of leak testing of sealed sources.

Each licensee shall maintain records of leak test results in units of becquerels (curies) and retain each record for 3 years after it is made.

§ 34.69 Records of quarterly inventory.

(a) Each licensee shall maintain records of the quarterly inventory and retain each record for 3 years after it is made.

(b) The record must include the quantities and kinds of byproduct material (including the model number, the serial number and manufacturer), location of sealed sources, the name of the individual conducting the inventory, and the date of the inventory.

§ 34.71 Utilization logs.

(a) Each licensee shall maintain current utilization logs at the address specified in the license, showing for each sealed source the following information:

(1) A description, including the make, model number, and serial number of the radiographic exposure device or storage container in which the sealed source is located;

(2) The identity and signature of the radiographer to whom assigned; and

(3) The plant or site where used and dates of use, including the dates removed and returned to storage.

(b) The licensee shall retain the logs required by paragraph (a) of this section for 3 years after the log is made.

§ 34.73 Records of inspection and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers.

(a) Each licensee shall maintain records of defects found in daily checks and quarterly inspections and maintenance of radiographic exposure devices, storage containers, associated equipment, and source changers, and retain each record for 3 years after it is made.

(b) The record must include the date of check, name of inspector, equipment involved, any defects found, and repairs made.

§ 34.75 Records of alarm system and entrance control checks at permanent radiographic installations.

Each licensee shall maintain records of alarm system and entrance control device tests and retain each record for 3 years after it is made.

§ 34.79 Records of training and certification.

Each licensee shall maintain the following records (of training and certification) for 3 years after the record is made:

(a) Records of training of each radiographer and each radiographer's assistant. The record must include radiographer certification documents, certification status verification, copies of written tests, dates of field examinations, and names of individuals conducting the field examinations, and

(b) Records of annual safety reviews and annual inspections for each radiographer and each radiographer's assistant. The records must list the topics discussed during the annual safety review, the dates the annual safety review was conducted, and names of the instructors and attendees. For annual inspections, the records must also include a list showing the items checked and any regulatory non-compliances observed by the RSO.

§ 34.81 Copies of operating and emergency procedures.

Each licensee shall maintain a copy of current operating and emergency procedures until the Commission terminates the license. Superseded material must be retained for 3 years after the change is made.

§ 34.83 Records of personnel monitoring.

Each licensee shall maintain the following exposure records:

(a) Daily pocket dosimeter readings and yearly operability checks for 3 years after the record is made.

(b) Records of alarm ratemeter calibrations for 3 years after the record is made.

(c) Reports received from the film badge or TLD processor until the Commission terminates the license.

(d) Records of estimates of exposures as a result of off-scale pocket dosimeters or lost or damaged film badges or TLDs until the Commission terminates the license.

§ 34.85 Records of radiation surveys.

Each licensee shall maintain a record of each exposure device survey conducted before placing the device in storage in accordance with § 34.49 (d) and (e) for 3 years after the record is made, if that survey is the last one performed in the work day.

§ 34.87 Form of records.

Each record required by this part must be legible throughout the specified retention period. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of reproducing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 34.89 Documents and records required at field stations and permanent installations.

Each licensee shall maintain copies of the following documents and records sufficient to demonstrate compliance at the field station and permanent installation:

(a) A copy of 10 CFR parts 19, 20, and 34;

(b) The license authorizing the use of licensed material;

(c) Operating and emergency procedures required by § 34.45;

(d) Records of radiation survey instrument calibrations required by § 34.65;

(e) Records of leak test results required by § 34.67;

(f) Quarterly inventory records required by § 34.69;

(g) Utilization records required by § 34.71;

(h) Records of inspection and maintenance required by § 34.73;

(i) For permanent installations, records of alarm system and entrance control checks required by § 34.75;

(j) Training and certification records required by § 34.79;

(k) Survey records required by § 34.85;

(l) Personnel monitoring records as required by § 34.83; and

(m) Records of receipt and transfer of sealed sources required by § 34.63.

§ 34.91 Documents and records required at temporary jobsites and use or storage locations exceeding 180 days.

Each licensee conducting operations at a temporary jobsite shall maintain copies of the following documents and records at the temporary jobsite until the radiographic operation is completed and at any storage location where radioactive material is stored for more than 180 days:

(a) The license authorizing the use of licensed material;

(b) Operating and emergency procedures required by § 34.45;

(c) Evidence of latest calibration of the radiation survey instruments in use at the site required by § 34.65;

(d) Evidence of latest calibrations of alarm ratemeters and operability checks of pocket dosimeters as required by § 34.83;

(e) Latest survey records required by § 34.85;

(f) The shipping papers for the transportation of radioactive materials required by § 71.5 of this chapter; and

(g) When operating under reciprocity pursuant to § 150.20 of this chapter, a copy of the Agreement State license authorizing use of licensed materials.

45. A new subpart F, consisting of § 34.101, is added to read as follows:

Subpart F—Notifications

§ 34.101 Notifications.

(a) In addition to the reporting requirements specified in § 30.50 and under other sections of this chapter, each licensee shall provide a written report to the U.S. Nuclear Regulatory Commission, Division of Industrial and Medical Nuclear Safety, Washington, DC 20555, with a copy to the Director, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

(1) Unintentional disconnection of the source assembly from the control cable;

(2) Inability to retract the source assembly to its fully shielded position and secure it in this position; or

(3) Failure of any component (critical to safe operation of the device) to properly perform its intended function;

(b) The licensee shall include the following information in each report submitted under paragraph (a) of this section, and in each report of overexposure submitted under 10 CFR 20.2203 which involves failure of safety components of radiography equipment:

(1) A description of the equipment problem;

(2) Cause of each incident, if known;

(3) Name of the manufacturer and model number of equipment involved in the incident;

(4) Place, date and time of the incident;

(5) Actions taken to establish normal operations;

(6) Corrective actions taken or planned to prevent recurrence; and

(7) Qualifications of personnel involved in the incident.

(c) The licensee shall notify the appropriate NRC regional office in writing 30 days before conducting radiographic operations or storing radioactive material at any location not listed on the license in excess of 180 days.

46–47. A new subpart G, consisting of § 34.111, is added to read as follows:

Subpart G—Exemptions

§ 34.111 Applications for exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

48–49. A new subpart H, consisting of §§ 34.121–34.123, is added to read as follows:

Subpart H—Violations

§ 34.121 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to these Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act;

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section.

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 34.123 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1952, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under one or more of sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 34 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 34 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 34.1, 34.3, 34.5, 34.8, 34.11, 34.13, 34.111, 34.121, 34.123.

50–52. Appendix A is revised to read as follows:

Appendix A to Part 34—Radiographic Certification

I. Requirements for an Independent Certifying Organization

An independent certifying organization shall:

1. Be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography or non-destructive testing;

2. Make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin or handicap;

3. Have a certification program open to nonmembers;

4. Be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise;

5. Have a permanent full-time staff, a viable system for financing its operations, and a policy- and decision-making review board;

6. Have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those by-laws and policies;

7. Have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program;

8. Have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;

9. Have written procedures describing all aspects of its certification program, maintain records of the current status of each individual's certification and the administration of its certification program;

10. Have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals; and

11. Have procedures to ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees;

12. Exchange information about certified individuals with the Commission and other independent certifying organizations and/or Agreement States and allow periodic review of its certification program and related records;

13. Provide a description to the Commission of its procedures for choosing examination sites and for providing an appropriate examination environment.

II. Requirements for Certification Programs

All certification programs must:

1. Require that individuals:

(a) Receive training in the topics set forth in § 34.34(f) of this part, and

(b) Satisfactorily complete a written examination covering these topics;

2. Require applicants for certification to provide documentation that demonstrates that the applicant has:

(a) Received training in the topics set forth in section 34.43(f) to this part;

(b) Satisfactorily completed a minimum period of on-the-job training; and

(c) Has received verification by an Agreement State or a NRC licensee that the applicant has demonstrated the capability of independently working as a radiographer;

3. Include procedures to ensure that all examination questions are protected from disclosure;

4. Include procedures whereby an application or certification would be considered null and void if the applicant or certified individual is prohibited from acting as a radiographer by a regulatory agency at the time of making the application;

5. Provide a certification period of not less than 3 years nor more than 5 years;

6. Include procedures for renewing the certifications and, if the procedures allow renewals without examination, require evidence of recent active full-time employment and annual refresher training;

7. Include procedures whereby an individual's certification may be revoked, suspended, or restricted for willful or significant failure to comply with his or her employer's operating or emergency procedures, or the Commission's or an Agreement State's regulations;

8. Provide for automatic suspension of an individual's certification, based on Commission or Agreement State action prohibiting the individual from acting as a radiographer;

9. Provide for sanctions imposed against certified individuals that are at least as severe as any action taken by the Commission or an Agreement State; and

10. Provide a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

III. Requirements for Written Examinations

All examinations must be:

1. Designed to test an individual's knowledge and understanding of the topics listed in section 34.43(f) or equivalent Agreement State requirements;

2. Written in a multiple-choice format;

3. Written at a ninth-grade reading comprehension level;

4. Scientifically-analyzed, before use, to ensure that the questions are not biased or misleading, and that the examination of one certifying entity will produce a result equivalent to that of another certifying entity;

5. Tested by at least 50 individuals before being used in an actual examination leading to certification of individuals; and

6. Composed of questions randomly selected from a population of questions that contains ten times as many questions as may be needed for any one examination, to ensure that it is unlikely that an examinee would retake the same examination.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

53. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

54. A new § 150.15b is added to read as follows:

§ 150.15b Continued Commission authority pertaining to independent certifying organizations.

The Commission reserves the authority to establish minimum standards regarding industrial radiographer certification programs and independent certifying organizations, as described in part 34 of this Chapter, and to identify acceptable certifying entities.

55. In § 150.33, paragraph (b) is revised to read as follows:

§ 150.33 Criminal penalties.

* * * * *

(b) The regulations in part 150 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 150.1, 150.2, 150.3, 150.4, 150.5, 150.7, 150.8, 150.10, 150.11, 150.15, 150.15a, 150.15b, 150.30, 150.31, 150.32, 150.33.

Dated at Rockville, Maryland, this 17th day of February 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A—Initial Regulatory Flexibility Analysis for Revision of 10 CFR Part 34

The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing industrial radiography. The proposed rule would include additional safety requirements to enhance the level of protection of radiographers and the public and would clarify the regulations so that licensees may have a better understanding of what is expected in radiographic operations. The proposed rule includes a number of updated radiography regulations that have been adopted by many Agreement States. The format of the radiography regulations would be adjusted to place requirements into descriptive categories.

The radiography industry in the United States consists of approximately 700 firms, employing about 20,000 individuals, that perform radioisotope radiography either at fixed locations or at multiple temporary job sites. Of these firms, approximately 200 are NRC licensees employing about 3,400 radiographers with an additional 2,000 radiography supervisors and radiographers' assistants. This estimate is based on 1990 data for the number of individuals monitored for radiation exposure to comply with 10 CFR Part 20. The industry uses an estimated 3,500 radiographic exposure devices that employ either cobalt-60 or iridium-192 radioisotope sources. Roughly one-quarter of the firms conduct radiography at a single location and the other three-quarters work at multiple locations generally referred to as temporary jobsites.

Approximately 90 percent are considered to be "small entities" under the criterion established in Section 605(b) of the Regulatory Flexibility Act of 1980. Most of the radiography licensees are in the business of non-destructive testing in which radiography represents only a part of their total income. A few small firms work only in radiography. Much of the work in the field involves the inspection of welds in bridges, oil, gas, and other pipelines and in the steel framework of commercial buildings under construction so that the success and viability of the industry is closely tied to the economic health of the country. NRC surveys indicated that 76 percent of NRC radiography licensees had annual receipts of over $500,000, and most of the remainder had annual receipts exceeding $250,000.

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), the Commission believes that this rule may, if promulgated, have a significant economic impact on a substantial number of small entities.

The proposed revisions to part 34 are intended to provide additional safety requirements to enhance the level of protection of radiographers and the public and to clarify the regulations so that licensees may have a better understanding of what is expected in radiographic operations. The proposed rule includes a number of radiography regulations which have been adopted by the Agreement States.

The proposed revisions to part 34 can be grouped into major and minor impacts. Of the five major impacts, the proposed requirement to have a second qualified individual at temporary jobsites may have a significant effect on small entities, who would be more likely to use single-person crews. It should be recognized that under the current rule many licensees already need to have, at least, two qualified individuals present at a temporary jobsite to maintain direct surveillance of radiographic operations so as to protect against any unauthorized entry into the restricted area. Therefore, this proposed requirement will only impact those operations where two individuals are not currently required. It was assumed in the draft Regulatory Analysis that approximately 25 percent of NRC licensees who perform radiography at temporary jobsites will need to hire and train additional staff to meet the proposed requirement. Other assumptions used in the draft Regulatory Analysis were that each of these 50 licensees would need to hire 3–4 additional workers, and that the cost of each assistant is $24,000 per year including benefits.

The other major impacts include mandatory certification requirements for radiographers, additional training for radiographers' assistants, a specific requirement for a Radiation Safety Officer (RSO) who meets certain training requirements, requirements for permanent installation alarms, and additional requirements for alarm ratemeters. The estimated costs for all of these changes are significantly less than the costs associated with adopting the two-person rule. The initial costs to certify radiographers is approximately $4080. The initial costs for each licensee to provide an additional eight hours of training for radiographers' assistants is approximately $1,200. The initial costs to provide the additional training required to meet the proposed RSO requirements is $3,700 per RSO. The initial costs to install alarms in permanent installations is estimated to be $3,000. The initial costs to purchase additional upgraded alarm ratemeters is estimated to be $1800. The other proposed revisions which are of a minor nature, would result in initial costs of $700-$800 per licensee.

In addition, the proposed rule includes a reduction in the number of field inspections to be conducted, from quarterly to annual. This reduction would lead to an estimated annual savings to each NRC licensee of approximately $16,000. The proposed rule also includes a reduction in the frequency for radiation survey instrument calibrations from 3 months to 6 months. This reduction would lead to an estimated annual savings to each NRC licensee of approximately $1400.

Of these changes, the costs to adopt the two-person rule may have the most impact on a substantial number of "small entities"; however, the Commission believes that by requiring at least two qualified individuals to always be present when radiographic operations are being conducted, there will be a significant increase in assurance that operational safety measures and emergency procedures will be implemented effectively. The potential for a lowering of the risk of unintended public exposure can be viewed as a potential cost savings to the industry. This proposed rule does not duplicate or conflict with other Federal rules. No other alternative regulatory provisions that would minimize the economic impact on small entities were considered.

[FR Doc. 94–4133 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–4]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received April 26, 1994.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM 1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on February 21, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Rulemaking

Docket No.: 27584.

Petitioner: Mr. Antonio M. DeAngelo.

Regulations Affected: 14 CFR 61.96–61.101.

Description of Rulechange Sought: To repeal the provisions for a recreational pilots license.

Petitioner's Reason for the Request: The petitioner feels the Recreational Pilot's License is not worth the cost; that the Private Pilot's License should be the minimum required; statistics support a lack of pubic support for the Recreational Pilot License; an through the proposed action, one more government control will be eliminated.

Disposition of Petitions

Docket No.: 26729.

Petitioner: Sol Rothkopf.

Sections of the FAR Affected: 14 CFR 91.119(d).

Description of Relief Sought: To require operators of helicopters to maintain at or above 1,500 feet above ground level (AGL) until the helicopter is within 1,500 feet of the landing point and then the helicopter may descend; and on takeoffs, helicopters must be at or above 1,500 feet AGL prior to 1,500 feet from the takeoff point.

Denial, February 2, 1994

[FR Doc. 94–4363 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–NM–126–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes. That action would have required modification of the automatic speed brake control circuit. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has reconsidered its position on this safety issue and has concluded that the proposed modification is unnecessary to provide an acceptable level of safety. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on September 17, 1993 (58 FR 48616). The proposed rule would have required modification of the automatic speed brake control circuit. That action was prompted by a report of failure of a hydraulic pressure line to a landing gear truck tilt cylinder, which resulted in inadvertent deployment of the automatic speed brake. The proposed actions were intended to prevent inadvertent in-flight operation of the automatic speed brake system.

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

Boeing requests that the proposal be withdrawn. Boeing notes that an AD was not issued when the Boeing service bulletin (referenced in the notice) was released in 1971 because, at that time, neither Boeing nor the FAA considered that there was an unsafe condition addressed. Boeing has carefully examined the scenario of the incident of inadvertent deployment of the automatic speed brake that prompted issuance of the proposal, and finds that the incident did not occur during airline operations, but during a Boeing test flight. Specifically, the incident occurred while the airplane was conducting "touch and go's" (which are not allowed in airline operations), which allowed the landing gear trucks to move out of the fully tilted position and initiated extension of the automatic speed brake. The pilot immediately recognized this and retracted the spoilers manually. (On Boeing Model 747 series airplanes equipped with triple slotted flaps, once the spoilers are retracted, the hydraulic flow redirects to the flaps immediately, and the lift is regained with minimal altitude loss.) Boeing points out that, during this incident, the reported 6-foot loss in altitude occurred when the airplane was at around 100 feet.

Finally, Boeing asserts that the reason for issuance of its service bulletin, containing procedures for installing the modification of the automatic speed

brake control circuit, was not only to add better protection for the circuit, but to minimize the "pitch up" on the ground during landing. If the number four hydraulic system (which powers the inboard spoilers) is inoperative, a "pitch up" would occur with outboard spoilers only. Boeing asserts that the pilot can easily compensate for this condition by using his/her hand and the speed brake levers.

Based upon the information discussed above, Boeing requests that the proposal be withdrawn.

In response to these comments, the FAA acknowledges that issuance of the notice was based on a recommendation of the Systems Review Task Force (SRTF). The SRTF has completed an extensive review process to "* * * determine possible design concepts that will provide alternative means of control of flight critical functions in the event of total loss of all (normal) redundant systems which provide that control * * *" The SRTF's charter was specifically oriented toward identifying alternative means to ensure controllability of airplanes that have lost all normal flight control functions, while maintaining basic airplane structural integrity. The SRTF recommended incorporation of the modification described in Boeing Service Bulletin 27–2066, Revision 1, dated August 20, 1971, which was referenced in the notice.

However, after further study of the Boeing service bulletin and its intent, the FAA has determined that failure to incorporate the modification described in that service bulletin does not degrade the flight safety of the airplane. While the modification adds logic to prevent uncommanded deployment on touchdown for airplanes equipped with auto speed brakes, the effects of such deployment can be readily rectified by manually retracting the spoilers. Although the installation of the proposed modification would add additional protection against inadvertent deployment of the speed brakes and thereby minimize the pitch up on the ground as a result of such deployment, this condition does not cause loss of hydraulics, does not affect airplane symmetry, and does not significantly degrade airplane flight controllability.

Upon further consideration, the FAA has determined that this condition does not present an unsafe condition that would warrant the proposed mandatory corrective action. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 93–NM–126–AD, published in the **Federal Register** on September 17, 1993 (58 FR 48616), is withdrawn.

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4449 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–197–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies and of the bolt bosses on certain demountable flange (outboard) wheel subassemblies, and modification or replacement, if necessary. This proposal is prompted by reports of cracks and broken spokes found on certain main wheel assemblies of these airplanes. The actions specified by the proposed AD are intended to prevent loss of a main wheel assembly during takeoff or landing.

DATES: Comments must be received by April 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–197–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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that several operators of Model F28 Mark 0100 series airplanes have reported finding cracks and broken spokes on certain main wheel assemblies, part number 5008131–4. Investigation revealed that the manufacturer of these wheels had discontinued a shot-peening procedure that was part of the manufacturing process prior to April 1991. Subsequently, an improved shot-peening procedure on the mating surfaces of the inboard wheel subassemblies was introduced in October 1992. However, this procedure was not introduced on the outboard wheel subassemblies until February 1993. Consequently, a number of units were produced that are prone to fretting and cracking due to a lack of shot-peening of the assembly mating surfaces and bolt bosses. This condition, if not corrected, could result in loss of a main wheel assembly during takeoff or landing.

Fokker has issued Service Bulletins SBF100–32–070, dated January 18, 1993, and SBF100–32–073, dated September 10, 1993, which reference Aircraft Braking Systems Corporation (ABSC) Service Bulletins Fo100–32–46, dated December 24, 1992, and Fo100–32–48, dated March 10, 1993, as the appropriate sources of service information. The RLD classified these Fokker service bulletins as mandatory and issued Netherlands Airworthiness Directive (BLA) 93–009/3 (A), dated June 1, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

ABSC Service Bulletin Fo100–32–46 describes procedures for eddy current inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies; and, if no cracks are found, modification and subsequent inspections of the subassemblies; and, if cracks are found, replacement of the subassemblies with serviceable parts.

ABSC Service Bulletin Fo100–32–48 describes procedures for eddy current inspections to detect cracks of the bolt bosses of certain demountable flange (outboard) wheel subassemblies; and, if no cracks are found, modification of the subassemblies; and, if cracks are found, replacement of the subassemblies with serviceable parts.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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 on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies and of the bolt bosses of certain demountable flange (outboard) wheel subassemblies, and modification or replacement, if necessary. Replacement of a cracked wheel subassembly terminates certain repetitive inspections required by this AD. The actions would be required to be accomplished in accordance with the ABSC service bulletins described previously.

The FAA estimates that 87 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed inspection and modification, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,990, or $770 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 14 CFR part 39 of the Federal Aviation Regulations 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:

Fokker: Docket 93–NM–197–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Aircraft Braking Systems Corporation (ABSC) main wheel assembly, part number 5008131–4, serial numbers APR91–0570 through FEB93–0965 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of a main wheel assembly during takeoff or landing, accomplish the following:

(a) For airplanes equipped with a demountable flange (inboard) wheel subassembly, part number 5008142–4, serial numbers APR91–0570 through OCT92–0858 inclusive, or S–APR91–0097 through S–MAY92–0126 inclusive: Within 100 landings after the effective date of this AD, or at the next tire change, whichever occurs first, perform an eddy current inspection to detect cracks of the wheel subassembly, in accordance with paragraph C. of Section II—Accomplishment Instructions of ABSC Service Bulletin Fo100–32–46, dated December 24, 1992. Repeat this inspection thereafter at intervals not to exceed 500 landings or at each tire change, whichever occurs first.

(1) If no crack is found during any inspection required by paragraph (a) of this AD: Prior to further flight following the third inspection, modify the wheel subassembly in accordance with paragraph D. of Section II—Accomplishments Instructions of the service bulletin. After modification, continue to inspect in accordance with paragraph (a) of this AD. If no crack is found during the first two inspections conducted after modification, no further action is required by this paragraph.

(2) If any crack is found during any inspection required by paragraph (a) of this

AD, prior to further flight, replace the wheel subassembly, part number 5008142–4, with a serviceable part. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(b) For airplanes equipped with a demountable flange (outboard) wheel subassembly, part number 5008140–1, serial numbers APR91–0570 through FEB93–0965 inclusive, or S–MAR91–0002 through S–FEB93–0010 inclusive: Within 100 landings after the effective date of this AD, or at the next tire change, whichever occurs first, perform an eddy current inspection to detect cracks of the bolt bosses of the wheel subassembly, in accordance with paragraph B. of Section II—Accomplishment Instructions of ABSC Service Bulletin Fo100–32–48, dated March 10, 1993. Repeat this inspection thereafter at interals not to exceed 500 landings or at each tire change, whichever occurs first.

(1) If no crack is found during any inspection required by paragraph (b) of this AD: Prior to further flight following the third inspection, modify the wheel subassembly in accordance with paragraph C. of Section II—Accomplishment Instructions of the service bulletin. Such modification constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(2) If any crack is found during any inspection required by paragraph (b) of this AD, prior to further flight, replace the wheel subassembly, part number 5008140–1, with a serviceable part. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(c) After the effective date of this AD, no person shall install any of the following parts on any airplane unless that part has been inspected and modified in accordance with paragraph (a) and/or (b) of this AD, as applicable.

(1) ABSC demountable flange (inboard) wheel subassembly, part number 5008142–4, having serial numbers APR91–0570 through OCT92–0858 inclusive, or S–APR91–0097 through S–MAY92–0126 inclusive;

(2) ABSC demountable flange (outboard) wheel subassembly, part number 5008140–1, having serial numbers APR91–0570 through FEB93–0965 inclusive, or S–MAR91–0002 through S–FEB93–0010 inclusive;

(3) Main wheel assembly, part number 5008131–4, having serial numbers APR91–0570 through FEB 93–0965 inclusive.

(d) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on February 22, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4450 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1004

RIN 0991–AA73

Health Care Programs: Fraud and Abuse; Revisions to the PRO Sanctions Process

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and update the procedures governing the imposition and adjudication of program sanctions predicated on recommendations of State Utilization and Quality Control Peer Review Organizations (PROs). These changes are necessitated by statutory revisions addressing health care fraud and abuse issues and the OIG sanctions process. In addition, this proposed rule also sets forth new appeal and reinstatement procedures for practitioners and other persons excluded by the OIG based on a PRO recommendation.

DATES: To assure consideration, public comments must be delivered to the address provided below by April 29, 1994. Comments are available for public inspection March 14, 1994.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–73–P, room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–73–P. Comments will be available for public inspection in room 5551, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT:
Joel Schaer, Legislation and Regulations Staff, (202) 619–3270
Joanne Lanahan, Office of Investigations, (410) 965–9609.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Utilization and Quality Control Peer Review Organization (PRO) program was established to ensure that Medicare beneficiaries receive medical care that meets professionally recognized standards. Section 1156 of the Social Security Act (the Act) sets forth specific statutory obligations imposed on practitioners and other persons to furnish necessary services meeting professionally recognized standards. The statute also authorizes the Secretary, based on a PRO's recommendation, to impose sanctions (exclusion from Medicare and any State health care program participation as defined under section 1128 of the Act or a monetary penalty) on those who fail to comply with the statutory obligations.

Under the PRO sanction process, no practitioner or other person is recommended for exclusion or the imposition of a monetary penalty until the PRO provides the opportunity for extensive discussion with the practitioner or other person, and the opportunity to provide additional information. After receipt of a recommendation from a PRO, the Office of Inspector General (OIG) excludes, or imposes a monetary penalty, only after a careful review of all the documentation submitted and a separate determination that the practitioner or other person has violated the statutory obligations to render only medically necessary and appropriate care that meets professionally recognized standards or has failed to provide evidence of medical necessity and quality, and is unwilling or unable to comply with those obligations. A practitioner or other person who is excluded from Medicare and any State health care programs as defined in section 1128(h) of the Act, or assessed a monetary penalty, on the basis of a PRO finding is entitled to administrative and judicial review after the exclusion is imposed or the monetary penalty is assessed.

Recent Statutory Changes

A. Public Law 100–93

Prior to the enactment of Public Law 100–93 (the Medicare and Medicaid Patient and Program Protection Act of 1987), section 1156 of the Act set forth obligations of practitioners and other persons providing care to Medicare patients to provide care that was

medically necessary and appropriate that meets professionally recognized standards of quality, and appropriately documented. It also provided for the exclusion from Medicare of practitioners and other persons who, upon the review and recommendation of a PRO, were found to have violated those obligations. Section 6 of Public Law 100–93 extended those obligations to encompass all health care services for which payment may be made under the Act, and not just Medicare. Further, the exclusion authority was extended to encompass violations occurring in, and exclusions from, Medicaid, the title V Maternal and Child Health Block Grant, and the title XX Social Services Block Grant programs.

B. Public Law 100–203

Section 4095 of Public Law 100–203, the Omnibus Budget Reconciliation Act (OBRA) of 1987, amended section 1156 of the Act to provide that an exclusion of a health care practitioner or other person who practices in a country of less than 70,000 people or in a rural health professional shortage area (HPSA) cannot be effectuated until an opportunity is provided for a preliminary administrative hearing. The purpose of this preliminary hearing is to determine whether the practitioner's or other person's continued program participation, through the conclusion of the administrative proceedings on the merits of the exclusion, would place beneficiaries at serious risk. In accordance with section 1156(b)(5) of the Act, unless the administrative law judge (ALJ) at the preliminary hearing determines that the practitioner or other person will pose a serious risk to Medicare beneficiaries if permitted to continue furnishing such services, the exclusion of a rural practitioner or other person may not be effectuated until they are given an opportunity for an administrative hearing on the merits of the exclusion itself.

C. Public Law 101–508

Section 4205 of Public Law 101–508, OBRA 1990, set forth new statutory requirements with respect to PRO sanction activities. Specifically, the statutory amendments require PROs, if appropriate, to offer a corrective action plan to practitioners and other persons prior to making a finding under section 1156 of the Act; and require the Secretary to consider, in determining whether a practitioner or other person is willing and able to comply with his, her or its obligations, whether the practitioner or other person entered into and successfully completed a corrective action plan prior to the PRO's submission of its recommendation and report to the Secretary.

II. Provisions of the Proposed Rule

A. Inclusion of the OBRA 1990 Provisions Relating to PROs

On January 29, 1992, the OIG published a final rule (57 FR 3298) setting forth amendments to the OIG's exclusion and civil money penalty (CMP) authorities resulting from Public Law 100–93. Specifically, that final rule revised § 1004.130 of the regulations and deleted § 1004.100(g) in its entirety to be consistent with the establishment of a new part 1005—Appeals of exclusions, civil money penalties and assessments—which now governs ALJ hearings and subsequent appeals to the Secretary for all CMP and other OIG sanction cases.

The revisions to 42 CFR part 1004 of that final rule were meant only to conform the regulations to new statutory changes resulting from OBRA 1990, and were not meant to be a comprehensive rewrite of part 1004. This regulation sets forth a more complete and comprehensive rewrite of this part. Among other revisions:

- These proposed regulations would eliminate the current procedural distinction between "substantial" violations and "gross and flagrant" violations. This is an artificially created procedure that has no basis in law or legislative history to provide a distinction between the two types of violations. Experience in processing these cases has shown that the second meeting is just a repeat of the first meeting since the present regulations preclude any new violations identified in the second meeting as serving as the basis for a sanction recommendation. Under these proposed regulations, which are consistent with a recommendation from the Administrative Conference of the United States, an opportunity would be provided for a meeting with the PRO and to provide additional information. The regulations would also provide that any violations of the obligations that are identified during a corrective action plan period would be used to support the PRO's recommendation regarding unwillingness or inability to comply with the statutory obligations.
- These proposed regulations also codify the agreement reached among the American Medical Association, the American Association of Retired Persons, the Health Care Financing Administration, and the Office of Inspector General with regard to PRO physicians involved in the sanctions process. Under this agreement, no physician member of the PRO panel may be in direct competition with, or have a substantial personal bias against, the practitioner or other person being considered for sanction.
- Section 1004.30(e) of these proposed regulations would provide instructions to the PROs on the actions to be taken when a physician relocates after receiving a sanction notice.
- Among the factors considered by the OIG in imposing an exclusion, in addition to the practitioner's or other person's previous sanction record, are any prior problems that such person has had with the Medicare carrier or intermediary. We are now proposing to include as an additional factor any prior problems that any State health care program has had with such practitioner or other person.
- The current language of § 1004.90(b)(1) concerning the OIG's review responsibilities (that would now be designated as § 1004.100(b)(1)) would be modified to state that the OIG will review the PRO report to determine whether the PRO followed the "regulatory requirements of part 1004."
- The existing definition of the term "physician" appearing in § 1004.1 would be deleted in order to conform with the HCFA definition of this term.

B. Preliminary Hearings

These proposed regulations would amend part 1004 by allowing a practitioner or other person in specified rural areas or counties of a specified population to request a preliminary hearing when notified of an exclusion from participation in the Medicare program by the OIG as a result of a PRO recommendation under section 1156(b) of the Act. The preliminary hearing would be solely on the issue of whether such practitioner's or other person's continued participation in the program during the appeal to an ALJ would place program beneficiaries at serious risk.

Criteria for entitlement. Entitlement to such a preliminary hearing would apply to providers or practitioners for whom an exclusion is proposed who practice in a rural Health Professional Shortage Area (HPSA) for their specialty or in a county with a population of less than 70,000. For purposes of this entitlement, a practitioner's or other person's practice is where over 50 percent of his, her or its services are rendered.

Health professional shortage areas are designated by the Secretary and are defined in regulations at 42 CFR 5.2. Since HPSAs are not specifically designated by rural or urban classifications, we are proposing that any HPSA not located in a Metropolitan Statistical Area (MSA) would be

considered a rural HPSA for purposes of these regulations. Both section 1886(d)(2) of the Act and regulations at 42 CFR 412.62(f) use these MSAs as the basis for determining an urban area or rural area for computing Medicare prospective payment rates. Although Public Law 100–203 divided the definition of urban into large urban and other urban areas, it did not change the differentiation between urban and rural. Therefore, we are proposing to classify any HPSA not located in a MSA as rural.

There are seven different HPSA specialty categories. These HPSA specialty categories are described in current regulations at 42 CFR part 5, Appendices A through G, and include primary medical care, dental, psychiatric, vision care, podiatric, pharmacy and veterinary manpower. In determining eligibility for a preliminary hearing, we are proposing to use these categories for all practitioners and other persons to whom they apply. For all practitioners not covered by the specialty categories, we are proposing to use the "primary medical care" specialty category for determining eligibility for a preliminary hearing. This means that any practitioner who practices a specialty other than those identified in 42 CFR part 5 will be regarded as practicing in a rural HPSA only if that area is designated as an HPSA for "primary medical care."

The "primary medical care" category will also be used for all other persons and facilities, e.g., hospitals, with the exception of those "other persons" qualified under the "psychiatric" manpower category.

Information on a county's population size would be obtained by the OIG from the responsible officials of that county.

Timeframes for hearing. The proposed regulations provide that a practitioner's or other person's request for a preliminary hearing must be received within 15 days of receipt of an OIG exclusion notice. Once such a request is received, the preliminary hearing is to be held and a decision rendered on the "serious risk" issue within 45 days. In those cases where the ALJ grants a stay of the exclusion, a full hearing must be held and a decision rendered within six months. These timeframes developed for the ALJs are intended to balance the right of a "rural" practitioner or other person to receive timely due process against the OIG responsibility to ensure that substandard or unnecessary health care services are not provided to program beneficiaries.

C. Sanctions Notification Process

Section 1156(b)(2) of the Act requires reasonable notice to the public of a sanction action being taken against a practitioner or other person based on the PRO's recommendation. Under the current implementing regulations, when a sanction action is taken by the OIG against a practitioner or other person, the OIG is required to notify the general public of such action. This notice to the public specifically identifies: (1) The sanctioned practitioner or other person; (2) the obligation that has been violated by this person; (3) the specific sanction action imposed; and (4) if the sanction is an exclusion, the effective date and duration of this action.

While this public notification process has worked well in most instances, we believe the present publication procedure may not always yield the most effective results of informing affected parties and program beneficiaries of a specific sanction action taken under the program. As a result, we are considering permitting practitioners and other persons to select an alternative method of notification.

These proposed regulations would amend 42 CFR part 1004 to offer sanctioned health care practitioners and other persons the option of informing all their patients directly of a sanction action taken against them. If they select this option and comply with its requirements in a timely fashion, this compliance would constitute public notice and would replace the public notice currently published by the OIG. Among other things, a practitioner or other person opting for this method of notification would be required to certify to the Department that they have undertaken to inform all their patients of the action taken and, in the case of exclusion, that they will notify new patients before furnishing services.

Method of direct notification of patients by practitioner or other person. We considered a variety of methods for practitioners and other persons to notify and inform patients of a sanction action. For example, we considered having the sanctioned party (1) post a sign in his, her or its office; (2) verbally communicate the information to patients when they called for an appointment or came to an office visit; or (3) send written notification to each of his, her or its patients. After evaluating the options, we believe that the first two methods indicated above would not effectively meet the proposed requirement that all existing patients be informed within 30 calendar days since it is unlikely that all of these patients would make an appointment or come for an office visit in the specified period. In addition, the Department would be unable to verify that the proper information had been adequately conveyed to the patients if either of the first two notification methods were selected.

We, therefore, propose that each sanctioned practitioner or other person opting for this alternative notification procedure alert both his, her or its existing patients and all new patients through written notification based on a suggested (non-mandatory) model that will be provided to the sanctioned individual by the OIG. If the sanctioned party is a hospital, the hospital would be required to notify all physicians having privileges at the hospital, as well as post a sign in its emergency room, business office and in all affiliated entities regarding its sanction. (Practitioners and other persons must also notify all new patients orally at the time an appointment is set to provide services, as well as provide written notification to such patients at the time they arrive to see the provider for treatment or services.) We believe that only through this method can the OIG assure that all patients are properly informed of a sanction action.

Certification of notice to patients. If the sanctioned practitioner or other person chooses to use the alternative notification approach, he, she or it would be given 30 calendar days from receipt of the notification from the OIG to return an OIG-prepared certification form stating that: (1) He, she or it has informed each of their existing patients that a sanction has been imposed; (2) if excluded from Federal programs, the program will not pay for items and services ordered, furnished or prescribed by the practitioner or other person and that this ban will remain in effect until the practitioner or other person is reinstated; (3) if excluded, he, she or it will provide this information, prior to providing services, to any new patient seen until he, she or it is reinstated; and (4) he, she or it certifies to the truthfulness and accuracy of the notification and the statements in the certification.

Non-election of the alternative method of notification. If the sanctioned practitioner or other person does not elect this alternative method of notification of informing his, her or its patients and returning the certification form within the proposed 30-day period, the OIG would follow its standard procedure for public notification, which consists of notifying the public directly of the identity of the sanctioned practitioner or other person, the obligation that has been violated,

and the effective date and duration of any exclusion.

Failure to comply with alternative method of notification after electing such method. If the sanctioned practitioner or other person elects the alternative method of notification by returning the certification form within the proposed 30-day period, but the OIG receives reliable evidence that such practitioner or other person has not adequately informed his, her or its new and existing patients of the sanction, the OIG would follow its standard procedure for public notification as described above. Once a practitioner or other person has elected the alternative notification option by returning the certification form to the OIG, his, her or its failure to follow through and fully comply with the notification requirements will be considered adversely at the time of his, her or its application for reinstatement.

In order to ensure that patient notification is enforced and provided in a timely manner so that patients are not at risk of receiving poor quality of care, we are soliciting comments on how best to enforce this provision. Under this proposed approach, when the OIG learns through patient complaints or other forms that the practitioner or other person has not fully complied, the IG at that point may additionally consider specific action to remedy the situation, such as pursuing penalties for the filing of a false statement. Comments on this alternative notice process and on whether this enforcement approach is reasonable and effective are specifically invited.

Notification of other entities. Under this proposed revision, as under the current regulations, the OIG would continue its practice of notifying hospitals at which a sanctioned practitioner has privileges, as well as State licensing boards and other entities, of any sanction action taken.

III. Additional Information

A. Regulatory Impact Statement

The Office of Management and Budget has reviewed this proposed rule in accordance with the provisions of Executive Order 12866. As indicated above, the revisions contained in this proposed rule are intended to revise and update administrative procedures governing the imposition and adjudication of program sanctions, based on PRO recommendations, against practitioners and other persons who violate the statute. We believe that the great majority of practitioners and other persons do not engage in such prohibited activities and practices, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, these regulations should have no direct effect on the economy or on Federal or State expenditures.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. While some sanctions and penalties may have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities, we have not prepared a regulatory flexibility analysis.

B. Response to Comments

Because of the number of comments we normally receive on proposed regulations, we cannot acknowledge or respond to each letter individually. Rather, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble of that rule.

List of Subjects in 42 CFR Part 1004

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations, Penalties, Reporting and recordkeeping requirements.

Part 1004 would be revised be read as follows:

PART 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

Subpart A—General Provisions

Sec.
1004.1 Scope and definitions.

Subpart B—Sanctions Under the PRO Program; General Provisions

1004.10 Statutory obligations of practitioners and other persons.
1004.20 Sanctions.

Subpart C—PRO Responsibilities

1004.30 Basic responsibilities.
1004.40 Action on identification of a violation.
1004.50 Meeting with a practitioner or other person.
1004.60 PRO determination of a violation.
1004.70 PRO action on final determination of a violation.
1004.80 PRO report to the OIG.
1004.90 Basis for recommended sanction.

Subpart D—OIG Responsibilities

1004.100 Acknowledgement and review of report.
1004.110 Notice of sanction.

Subpart E—Effect and Duration of Exclusion

1004.120 Effect of an exclusion on program payments and services.
1004.130 Reinstatement after exclusion.

Subpart F—Appeals

1004.130 Appeal rights.

Authority: 42 U.S.C. 1302 and 1320c–5.

Subpart A—General Provisions

§ 1004.1 Scope and definitions.

(a) *Scope.* This part implements section 1156 of the Act (PROs) by—

(1) Setting forth certain obligations imposed on practitioners and providers of services under Medicare;

(2) Establishing criteria and procedures for the reports required from PROs when there is failure to meet those obligations;

(3) Specifying the policies and procedures for making determinations on violations and imposing sanctions; and

(4) Defining the procedures for appeals by the affected party and the procedures for reinstatements.

(b) *Definitions.* As used in this part, unless the context indicates otherwise—

Dentist is limited to licensed doctors of dental surgery or dental medicine.

Economically means the services are provided at the least expensive, medically appropriate type of setting or level of care available.

Exclusion means that items and services furnished or ordered (or at the medical direction or on the prescription of a physician) by a specified health care practitioner, provider or other person during a specified period are not reimbursed under titles V, XVIII, XIX, or XX of the Social Security Act.

Gross and flagrant violation means a violation of an obligation has occurred in one or more instances which presents an imminent danger to the health, safety or well-being of a program patient or places the program patient unnecessarily in high-risk situations.

Health care service or services means services or items for which payment may be made (in whole or in part) under the Medicare or State health care programs.

Health professional shortage area (HPSA) means an area designated by the Secretary and defined in 42 CFR 5.2.

Metropolitan Statistical Area means an area as defined by the Executive Office of Management and Budget.

Obligation means any of the obligations specified at section 1156(a) of the Act.

Other person means a hospital or other health care facility, an organization or an agency that provides health care services for which payment may be made (in whole or in part) under the Medicare or State health care programs.

Pattern of care means that the care under question has been demonstrated in more than three instances.

Pharmacy professional is a term limited to individuals who are licensed or registered to provide pharmaceutical services.

Podiatric professional is a term limited to licensed doctors of podiatric medicine.

Practice area means the location where over 50 percent of the practitioner's or other person's patients are seen.

Practitioner means a physician or other health care professional licensed under State law to practice his or her profession.

Primary medical care professional is a term limited to (i) licensed doctors of medicine and doctors of osteopathy providing direct patient care who practice in the fields of general or family practice, general internal medicine, pediatrics, obstetrics and gynecology, surgery, and any other specialty that is not accommodated by the remaining specialty HPSA designator, or (ii) those facilities where care and treatment is provided to patients with health problems other than mental disorders.

PRO area means the geographic area subject to review by a particular PRO.

Provider means a hospital or other health care facility, agency, or organization.

Psychiatric professional is a term limited to licensed doctors of medicine who limit their practice to psychiatry or to those facilities where care and treatment is limited to patients with mental disorders.

Rural means any area outside an urban area.

Rural health professional shortage area means any health professional shortage area located outside a Metropolitan Statistical Area.

Sanction means an exclusion or monetary penalty that the Secretary may impose on a practitioner or other person as a result of a recommendation from a PRO.

Serious risk includes situations that may involve the risk of unnecessary treatment, prolonged treatment, lack of treatment, incorrect treatment, medical complication, premature discharge, physiological or anatomical impairment, disability, or death.

State health care program means a State plan approved under title XIX, any program receiving funds under title V or from an allotment to a State under such title, or any program receiving funds under title XX or from an allotment to a State under such title.

Substantial violation in a substantial number of cases means a pattern of providing care that is inappropriate, unnecessary, or does not meet recognized professional standards of care, or is not supported by the necessary documentation of care as required by the PRO.

Urban means a Metropolitan Statistical Area as defined by the Executive Officer of Management and Budget.

Vision care professional is a term limited to licensed doctors of medicine who limit their practice to ophthalmology and to doctors of optometry.

Subpart B—Sanctions Under the PRO Program; General Provisions

§ 1004.10 Statutory obligations of practitioners and other persons.

It is the obligation of any health care practitioner or other person who furnishes or orders health care services that may be reimbursed under the Medicare or State health care programs to ensure, to the extent of his or her or its authority, that those services are—

(a) Provided economically and only when, and to the extent, medically necessary;

(b) Of a quality that meets professionally recognized standards of health care; and

(c) Supported by evidence of medical necessity and quality in the form and fashion and at such time that the reviewing PRO may reasonably require (including copies of the necessary documentation and evidence of compliance with pre-admission or pre-procedure review requirements) to ensure that the practitioner or other person is meeting the obligations imposed by section 1156(a) of the Act.

§ 1004.20 Sanctions.

In addition to any other sanction provided under law, a practitioner or other person may be—

(a) Excluded from participating in programs under titles V, XVIII, XIX, and XX of the Social Security Act; or

(b) In lieu of exclusion and as a condition for continued participation in titles V, XVIII, XIX, and XX of the Act, if the violation involved the provision or ordering (or at the medical direction or the prescription of a physician) of health care services that were medically improper or unnecessary, required to pay an amount not in excess of the cost of the improper or unnecessary services that were furnished or ordered (and prescribed, if appropriate). The practitioner or other person will be required either to pay the monetary assessment within 6 months of the date of notice or have it deducted from any sums the Federal government owes the practitioner or other person.

Subpart C—PRO Responsibilities

§ 1004.30 Basic responsibilities.

(a) The PRO must use its authority or influence to enlist the support of other professional or government agencies to ensure that each practitioner or other person complies with the obligations specified in § 1004.10.

(b) When the PRO identifies situations where the obligations specified in § 1004.10 are violated, it will afford the practitioner or other person reasonable notice and opportunity for discussion and, if appropriate, a suggested method for correcting the situation and a time period for a corrective action in accordance with §§ 1004.40 and 1004.60.

(c) The PRO must submit a report to the OIG after the notice and opportunity provided under paragraph (b) of this section and, if appropriate, the opportunity to enter into and complete a corrective action plan if the PRO determines that the practitioner or other person has—

(1) Failed substantially to comply with any obligation in a substantial number of instances; or

(2) Grossly and flagrantly violated any obligation in one or more instances.

(d) The PRO report to the OIG must comply with the provisions of § 1004.80.

(e) If a practitioner or other person relocates to another PRO area prior to a determination of a violation or sanction recommendation, and the originating PRO—

(1) Is able to make a determination, the originating PRO must, as appropriate, close the case or forward a sanction recommendation to the OIG; or

(2) Cannot make a determination, the originating PRO must forward all documentation regarding the case to the PRO with jurisdiction, and notify the practitioner or other person of this action.

(f) The PRO must deny payment for services or items furnished or ordered (or at the medical direction or on the

prescription of an excluded physician) by an excluded practitioner or other person when the PRO identifies the services or items. It must report the findings to the Health Care Financing Administration.

§ 1004.40 Action on identification of a violation.

When a PRO identifies a violation, it must—

(a) Indicate whether the violation is a gross and flagrant violation or is a substantial violation in a substantial number of cases; and

(b) Send the practitioner or other person written notice of the identification of a violation containing the following information—

(1) The obligation(s) involved;

(2) The situation, circumstances or activity that resulted in a violation;

(3) The authority and responsibility of the PRO to report violations of obligations;

(4) A suggested method for correcting the situation and a time period for corrective action, if appropriate;

(5) The sanction that the PRO could recommend to the OIG if the violation continues;

(6) The right of the practitioner or other person to submit to the PRO within 30 days of receipt of the notice additional information or a written request for a meeting with the PRO to review and discuss the finding, or both. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary. The notice will also state that if a meeting is requested—

(i) It will be held within 30 days of receipt by the PRO of the request, but may be extended for good cause;

(ii) The practitioner or other person may have an attorney present; and

(iii) The attorney, if present, will be permitted to make opening and closing remarks, ask clarifying questions at the meeting and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person's behalf; and

(7) A copy of the material used by the PRO in arriving at its finding.

§ 1004.50 Meeting with a practitioner or other person.

If the practitioner or other person requests a meeting with the PRO—

(a) The PRO panel that meets with the practitioner or other person must consist of a minimum of 3 physicians;

(b) No physician member of the PRO panel may be in direct economic competition with the practitioner or other person being considered for sanction;

(c) The PRO must ensure that no physician member of the PRO panel has a substantial personal bias against the practitioner or other person being considered for sanction;

(d) At least one member of the PRO panel meeting with the practitioner or other person should practice in a similar area, e.g., urban or rural, and at least one member of the panel must be in the same specialty (both requirements could be met by a single individual);

(e) If the practitioner or other person has an attorney present, that attorney will be permitted to make opening and closing remarks, ask clarifying questions and assist the practitioner or other person in presenting the testimony of expert witnesses who may appear on the practitioner's or other person's behalf;

(f) A reviewing physician who recommends to the PRO that a practitioner or other person be sanctioned may not vote on the sanction panel's determination;

(g) The PRO may allow the practitioner or other person 5 working days after the meeting to provide the PRO additional relevant information that may affect its decision; and

(h) A verbatim record must be made of the meeting and must be made available to the practitioner or other person promptly.

§ 1004.60 PRO determination of a violation.

(a) On the basis of any additional information received, the PRO will affirm or modify its finding. If the PRO affirms its findings, it may suggest in writing a method for correcting the situation and a time period for corrective action. This CAP could correspond with, or be a continuation of, a prior CAP or be a new proposal based on additional information received by the PRO. If the issue has been resolved to the PRO's satisfaction, the PRO may modify its initial finding and close the case.

(b) The PRO must give written notice to the practitioner or other person of any action it takes as a result of the additional information received, as specified in § 1004.70.

(c) At least one member of the PRO who is a participant in the finding to recommend to the OIG that a practitioner or other person be sanctioned should practice in a similar area, e.g. urban or rural, and at least one member of the panel must be in the same specialty. Both requirements could be met by a single individual. In addition, no one at the PRO who is a participant in such a finding may be in direct economic competition with, or have a substantial bias against, the practitioner or other person being recommended for sanction.

§ 1004.70 PRO action on final determination of a violation.

If the issue is not resolved to the PRO's satisfaction as specified in § 1004.60(a), the PRO must—

(a) Submit its report and recommendation to the OIG;

(b) Send the affected practitioner or other person a concurrent final notice, with a copy of all the material that is being forwarded to the OIG, advising that—

(1) The PRO recommendation has been submitted to the OIG;

(2) The practitioner or other person has 30 days from receipt of this final notice to submit any additional written material or documentary evidence to the OIG at its headquarters location. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary; and

(3) Due to the 120-day statutory requirement specified in § 1004.100(e), the period for submitting additional information will not be extended and any material received by the OIG after the 30-day period will not be considered; and

(c) Provide notice to the State medical board or to other appropriate licensing boards for other practitioner types when it submits a report and recommendation to the OIG with respect to a physician whom the board is responsible for licensing.

§ 1004.80 PRO report to the OIG.

(a) *Manner of reporting.* If the violation(s) identified by the PRO have not be resolved, it must submit a report and recommendation to the OIG at the field office with jurisdiction.

(b) *Content of report.* The PRO report must include the following information—

(1) Identification of the practitioner or other person and, when applicable, the name of the director, administrator or owner of the entity involved;

(2) The type of health care services involved;

(3) A description of each failure to comply with an obligation, including specific dates, places, circumstances and other relevant facts;

(4) Pertinent documentary evidence;

(5) Copies of written correspondence, including reports of conversations with the practitioner or other person regarding the violation and, if applicable, a copy of the verbatim transcript of the meeting with the practitioner or other person;

(6) The PRO's determination that an obligation under section 1156(a) of the

Act has been violated and that the violation is substantial and has occurred in a substantial number of cases or is gross and flagrant;

(7) A case-by-case analysis and evaluation of any additional information provided by the practitioner or other person in response to the PRO's initial determination;

(8) A copy of the corrective action plan that was developed and documentation of the results of such plan or an explanation of why such a corrective action plan was not appropriate. Any violations identified during the corrective action plan will be used to support the PRO's recommendation regarding inability or unwillingness in accordance with § 1004.80(c)(6) and not as a basis for the sanction;

(9) The number of admissions by the practitioner or other person reviewed by the PRO during the period in which the violation(s) were identified;

(10) The professional qualifications of the PRO's reviewers; and

(11) The PRO's sanction recommendation.

(c) *PRO recommendation.* The PRO must specify in its report—

(1) The sanction recommended;

(2) The amount of the monetary penalty recommended, if applicable;

(3) The period of exclusion recommended, if applicable;

(4) The availability of alternative sources of services in the community with supporting information;

(5) The county or counties in which the practitioner or other person furnishes services; and

(6) A recommendation with supporting documentation as to whether the practitioner or other person is unable or unwilling substantially to comply with the obligation that was violated and the basis for that recommendation.

§ 1004.90 Basis for recommended sanction.

The PRO's specific recommendation must be based on documentation provided to the OIG showing its consideration of—

(a) The type of offense involved;

(b) The severity of the offense;

(c) The deterrent value;

(d) The practitioner's or other person's previous sanction record;

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the PRO considers relevant, such as the duration of the problem.

Subpart D—OIG Responsibilities

§ 1004.100 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the PRO of the date it received the PRO's report and recommendation.

(b) *Review.* The OIG will review the PRO report and recommendation to determine whether—

(1) The PRO has followed the regulatory requirements of part 1004;

(2) A violation has occurred; and

(3) The practitioner or other person has demonstrated an unwillingness or lack of ability substantially to comply with an obligation.

(c) *Rejection of the PRO recommendation.* If the OIG decides that a sanction is not warranted, it will notify the PRO that recommended the sanction, the affected practitioner or other person, and the licensing board informed by the PRO of the sanction recommendation that the recommendation is rejected.

(d) *Decision to sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

(1) The recommendation of the PRO;

(2) The type of offense;

(3) The severity of the offense;

(4 The previous sanction record of the practitioner or other person;

(5) The availability of alternative sources of services in the community;

(6) Any prior problems the Medicare or State health care programs have had with the practitioner or other person;

(7) Whether the practitioner or other person is unable or unwilling to comply substantially with the obligations, including whether he, she or it entered into a corrective action plan prior to the PRO's recommendation and, if so, whether he, she or it successfully completed such corrective action plan; and

(8) Any other matters relevant to the particular case.

(e) *Exclusion sanction.* If the PRO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 1004.110(f).

(f) *Monetary penalty.* If the PRO recommendation is to assess a monetary penalty, the 120-day provision does not apply and the OIG will provide notice in accordance with § 1004.110(a)–(e).

§ 1004.110 Notice of sanction.

(a) The OIG must notify the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 15 days from the date of receipt of the notice. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice must specify—(1) The legal and factual basis for the determination;

(2) The sanction to be imposed;

(3) The effective date and, if appropriate, the duration of the exclusion;

(4) The appeal rights of the practitioner or other person;

(5) The opportunity to provide alternative notification; and

(6) In the case of exclusion, the earliest date on which the OIG will accept a request for reinstatement.

(d) Patient notification: (1)(i) The OIG will provide a sanctioned practitioner or other person an opportunity to elect to inform each of their patients of the sanction action. In order to elect this option, the sanctioned practitioner or other person must, within 30 calendar days from receipt of the OIG notice, inform both new and existing patients through written notification—based on a suggested (non-mandatory) model provided to the sanctioned individual by the OIG—of the sanction and, in the case of an exclusion, its effective date and duration. In addition, the practitioner or other person must notify all new patients orally at the time such prospective patients set an appointment for the provision of services. If the sanctioned party is a hospital, it must notify all physicians having privileges at the hospital, and must post a notice in its emergency room, business office and in all affiliated entities regarding the exclusion. The date of receipt is presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary. Within this time period, the practitioner or other person must also sign and return the certification that the OIG will provide with the notice.

(ii) The certification will provide that the practitioner or other person—

(A) Has informed each of his, her or its patients in writing that the practitioner or other person has been sanctioned, or if a hospital, has informed all physicians having privileges at the hospital that it has been sanctioned;

(B) If excluded from Federal programs, has informed his, her or its existing patients in writing that the programs will not pay for items and services furnished or ordered (or at the medical direction or on the prescription

of an excluded physician) by the practitioner or other person until they are reinstated, or if a hospital, has provided this information to all physicians having privileges at that hospital;

(C) If excluded from Federal programs, will provide new patients—or if a hospital, physicians requesting privileges at that hospital—oral information of both the sanction and that the programs will not pay for services provided prior to furnishing or ordering (or in the case of an excluded physician, medically directing or prescribing) services, and written notification at the time of the provision of services;

(D) If excluded from Federal programs and is an entity such as a hospital, will post a notice in its emergency room, business office and in all affiliated entities that the programs will not pay for services provided prior to furnishing or ordering services; and

(E) Certifies to the truthfulness and accuracy of the notification and the statements in the certification.

(2) If the sanctioned practitioner or other person does not inform his or her patients *and* does not return the required certification within the 30-day period, or if the sanctioned practitioner or other person returns the certification within the 30-day period but the OIG obtains reliable evidence that such person nevertheless has not adequately informed new and existing patients of the sanction, the OIG will see that the public is notified directly of the identity of the sanctioned practitioner or other person, the obligation that has been violated, and the effective date and duration of any exclusion.

(3) If the sanctioned practitioner or other person is entitled to a preliminary hearing in accordance with § 1004.140(a) and requests such a preliminary hearing, he, she or it would have 30 days, from the date of receipt of the administrative law judge's (ALJ's) decision that he, she or it poses a risk to program beneficiaries, to provide certification to the OIG in accordance with § 1004.110(d)(1). The date of receipt is presumed to be 5 days after the date of the ALJ's decision, unless there is a reasonable showing to the contrary.

(e) Notice of the sanction is also provided to the following entities as appropriate—

(1) The PRO that originated the sanction report;

(2) PROs in adjacent areas;

(3) State Medicaid fraud control units and State licensing and accreditation bodies;

(4) Appropriate program contractors and State agencies;

(5) Hospitals, including the hospital where the sanctioned individual's case originated and where the individual currently has privileges, if known; skilled nursing facilities, home health agencies, and health maintenance organizations and Federally-funded community health centers where the practitioner or other person works;

(6) Medical societies and other professional organizations; and

(7) Medicare carriers and fiscal intermediaries, health care prepayment plans and other affected agencies and organizations.

(f) If an exclusion sanction is not effected because a decision was not made within 120 days after receipt of the PRO recommendation, notification is as follows—

(1) The OIG notifies the practitioner or other person that the exclusion is effective 20 days from the date of the notice;

(2) Notice of the sanction is also provided as specified in paragraph (e) of this section; and

(3) As soon as possible after the 120th day, the OIG will issue a notice to the practitioner or other person affirming the PRO recommendation or modifying the recommendation based on the OIG's review of the case.

Subpart E—Effect and Duration of Exclusion

§ 1004.120 Effect of an exclusion on program payments and services.

The effect of an exclusion is set forth in § 1001.1901 of this chapter.

§ 1004.130 Reinstatement after exclusion.

A practitioner or other person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with provisions of §§ 1001.3001 through 1001.3005 of this chapter.

Subpart F—Appeals

§ 1004.140 Appeal rights.

(a) *Right to preliminary hearing.* (1)(i) A practitioner or other person excluded from participation in Medicare and any State health care programs under section 1156 of the Act may request a preliminary hearing if the location where services are rendered to over 50 percent of the practitioners's or other person's patients at the time of the exclusion notice is in a rural HPSA or in a county with a population of less than 70,000.

(ii) Unless the practitioner's or other person's practice meets the definition for psychiatric professional, vision care professional, dental professional, podiatric professional or pharmacy professional, the HPSA used by the OIG for determination of entitlement to a preliminary hearing will be the HPSA list for primary medical care professional.

(iii) Information on the population size of a county in order to determine entitlement to a preliminary hearing will be obtained by the OIG from the responsible officials of that county.

(2)(i) A request for a preliminary hearing must be made in writing and received by the Departmental Appeals Board (DAB) no later than the 15th day after the notice of exclusion is received by a practitioner or other person. The date of receipt of the notice of exclusion by the practitioner or other person is presumed to be 5 days after the date appearing on the notice, unless there is a reasonable showing to the contrary.

(ii) A request for a preliminary hearing will stay the effective date of the exclusion pending a decision of the ALJ at the preliminary hearing, and all the parties informed by the OIG of the exclusion will be notified of the stay.

(iii) A request for a preliminary hearing received after the 15-day period has expired will be treated as a request for a hearing before an ALJ in accordance with paragraph (b) of this section.

(iv) If the practitioner or other person exercises his, her or its right to a preliminary hearing, such a hearing must be held by the ALJ in accordance with paragraph (a)(3)(i) of this section unless the OIG waives it in accordance with paragraph (a)(6)(i) of this section.

(v) The ALJ cannot consolidate the preliminary hearing with a full hearing without the approval of all parties to the hearing.

(3)(i) The preliminary hearing will be conducted by an ALJ of the DAB in a city that the ALJ deems equitable to all parties. The ALJ will conduct the preliminary hearing and render a decision no later than 45 days after receipt of the request for such a hearing by the DAB. Date of receipt by the DAB is presumed to be 5 days after the date on the request for a preliminary hearing, unless there is a reasonable showing to the contrary. A reasonable extension to the 45-day period of up to 15 days may be requested by any party to the preliminary hearing and such a request may be granted upon concurrence by all parties to the preliminary hearing. Such request must be received no later than 15 days prior to the scheduled date of the preliminary hearing.

(ii) The only issue to be heard and decided on at the preliminary hearing is whether the practitioners's or other person's continued participation in the Medicare and State health care programs during the appeal of the exclusion before an ALJ would place program beneficiaries at serious risk.

(iii) In the interest of time, the ALJ may issue an oral decision to be followed by a written decision.

(iv) In those cases where the ALJ has stayed an exclusion after a preliminary hearing, a full hearing must be held and a decision rendered by the ALJ within 6 months. If, for any reason, the request for a full hearing before the ALJ is withdrawn or dismissed, the exclusion for the period that has not been served will be effective 5 days after the notice of the withdrawal or dismissal is received in the OIG headquarters.

(4) The preliminary hearing decision is not appealable or subject to further administrative or judicial review.

(5) A practitioner or other person found at the preliminary hearing not to place program beneficiaries at serious risk, but later determined to have been properly excluded from program participation after a full hearing before an ALJ, is not entitled to have the exclusion stayed further during an appeal to the DAB. Exclusions in such instances will be effective 5 days after receipt of the ALJ decision in the OIG headquarters.

(6)(i) After notice of a timely request for a preliminary hearing, the OIG may determine that the practitioner's or other person's continued program participation during the appeal before the ALJ will not program beneficiaries at serious risk and waive the preliminary hearing. Under these circumstances, the exclusion will be stayed pending the decision of the ALJ after a full hearing. The hearing must be held, and a decision reached, within 6 months.

(ii) If the OIG decides to waive the preliminary hearing, the request for the preliminary hearing will be considered a request for a hearing before the ALJ in accordance with paragraph (b) of this section.

(b) *Right to administrative review.* (1) A practitioner of other person dissatisfied with an OIG determination, or an exclusion that results from a determination not being made within 120 days, is entitled to appeal such sanction in accordance with part 1005 of this chapter.

(2) Due to the 120-day statutory requirement specified in § 1004.100(e), the following limitations apply—

(i) The period of time for submitting additional information will not be extended.

(ii) Any material received by the HHS after the 30-day period allowed will not be considered by the ALJ or the DAB.

(3) The OIG's determination continues in effect unless reversed by a hearing.

(c) *Rights to judicial review.* Any practitioner or other person dissatisfied with a final decision of the Secretary may file a civil action in accordance with the provisions of section 205(g) of the Act.

Dated: October 18, 1993.

Bryan B. Mitchell,

Principal Deputy Inspector General.

Approved: December 2, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–4321 Filed 2–25–94; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–315; RM–8320]

Radio Broadcasting Services; Huntsville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a Notice of Proposed Rule Making issued in response to a request filed by Contemporary Broadcasting, Inc. for the substitution of Channel 278C1 for Channel 278C2 at Huntsville, Missouri. See 59 FR 1366, January 10, 1994. Contemporary Broadcasting, Inc. requested dismissal of the rule making as it has filed an application for Channel 278C1 at Huntsville, Missouri, under the one-step process. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–315, adopted January 24, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–4460 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[Docket No. 92–D]

RIN 2132–AA39

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, DOT.

ACTION: Proposed rule; notice of hearing; extension of the comment period.

SUMMARY: On December 9, 1993, the Federal Transit Administration (FTA) issued a Notice of Proposed Rulemaking (NPRM) for its Rail Fixed Guideway Systems State Safety Oversight program. FTA has decided to hold a public hearing in conjunction with an American Public Transit Association meeting which occurs after the close of the comment period announced in the NPRM. This document accordingly reopens the comment period and announces the public hearing.

DATES: Comments on this proposed rule must be submitted by March 22, 1994. The public hearing will be held at 8 a.m. (EST) on March 8, 1994. For further information see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: Comments on the NPRM should be sent, in duplicate, to Docket No. 92–D, Docket Clerk, room 9316, Office of the Chief Counsel, Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590. Those wishing the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments. All comments will be available for review by the public at this address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The public hearing will be held at 8:00 a.m. (EST) on March 8, 1994 at the J. W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. For further information see the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For program issues: Franz Gimmler, Deputy

Associate Administrator for Safety, or Roy Field, Transit Safety Specialist, both of the Office of Safety and Security, Federal Transit Administration, (202) 366–2896 (telephone) or (202) 366–3765 (fax). For legal issues: Nancy Zaczek or Daniel Duff, Office of the Chief Counsel, Federal Transit Administration, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Introduction

FTA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 9, 1993, at 58 FR 64856, concerning the creation of a State oversight agency that would develop certain procedures for overseeing the safety of rail fixed guideway systems. FTA has determined that a public hearing would help in the development of the final rule. FTA accordingly will hold the hearing in conjunction with a conference sponsored by the American Public Transit Association (APTA), which will be attended by State and local transit representatives. The hearing will be held on March 8, 1994. Because of this action, FTA is extending the comment period.

Information on the Public Hearing

The hearing will be held on March 8, 1994, in the Grand Ballroom—Salon D at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue NW., Washington, DC 20004. It will begin at 8 a.m. (EST).

Those interested in providing comments on the NPRM may respond in writing to the docket or participate in the public hearings and are encouraged to do both.

FTA has established the following procedures to facilitate the hearings. Those wishing to participate in the public hearings should contact either Mr. Franz Gimmler or Mr. Roy Field by telephone at (202) 366–2896, by fax at (202) 366–3765, or in writing at the address in the **FOR FURTHER INFORMATION CONTACT** section at least three business days before the hearing is to be held or register with the FTA on the day of the hearing. Those contacting FTA at least three business days before the hearing is scheduled may request a particular time to testify. FTA will try to accommodate those requests.

For those who have not contacted FTA at least three business days in advance, a registration desk will be available at the hearing site on the day of the hearing. Individuals may register beginning one hour before the hearing is scheduled to start. The registration desk will remain open until the hearing begins, after which FTA staff will try to accommodate late registrants. Time permitting, individuals will testify in the order in which they have registered.

Those who request to testify may be given ten minutes to make a statement or present other relevant documents which will be included in the docket. FTA encourages those individuals to submit a written statement which will also be included in the docket.

Those individuals in need of an oral interpreter should inform Mr. Gimmler or Mr. Field of that need also at least three business days before the hearing is to be held. Unless requested three business days before the hearing, an oral interpreter will not be provided.

A hearing officer will preside over the hearing. The hearing officer may make a statement to clarify issues or facilitate discussion during the hearing . Any statements the hearing officer makes during a hearing are not intended to be and should not be construed as a position of the FTA with respect to the NPRM or any future rulemaking.

The hearing will be recorded by a court reporter. A transcript of the hearing will be included in the official rulemaking Docket 92–D and be available for inspection. Any individual interested in a copy of the transcript of a hearing may contact the court reporter directly.

The hearing is designed to solicit public views and information on the NPRM. Therefore, the hearing will be conducted in an informal and nonadversarial manner. However, the hearing officer may ask questions in order to clarify statements made at the hearing. To facilitate comment and get a broad cross-section of views, the FTA may ask some of those who register in advance to participate on a panel during the hearing.

Issued on: February 23, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94–4495 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–57–U

Notices

Federal Register
Vol. 59, No. 39
Monday, February 28, 1994

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

DEPARTMENT OF AGRICULTURE

Forest Service

South Manti Timber Salvage; Manti-La Sal National Forest, Sanpete and Sevier Counties, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to salvage harvest timber and improve productivity of stands of trees in portions of the Muddy Creek, Twelvemile Creek, Sixmile Creek, and Ferron Creek Drainages. The project is located approximately 10 air miles southeast of Manti, Utah.

The entire proposal area involves some 30,000 acres of which approximately 10,000 acres is forested with an Engelmann spruce cover type. A bark beetle epidemic has affected the major portion of this type. the need for the proposal is established by the silvicultural condition of the affected timber stands and forest goals as outlined in the Manti-La Sal National Forest Land and Resource Management Plan.

Six areas that were inventoried as roadless as part of the RARE II evaluation are adjacent to and in some cases overlap the proposal. These areas were released back to full Multiple Use management by the Utah Wilderness Act and were evaluated for a variety of designations in the Forest's analysis during the Forest Land and Resource Plan process which was completed in 1986. The current analysis will document effects that would substantially alter the undeveloped character of these areas.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before March 30, 1994.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Arthur J. Vasten Jr., Project Timber Staff, Manti-La Sal National Forest, phone (801) 637–2817.

SUPPLEMENTARY INFORMATION: This EIS will tier to the final EIS for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

A National forest Management Act Analysis for this proposal was completed in 1993. As a result of that analysis and additional scoping the Manti-La Sal concluded the proposal may have a significant effect on the roadless character of some of the surrounding areas, and because of the scope of the project size it was decided to prepare this EIS. The previous scoping and analysis also identified the following potential issues related to the proposed action:

What will be the effects of the proposal on the habitats, behavior, and local population of certain wildlife species?

What effect will the proposed activities have on the access, quality, and safety of the recreational opportunities of the area?

How will the proposal alter the present visual quality?

What will be the effects of the proposal on cultural resources?

How will potential build up of dead, down, woody, ground fuels be effected by the proposal?

How will the proposal contribute to a healthy, productive forest that will economically provide timber for the market place on a sustainable basis for the present and the future?

What effect will the proposal have on the transportation systems presently serving the area?

What will be the impacts on wetlands, and riparian areas?

What will the impacts be on the water quality and chemistry?

What will be the economics of the proposed action?

How will the proposal affect the roadless character of certain areas?

How will the local economies be affected by the proposal?

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the Federal Register. Preparation of the EIS will include the following steps:

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 will be completed through the scoping process.

Step 5 will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative. Other alternatives will consider various methods, levels and locations of harvest, regeneration, and related road development/ improvement in response to issues, and non-timber objectives.

Step 6 will describe the physical attributes of the area to be affected by this proposal; with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for

each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

The approximate boundary of the area covered for this analysis will be from the southern Forest boundary along White Mountain north along Skyline Drive to the Ferron and Sixmile drainages.

The proposed management activities would be administered by the Sanpete and Ferron Ranger Districts of the Manti-La Sal National Forest in Sanpete and Sevier Counties, Utah.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in June, 1994. At this time the EPA will publish an availability notice of the Draft EIS in the **Federal Register.**

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released September 16, 1994.

The Forest Supervisor for the Manti-La Sal National Forest, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decisions.

Dated: February 17, 1994.

George A. Morris,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 94–4420 Filed 2–25–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–401–801 A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Notice of Intent To Revoke Orders (in Part)

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

ACTION: Notice of preliminary results of antidumping duty administrative reviews, partial termination of administrative reviews, and notice of intent to revoke order (in part).

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings, cylindrical roller bearings, and spherical plain bearings. The reviews cover 38 manufacturers/exporters and the period May 1, 1992, through April 30, 1993 (the POR). Although we initiated reviews for nine other manufacturers/exporters, we are terminating the reviews because the requests for these reviews were withdrawn in a timely manner. As a result of these reviews, the Department has preliminarily determined the weighted-average dumping margins for the reviewed firms to range from 0.37 percent to 132.25 percent for BBs, from zero to 51.82 percent for CRBs, and from zero to 92.00 percent for SPBs.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; Telephone: (202) 482–4733.

France

Jacqueline Arrowsmith (SNR), Kris Campbell (SNFA), Joseph Hanley (SKF, Rollix Defontaine), David Levy (Hoesch Rothe Erde), Philip Marchal (Franke & Heydrich), or Michael Rill.

Germany

Kris Campbell (FAG), Joseph Hanley (Rollix Defontaine), David Levy (NTN Kugellagerfabrik, INA, Hoesch Rothe Erde), Philip Marchal (SKF, Franke & Heydrich), Charles Riggle (Fichtel & Sachs, GMN), or Michael Rill.

Italy

Charles Riggle (Meter), Joseph Hanley (SKF, FAG), or Michael Rill.

Japan

Carlo Cavagna (Honda, Nachi), William Czajkowski (Takeshita), Michael Diminich (NSK), J. David Dirstine (Koyo), Joseph Fargo (Nankai Seiko), David Levy (NTN), Michael Panfeld (IKS, NPBS), or Richard Rimlinger.

Singapore

Joanna Schlesinger (NMB/Pelmec), or Richard Rimlinger.

Sweden

Philip Marchal (SKF), or Michael Rill.

Thailand

Joanna Schlesinger (NMB/Pelmec), or Richard Rimlinger.

United Kingdom

Jacqueline Arrowsmith (RHP/NSK), Kris Campbell (Barden/FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs) and spherical plain bearings (SPBs) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand and the United Kingdom.

Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Italy, Sweden, and the U.K.; and BBs from Singapore and Thailand. On June 28, 1993, in accordance with 19 CFR 353.22(c)(1993), we initiated administrative reviews of those orders for the period May 1, 1992, through April 30, 1993 (58 FR 34563). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
France	
Franke & Heydrich KG	BBs
Hoesch Rothe Erde AG	BBs
Rollix Defontaine, S.A	BBs
SKF Compagnie d'Applications Mecaniques, S.A. (SKF)	BBs, CRBs, SPBs
SNFA	BBs, CRBs
SNR Roulements (SNR)	BBs, CRBs
Germany	
FAG Kugelfischer Georg Schaefer KGaA (FAG)	BBs, CRBs, SPBs
Fichtel & Sachs AG	BBs
Franke & Heydrich KG	BBs
Georg Mueller Nurnberg, AG (GMN)	BBs
Hoesch Rothe Erde AG	BBs
INA Walzlager Schaeffler KG (INA)	BBs, CRBs
NTN Kugellagerfabrik (Deutschland) GmbH (NTN)	BBs,
Rollix Defontaine, S.A	BBs
SKF GmbH	BBs, CRBs, SPBs
Italy	
FAG Italia S.p.A	BBs, CRBs
Meter, S.p.A.	BBs, CRBs
SKF Industrie S.p.A	BBs, CRBs
Japan	
General Bearing Corp	BBs, CRBs, SPBs
Honda Motor Co., Ltd	BBs, CRBs, SPBs
Izumoto Seiko Co., Ltd	BBs
Koyo Seiko Co	BBs, CRBs, SPBs
Nachi-Fujikoshi Corp	BBs, CRBs
Nankai Seiko Co	BBs
Nippon Pillow Block Sales Company, Ltd. (NPBS)	BBs
NSK Ltd	BBs, CRBs, SPBs
NTN Corp	BBs, CRBs, SPBs
Takeshita Seiko Co., Ltd	BBs
Singapore	
NMB Singapore Ltd./Pelmec Ind. (Pte.) Ltd. (NMB/Pelmec)	BBs
Sweden	
SKF Sverige	BBs, CRBs
Thailand	
NMB Thai Ltd./Pelmec Thai Ltd. (NMB/Pelmec)	BBs

Name of firm	Class or kind
United Kingdom	
Barden Corp. (U.K.) Ltd./FAG (U.K.) Ltd. (Barden/FAG)	BBs, CRBs
RHP Bearings/NSK Bearings Europe, Ltd. (RHP/NSK)	BBs, CRBs

Subsequent to the publication of our initiation notice, we received timely withdrawals of review requests for INA (France), SNECMA (France and Italy), Asahi Seiko (Japan), Fujino Iron Works (Japan), Tottori Yamakei Bearing Seisakusho (Japan), and Revolvo (U.K.). Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies, in accordance with 19 CFR 353.22(a)(5).

On January 13, 1994, GMN also requested that the Department allow GMN to withdraw its request for review and terminate the review of the order on BBs from Germany with respect to GMN. Although its request to withdraw was submitted well after the deadline for doing so, GMN claimed that the circumstances of the firm's bankruptcy rendered it unable to proceed further with the review. After giving careful consideration to GMN's circumstances, we find that it would be inappropriate to terminate the review. GMN's request to terminate the review was submitted during the verification process, which is an advanced stage of the review process, and at a point at which it had become clear that the company would be unable to complete verification successfully. Furthermore, a domestic interested party objected to termination of the review at that stage. Therefore, we are not terminating the review of GMN.

In addition, we initiated reviews for SST Bearing Corp. (SST), and Peer International (Peer) with respect to subject merchandise from Japan. SST informed us that it neither produced AFBs in Japan nor exported Japanese-produced bearings to the United States. Peer informed us that although it is a reseller of Japanese-made bearings, all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, Peer is not a reseller as defined in 19 CFR 353.2(s) because its sales cannot be used to calculate the U.S. price. Therefore, we are preliminarily terminating the reviews with respect to SST and Peer. If we obtain any information that contradicts these companies' assertions, we will complete the reviews with respect to these companies

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information available (BIA) is appropriate for certain firms. The Department's regulations provide that we may take into account whether a party refuses to provide information in determining what is the best information available (19 CFR 353.37(b)). For purposes of these reviews and in accordance with past Commerce practice, we have used the most adverse BIA—generally the highest rate for any company for the class or kind of merchandise from the same country from this or any prior segment of the proceeding, including the less-than-fair-value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a company substantially cooperated with our requests for information, but failed to provide all information requested in a timely manner or in the form requested, we used as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39728 (July 26, 1993)).

Because Franke & Heydrich, General Bearing Corp., and SNFA failed to respond to the Department's questionnaire, we have used the highest rate ever found for each relevant class or kind of merchandise and country of origin. Also, because GMN had substantially cooperated with our requests for information, but was unable to complete verification, we used as BIA its highest previous rate, in this case the rate from the LTFV investigation.

Intent to Revoke

The following firms have submitted requests, in accordance with 19 CFR 353.25(b), to revoke the orders covering the indicated merchandise:

Spherical plain bearings from France—SKF
Ball bearings from Germany—NTN Kugellagerfabrik and GMN
Cylindrical roller bearings from Italy—SKF
Spherical plain bearings from Japan—NTN and Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

In accordance with 19 CFR 353.25(a)(2)(iii), these requests were accompanied by certifications from the firms that they had not sold the relevant class or kind of merchandise at less than fair value for a three-year period including this review period, and will not do so in the future. Each of these firms also agreed to its immediate reinstatement in the relevant antidumping orders, as long as it is subject to those orders, if the Department concludes under 19 CFR 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than fair value.

In the two prior reviews of these orders, we determined that SPBs from France sold by SKF, BBs from Germany sold by NTN Kugellagerfabrik and GMN, CRBs from Italy sold by SKF, and BBs, CRBs, and SPBs from Japan sold by Honda were not sold at less than fair value. In this review, we preliminarily determine that these firms, with the exception of NTN Germany and GMN, have not sold these products at less than fair value, which will satisfy the three-year period of no sales at less than fair value, if these preliminary findings are affirmed in our final results. Therefore, we intend to revoke the orders with respect to the following firms and merchandise:

Spherical plain bearings from France—SKF
Cylindrical roller bearings from Italy—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

With respect to SPBs from Japan sold by NTN and BBs from Germany sold by NTN and GMN, we have not established that there has been a three-year period of sales at not less than fair value. The final results of the previous administrative review indicated the existence of dumping margins on NTN's sales of SPBs from Japan (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,

58 FR 39729, July 26, 1993). In addition, we preliminarily determine in this review that there are dumping margins on NTN's sales of BBs from Germany. Therefore, we do not intend to revoke the orders on SPBs from Japan with respect to NTN or on BBs from Germany with respect to NTN.

Concerning GMN, as BIA, (see "Best Information Available" section above), we have preliminarily determined that dumping margins exist on GMN's sales of BBs from Germany during the 1992–93 review period. Furthermore, on February 10, 1994, the company withdrew its request for revocation. Therefore, we do not intend to revoke the order on BBs from Germany with respect to GMN.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof (AFBs), and constitute the following "class or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 4016.93.10, 4016.9350, 8482.99.05, 8482.99.35, 8708.70.6060, 8708.93.6000, 8708.99.3100, 8708.99.4000, 8708.99.4960, 8708.5800, 8708.99.8015, 8708.99.8080.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 4016.93.10, 4016.9350, 8482.99.25, 8482.99.6530, 8482.99.6560, 8708.99.4000, 8708.99.4960, 8708.99.8080.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2,000 ESP sales transactions to the United States for a particular class or kind of merchandise, we reviewed ESP sales which occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 31–June 6, 1992; July 26–August 1, 1992; October 18–24, 1992; November 22–28, 1992; February 14–20, 1993; and April 18–24, 1993. We reviewed all PP sales transactions during the POR because there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for movement expenses, discounts and rebates.

We made additional deductions from ESP for direct selling expenses, indirect selling expenses, and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. In making our adjustment for VAT, we followed the instructions of the United States Court of International Trade (CIT) in *Federal Mogul Corp. and The Torrington Co. v. United States*, Slip Op. 93–194 (CIT October 7, 1993). The Department added to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department also adjusted the tax amount calculated for USP and the amount of tax included in foreign market value (FMV). We deducted the portions of the foreign market tax and the USP tax that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and in the United States price used to calculate the USP tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales.

With respect to subject merchandise to which value was added in the United States, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Tariff Act.

Those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, are not subject to the assessment of antidumping duties. In Roller Chain, Other Than Bicycle, from Japan (48 FR 51801; November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Because the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain. The Department, therefore, did not assess dumping duties on these transactions. We have applied this same principle to these reviews.

Foreign Market Value

The home market was viable for all companies and all classes or kinds of merchandise. The Department used home market prices or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. When a firm had more than 2,000 home market sales transactions for a particular class

or kind of merchandise, we used sales from sample months that corresponded to the sample weeks selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included March, June, July, October, and November of 1992, and February, April, and June of 1993.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV in administrative reviews. Because of the significant volume of home market sales involved in these reviews, we examined whether it was appropriate to average, in accordance with section 777A of the Tariff Act, all of each respondent's home market sales on an annual basis. In this case, the use of POR weighted-average prices results in significant time and resource savings for the Department. To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test.

We first compared each monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary meaningfully (*i.e.*, was within plus or minus 10 percent) from the monthly weighted-average prices. We did this for each model within each class or kind of merchandise. We then compared the volume of sales of all models within each class or kind of merchandise whose POR weighted-average price did not vary meaningfully from the monthly weighted-average price with the total volume of sales of that class or kind of merchandise. If the POR weighted-average price of at least 90 percent of sales in each class or kind of merchandise did not vary meaningfully from the monthly weighted-average price, we considered the POR weighted-average prices to be representative of the transactions under consideration. Finally, we tested whether there was any correlation between fluctuations in price and time for the home market sales. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 means a direct relation between price and time, *i.e.*, that prices consistently rise from month to month, and a coefficient approaching zero means no relation between prices and time), we concluded that there was no significant relation between price and time. We calculated a weighted-average POR FMV only for those classes or kinds that satisfied our three-step test for the factors of price, volume, and time.

We compared U.S. sales with sales of such or similar merchandise in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to related or unrelated purchasers in the home market. Where applicable, we made adjustments for movement expenses, differences in cost attributable to differences in physical characteristics of the merchandise, and differences in packing. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses. For comparisons to both ESP and PP sales, we adjusted for VAT using the methodology detailed in the "United States Price" section of this notice.

We used sales to related customers only where we determined such sales were made at arm's length, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Where we found home market sales below the cost of production in the previous administrative review period, we concluded that reasonable grounds exist to believe or suspect that home market sales during the POR were made at prices below the cost of production, and we therefore initiated cost investigations.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the cost of production, we examined whether such sales were made in substantial quantities over an extended period of time. When less than 10 percent of the home market sales of a particular model were at prices below the cost of production, we found that substantial quantities of such sales were not made and did not disregard any sales of that model. When 10 percent or more, but not more than 90 percent, of the home market sales of a particular model were determined to be below cost, we determined that substantial quantities of such sales were made and excluded the below-cost home market sales from our calculation of FMV provided that these below-cost sales were made over an extended period of time. When more than 90 percent of the home market sales of a particular model were made below cost over an extended period of time, we disregarded all home market sales of that model from our calculation of FMV and went to CV.

To determine if sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost of that model in each month. If a model was sold in more than three months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost in at least three of the months in which the model was sold.

Since none of the respondents has submitted information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," within the meaning of section 773(b)(2) of the Tariff Act, we were unable to conclude that the costs of production of such sales were recovered within a reasonable period. As a result, we disregarded below-cost sales when the conditions described above were met.

Home market sales of obsolete merchandise and distress sales were not disregarded in our cost analysis unless there was documented information on the record demonstrating that such sales were outside the ordinary course of trade.

With respect to FAG Germany, we disregarded certain sales reported by the company in its home market database. The disregarded sales pertain to two unrelated German resellers of FAG bearings. Although FAG reported that it did not know whether these resellers sold its bearings in Germany or abroad, we preliminarily determine, based on the following information obtained at verification, that FAG, at a minimum, should have known that the two resellers would export its bearings.

At verification, we found that FAG referred, both orally and in its records, to these resellers as "indirect exporters." We learned that one FAG subsidiary sold to one of these resellers from its export price list, rather than from its domestic price list. Finally, we contacted one of the resellers independently and were told that it only sells in export markets and that its suppliers were aware of this.

During verification, we inquired of other German producers/exporters about potential sales to "indirect exporters." We did not obtain conclusive evidence that reported home market sales were in fact export sales. However, if we obtain additional information indicating that other producers reported home market sales that we ultimately conclude were export sales, we will delete these sales from their home market databases.

In accordance with section 773(a)(2) of the Tariff Act, we used constructed value as the basis for FMV when there were no usable sales of such or similar merchandise for comparison.

We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, fabrication, general expenses, profit and packing. To calculate CV we used: (1) actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials, fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV in accordance with 19 CFR 353.56, for differences in circumstances of sale. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations. For comparisons involving ESP transactions, we made further deductions for constructed value for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1992 through April 30, 1993 to be:

Company	BBs	CRBs	SPBs
France:			
Franke & Heydrich	66.42	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
Rollix Defontaine	(1)	(2)	(2)
SKF	3.12	(1)	0.00
SNFA	66.42	18.37	(2)
SNR	3.31	2.58	(2)
Germany:			
FAG	17.46	14.24	17.54
Fichtel & Sachs	11.71	(2)	(2)
Franke & Heydrich	132.25	(2)	(2)
GMN	35.43	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
INA	29.81	9.14	(2)
NTN	9.06	(1)	(1)
Rollix Defontaine	(1)	(2)	(2)
3SKF	28.41	27.45	60.23
Italy:			
FAG	3.08	(1)	
Meter	1.22	(1)	
SKF	3.71	0.00	
Japan:			
General Bearing	106.61	51.82	92.00
Honda	0.37	0.01	0.01
IKS	27.96	(2)	(2)
Koyo	12.19	5.34	(1)
Nachi	28.27	4.33	(2)
Nankai Seiko	1.08	(2)	(2)
NPBS	18.32	(2)	(2)
NSK	27.17	20.42	(1)
NTN	5.09	2.34	0.01
Takeshita	14.58	(2)	(2)
Singapore:			
NMB/Pelmec	4.84		
Sweden:			
SKF	16.00	1.85	
Thailand:			
NMB/Pelmec	0.37		
United Kindgom:			
Barden/FAG .	4.86	8.22	
RHP/NSK	16.01	18.40	

[1] No U.S. sales during the review period.
[2] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce building:

Italy—March 28, 1994; 9:00 am; room 1617–M–4
General Issues—March 28, 1994; 1:00 pm; room 4830
Thailand—March 29, 1994; 9:00 am; room 1617–M–1
Singapore—March 29, 1994; 10:30 am; room 1617–M–1
Germany—March 29, 1994; 2:00 pm; room 1617–M–4
Japan—March 30, 1994; 9:00 am; room 1617–M–1
United Kingdom—March 30, 1994; 2:00 pm; room 1617–M–1
France—March 31, 1994; 9:00 am; room 1617–M–4
Sweden—March 31, 1994; 1:00 pm; room 1617–M–4

Issues raised in hearings will be limited to those raised in the respective briefs or written comments, and rebuttal briefs or rebuttals to written comments. Briefs or written comments from interested parties, and rebuttal briefs or rebuttals to written comments, limited to the issues raised in the respective case briefs and comments, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or hearings.

Case	Briefs/comments due	Rebuttals due
General Issues.	Mar. 16, 1994	Mar. 23, 1994
Italy	Mar. 16, 1994	Mar. 23, 1994
Thailand	Mar. 17, 1994	Mar. 24, 1994
Singapore	Mar. 17, 1994	Mar. 24, 1994
Germany	Mar. 17, 1994	Mar. 24, 1994
Japan	Mar. 18, 1994	Mar. 25, 1994
U.K.	Mar. 18, 1994	Mar. 25, 1994
France	Mar. 21, 1994	Mar. 28, 1994
Sweden	Mar. 21, 1994	Mar. 28, 1994

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total value of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total value of antidumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the POR.)

Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the POR. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

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 these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews; (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 prior 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 cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the most recent administrative reviews of the orders (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729, July 26, 1993). As noted in those previous final results, these rates are the "all others" rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 C.F.R. 353.22(c)(5)).

Dated: February 18, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4505 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amendment to Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of amendment to final results of antidumping duty administrative reviews.

SUMMARY: On July 26, 1993, the Department of Commerce published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews covered 41 manufacturers/exporters and the period May 1, 1991 through April 30, 1992. Based on the correction of ministerial errors, we are amending the final results with respect to Japanese ball bearings, cylindrical roller bearings and spherical plain bearings sold by one company.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Marchal or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202)482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, the Department of Commerce (the Department) published in the **Federal Register** the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom (58 FR 39729). The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 41 manufacturers/exporters and the period May 1, 1991 through April 30, 1992.

After publication of our final results, we received timely allegations of ministerial errors from Honda Motor Company concerning the final results for AFBs from Japan sold by Honda.

We agree with one of these allegations and have made the necessary correction. Specifically, Honda had submitted two sets of home market data. Although we had intended in our final results to use only certain portions of each of these datasets, we used the wrong portions in our final results. We have therefore corrected our analysis by using the correct portions of Honda's submitted home market datasets.

Amended Final Results of Reviews

As a result of our corrections of ministerial errors, we have determined the following percentage weighted-average margins to exist for the period May 1, 1991 through April 30, 1992:

Company	BBs	CRBs	SPBs
Honda	0.04	0.16	0.16

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Because these rates for Honda are less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department will require a cash deposit of zero for all entries of the above merchandise from Honda.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a 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 is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: February 15, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4504 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–831]

Initiation of Antidumping Duty Investigation: Fresh Garlic From the People's Republic of China

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

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner or Diane Mazur, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC, 20230; telephone (202) 482–1673 or 482–3534, respectively.

Initiation of Investigation

The Petition

On January 31, 1994, we received a petition filed in proper form by the member companies of the Fresh Garlic Producers Association (collectively petitioner). In accordance with 19 CFR 353.12, the petitioner alleges that fresh garlic from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petition is filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The products covered by this investigation are all grades of fresh garlic, whether or not chilled or frozen, and include whole garlic, whole garlic that has been separated into constituent cloves (cracked garlic), and peeled garlic (skin removed), whether or not packed in any substance. The differences between the grades are based on color, size, sheathing and level of decay.

Fresh garlic is used principally as a food product and for seasoning. Fresh garlic, whether or not chilled or frozen, is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, and 0710.80.9750 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on October 1993 invoices from U.S. importers of the subject merchandise from the PRC. In calculating USP, petitioner deducted amounts for the following: U.S. duties, ocean freight, marine insurance, foreign inland freight expenses, brokers' commission, harbor maintenance and U.S. merchandise processing fees, and commissions charged by the U.S. importers.

Petitioner alleges that the PRC is a non-market economy (NME) country within the meaning of section 773(c) of the Act. The Department has determined the PRC to be an NME, within the meaning of section 771(18)(A) of the Act, in previous cases (see e.g., Final Determination of Sales at Less than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the PRC, 58 FR 37908 (July 14, 1993). In accordance with 771(18)(C) of the Act, that determination continues to apply for purposes of this initiation. In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue.

Further, because of the extent of central government control in an NME, the Department considers that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters are free of central government ownership and can demonstrate an absence of central governmental control with respect to the pricing of exports, both in law and in fact, will they be considered eligible for separate, owner-specific deposit rates. (See Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833 (September 20, 1993) for a discussion of the information the Department considers appropriate to warrant calculation of separate rates.)

Petitioner based foreign market value on the PRC's factors of production for producing the subject merchandise. To value the factors of production, petitioner used India as a surrogate country. Petitioner argues that India is a country at a comparable level of economic development as the PRC and India is a significant producer of comparable merchandise pursuant to section 773(c)(4) of the Act. Further, India's garlic production is labor intensive and relies on rudimentary agricultural techniques similar to agricultural methods used in the PRC. For purposes of this initiation, we have accepted India as an appropriate surrogate country selection. There appear to be no other countries with comparable economies to the PRC that produce the subject merchandise. In addition, the Department has used India as an appropriate surrogate country selection in other investigations involving merchandise from the PRC. (See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 29705, July 6, 1992).

Petitioner first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production using the U.S. industry's costs, where it was determined that this provided a reasonable basis upon which to value certain factors of production. Petitioner valued the factors of production of the subject merchandise in the PRC as follows:

- For material costs (seed and fertilizer), petitioner relied on Indian factors based on its foreign market research, using public information whenever possible.
- For most labor costs (seed cracking, field preparation, planting, weed control, fertilization, irrigation, digging, windrowing and harvesting), petitioner relied on an industry expert's estimate of Chinese factors which was based on the expert's knowledge of the Chinese industry and the expert's own experience with nonmechanized garlic production, using public information whenever possible. Petitioner valued such labor costs on the basis of Indian production experience as developed in its foreign market research. For other labor costs related to hauling, sorting, grading, inspecting, and shrinkage, petitioner relied on the U.S. industry's cost-per-pound for these operations.

• Petitioner added an amount for all other manufacturing costs and related overhead equal to 10 percent of direct material and labor costs.

• Petitioner added an amount for shrinkage loss of 7 percent of the cost of production, based on U.S. experience.

• For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of production.

• For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A.

• Petitioner added an amount for packing based on the average, actual experience of the U.S. industry.

Based on petitioner's calculations, the dumping margins range from 266.73 to 376.67 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on fresh garlic and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of fresh garlic from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by March 17, 1994, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of fresh garlic from the PRC. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: February 22, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–4503 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–604]

Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof From Japan

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

ACTION: Notice of preliminary determination of scope inquiry.

SUMMARY: We preliminarily determine that subject forgings are within the scope of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from Japan. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Shields at (202) 482–1690 or John Kugelman at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1993, Koyo Seiko Company Ltd. and Koyo Corporation of U.S.A. (Koyo) requested that the Department of Commerce (the Department) issue a ruling that Koyo's imported forgings, including tower forgings, hot forgings, and cold forgings, be found outside the scope of the antidumping duty order on tapered roller bearings and parts thereof from Japan (52 FR 37352, October 6, 1987). The Department initiated its scope inquiry on September 28, 1993, and granted interested parties an opportunity to comment on whether these forgings fall within the scope of the order. We received comments on November 15, 1993, from the petitioner, the Timken Company, and rebuttal comments from Koyo on November 22, 1993. Due to the significant difficulty presented by this scope inquiry, we have determined that it is appropriate to issue a preliminary determination, in accordance with the Department's regulations (19 CFR 353.29(d)(3) (1993)).

Koyo requested the scope ruling in response to a change in the U.S. Customs classification of Koyo's imported forgings. At the time of the original investigation, Koyo's imported forgings were classified as forgings under the Tariff Schedules of the United States (TSUS) 606.7340. When the Harmonized Tariff Schedule (HTS) replaced the TSUS in 1989 and a specific provision for forgings ceased to exist, Koyo classified its forgings as "semifinished steel" under HTS 7224.90, and later, based on the advice of a Customs port, as "steel articles" under HTS 7326.19. Customs recently examined the subject forgings and informed Koyo that it considers them to be "parts of tapered roller bearings (TRBs)" under HTS 8482.99. Customs generally classifies an article as a "part" of another article if that is its chief or principal use. Based on this general principle, Customs determined that under the HTS Koyo's forged rings should be classified as TRB parts as long as they are chiefly used for incorporation into TRBs. Although Koyo's scope clarification request was prompted at least in part by the action of Customs, neither classification choices made by producers nor classification decisions made by Customs determine the scope of antidumping duty orders. Rather, the scope of antidumping duty orders is determined by the Department at the time of the original investigation and issuance of an order.

In accordance with 19 CFR 353.29(i)(1), in analyzing the scope request in this proceeding, the Department took into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the International Trade Commission (ITC). The regulations provide that if the Department determines these descriptions are ambiguous, it will further consider the factors provided for under 19 CFR 353.29(i)(2), known commonly as Diversified Products criteria (see *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983)).

Analysis

Koyo makes the forgings at issue from bearing grade steel bar, which is sheared, pierced, and extruded into the shape of the forging. The forgings are not machined in any way prior to exportation.

We note that the term "forgings" covers a broad spectrum of products. The Summaries of Trade and Tariff Information (Schedule 6, Volume 4) identifies two basic types of forgings in its description of the product. Open-die forgings are large shapes produced by hammering or pressing heated ingots, blooms, billets, slabs, or bars on regulation press-and-hammer forging equipment with dies that are flat or slightly shaped. Closed-die or drop forgings are small- or medium-size

shapes forged by using dies accurately formed to the size and shape of the desired finished product. Open-die forgings require machining to acquire the desired dimensions of the finished product. Closed-die forgings require little or no subsequent machining and are generally considered parts for import classification purposes. The forgings at issue have not been categorized as either open-die or closed-die forgings.

The Language of the Petition

The original petition describes the subject merchandise as follows:

> The merchandise covered by this petition is all tapered roller bearings, tapered rollers and other parts thereof (both finished and unfinished) including, but not limited to, single-row, multiple-row (e.g., two-, four-), and thrust bearings and self-contained bearing packages (generally pre-set, pre-sealed, and pre-greased), but only to the extent that such merchandise is not presently covered by an outstanding antidumping duty order or finding in the United States.

In the petition, Timken stressed that it had identified TSUS numbers to the best of its ability, but that it did not intend that products under other classification numbers be excluded from the scope if they fell within the description of the product in the petition. Timken argues that the language of the petition unambiguously includes Koyo's forgings, since the petition requested coverage for all unfinished TRB parts not included in the A–588–054 finding which covers TRBs four inches or less in outside diameter. Timken takes the position that the instant forgings fall under the category of unfinished parts and they should properly have been classified that way. The fact that they were not named specifically in the petition does not imply that Timken did not intend to include them. Timken states that it was impossible for it to name each item that might be considered a TRB part.

Koyo, however, claims that since the petition never mentioned forgings, they were not included. In its ruling request Koyo argues that forgings are outside the scope of the order because they are "precursor materials" that have not yet begun the manufacturing process. Koyo claims that including forgings would be tantamount to including bearing grade steel in the scope of the order.

The Department's position is that the petition clearly includes unfinished TRB parts in its scope. However, the language in the petition is ambiguous with respect to whether forgings are considered unfinished parts.

The Language of the Commerce Department's Determinations

The products covered by the preliminary and final determinations and the order as it was published in 1987 are "tapered roller bearings and parts thereof, currently classified under Tariff Schedules of the United States (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item number 661.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item number 692.32 or elsewhere in the TSUS. Products subject to the outstanding antidumping duty order covering certain tapered roller bearings from Japan (T.D. 76–227, 41 FR 34974) were not included within the scope of this investigation" (see Antidumping Duty Order: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, 52 FR 37352, October 6, 1987). At issue is whether forgings should be considered unfinished parts within the scope of the order.

Timken claims that at the time of the order Koyo's imported forgings should have properly been classified as TRB parts, and that they are clearly included within the scope of the order. Koyo argues that the language of the order unambiguously excludes forgings, since at the time of the investigation Koyo was importing forgings under TSUS 606.7340 as "non-machined steel forgings", a provision not mentioned in the order. Koyo clearly stated in each of the first three administrative reviews that it considered its imported forgings to be outside the scope of the order, and neither the Department nor the petitioner objected. Therefore, Koyo argues that forgings have been considered outside the scope since the order was published.

The Department's position is that, absent the rare case in which there is no narrative description of the subject merchandise, any TSUS or HTS numbers mentioned in the scope of an order are for reference only, and do not limit the scope in any way. The Department's position in this respect is supported by the fact that the scope description for each of the administrative reviews has contained a statement to the effect that the Customs classification numbers are provided for reference purposes only. However, the language used in the order to describe the products is ambiguous with respect to forgings, since forgings are not mentioned and there is no explicit indication of what products are included as unfinished parts. Moreover, while Koyo stated in its review responses that it did not report forgings, it is not apparent from these statements the form the imports took. As was described earlier, the term "forgings" covers a wide range of products. The question this scope inquiry poses for the Department is whether the instant forgings are advanced to the point that the Department considers them TRB parts.

The ITC's Determination

The International Trade Commission's (ITC) questionnaires in the investigation defined unfinished parts as "* * * those that have been shaped sufficiently that they may be used only in the manufacture of tapered roller bearings." (p. 5). Likewise, the ITC considered whether to treat unfinished parts as separate like products in its final determination. It rejected Koyo's request to consider each of the following groups as discrete like products:

> 1. "Precursor materials" (i.e., unfinished forged rings) and "finished bulk parts" (i.e., rollers and cages) of tapered roller bearings;
> 2. Unfinished tapered roller bearing components (i.e.—unfinished outer rings and inner rings);
> 3. Finished tapered roller bearings.

(Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers, from Japan, Inv. No. 731–TA–343 (Final), USITC Pub 2020, September 1987, p. 5). The ITC reasoned that all parts are destined to become complete, finished TRBs and that neither finished nor unfinished parts have commercial value except as components of TRBs. To the extent that the ITC considered the items in this list a single like product, this statement suggests that the ITC considered forged rings to be unfinished parts.

The ITC also states in its final determination that:

> Unfinished bearing components are the cones, cups, and rollers that have been green machined and heat treated, but that require final finishing * * * Green machining is an industry term that relates to the machining operations performed on the raw materials prior to heat treatment for cups, cones, and rollers. (p. A–8)

However, Timken points out that the ITC was discussing cups and cones made from tubing rather than forgings, and argues that the ITC's view that green machining is the first stage in the production process applies only to tubing. Timken claims that, in the bar-based manufacturing process Koyo uses, the first step in production is forging.

This is consistent with an ITC footnote (p. A–8) that the forging process is used instead of green machining, indicating that at least some of the green machining necessary on rings cut from tube steel is not necessary on forgings. Although the ITC considered green machining to be the turning point in Timken's tube-based production process, the distinction is blurred when forgings are used. Since forging can accomplish some of the same results as green machining, the ITC's description of the production process does not necessarily imply that forged rings are outside the scope of the order.

Diversified Products Analysis

While stages of production can be helpful in determining when raw material becomes an unfinished part, the descriptions of the merchandise in the petition and the Department's determinations are ambiguous with respect to the question of whether these forgings are unfinished parts. The ITC's final determination, though not perfectly clear, points toward the conclusion that forgings are within the scope of the order. However, because there is some ambiguity, the Department considered it appropriate to analyze the Diversified Products criteria. The four additional criteria the Department considered in determining if forgings are within the order are listed at 19 CFR 353.29(i)(2): (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; and (4) the channels of trade.

Physical Characteristics

Timken points out that forgings are similar in size and shape to finished cups and cones. However, Koyo argues that there are dramatic differences between forgings and finished cups and cones. Some forgings are split in two to form both the cup and the cone. In the manufacturing steps that take place during the turning process, between 24% and 30% of the steel is removed from a forging, resulting in a green machined ring with the specific dimensions and tolerance of the finished cup or cone, or inner and outer raceways.

Koyo argues further that the forged rings are most similar to steel tube rings, which undergo the same processes (green machining, heat treatment, polishing, and grinding) before becoming a finished TRB part. Koyo states that "both rings cut from tube and forged rings are intermediate donut-shaped pieces of steel that are first produced from steel bar and later further processed into parts for bearings" (Koyo's letter to the Department, November 22, 1993, p.4). Both parties agree that rings cut from tube are outside the scope of the order, as indicated by Koyo's statement to that effect on page 24 of its letter and Timken's reference to rings cut from tube as raw material (p.23).

However, Timken points out that the forgings in question are a much more processed product than rings cut from tube steel. Forged rings have the approximate shapes of the cups and cones that they will be turned into. Indeed, forging gives them much of the definition that green machining would otherwise give. As a result, the forgings are effectively dedicated to use as TRB parts. Conversely, rings cut from tube steel bear little resemblance to cups or cones. Tube rings lose 50% to 75% of the weight of the ring during green machining, and can only be considered TRB parts after this process takes place. Given the advanced shape that forging gives the components, and the consequent reduction in green machining, the green machining process does not appear determinative in this case. Rather, it is the advanced physical characteristics of the component forgings that are definitive.

The Department preliminarily determines that forged rings are more processed than rings from tube stock, and, as such, are physically distinct from rings cut from tube steel. While some final machining is necessary, the forging process used in this case effectively transforms the metal input into a product sufficiently advanced in state that it is essentially a TRB component. Consequently, an examination of physical characteristics indicates that forgings are included in the scope of the order.

Channels of Trade

The forgings at issue are either produced by Koyo or purchased from steel forgers and sold by Koyo to AKBMC, its related subsidiary. Forgings move through the same channel of trade as unfinished parts, namely, to bearings producers for incorporation into tapered roller or antifriction bearings. Therefore, the Department preliminarily determines that the channels of trade criterion indicates that forgings are within the scope of the order.

Expectations of the Ultimate Purchaser

The forgings in question are imported into the United States for use in the production of TRBs. Timken points out that these forgings have undergone initial processing which renders them dedicated to use in a limited range of part numbers. Timken notes that the bearings producers who purchase these forgings have no expected use other than the production of finished bearings. Koyo submits, however, that finding forgings to be within the scope of the order based on the expectation criterion is comparable to concluding that bearing grade steel is also within the scope, since it too is imported for use in production of TRBs and has almost no alternative uses. Koyo argues further that rings cut from tube steel, which are outside the scope, are also limited to use in a specific range of models.

The Department notes that although the expectations of the purchasers of bearing grade steel and of rings cut from tube steel are the same as those of purchasers of in-scope TRB parts, no one argues that bearing grade steel or rings cut from tube are steel are covered by the order. Moreover, bearing steel might be destined for bearing-related production but it has not been advanced to the point of dedicating it to a TRB component, finished or unfinished. By the same token, it is also possible that some rings cut from tube steel may not necessarily be intended for use in TRBs. However, the forgings in question have been advanced to the point that some use other than a TRB component is highly unlikely. Because the expectation of the parties importing the instant forgings is to make TRBs, the Department's position is that this criterion indicates that forgings are within the scope of the order.

Ultimate Use

Timken points out that forgings are more dedicated to use in TRBs than rings cut from tube steel, since these forgings more closely approximate the dimensions of the finished cup or cone and do not require as extensive a turning process as steel tube rings. Koyo contends that a ring cut from steel tube is as dedicated to use in TRBs as a forging is, because both are made from bearing grade steel, which Koyo claims is too expensive to be used for other purposes. Furthermore, Koyo argues, a steel tube ring and these forgings are equally limited in the range of bearings for which they can be used. However, Koyo uses the overwhelming portion of its imported forgings in the production of TRBs. Koyo suggests that it is possible to use some of the forgings to make both TRB and ball bearing parts (Koyo submitted an example of a ball bearing and a TRB that have inner rings made from the same forged ring), and it is theoretically possible for the manufacturer to use a forging originally intended for use in a TRB to produce a

ball bearing instead, if production needs change after importation. In practice, this possibility is seldom realized because it is not cost efficient to create a forging with multiple uses. Forgings are used to limit the amount of machining that is necessary. The very concept of forging embodies shaping a blank to the degree that it appears dedicated to one product.

The Department preliminarily determines that since the instant forgings appear dedicated to the production of TRBs, these forgings are essentially parts of TRBs. Therefore, the ultimate use criterion indicates that these forgings are within the scope of the order.

Conclusion

Based on our analysis of the comments provided by interested parties on the language of the petition and the determinations of the ITC and the Department, and on the physical characteristics, channels of trade, expectations of the ultimate purchasers, and the ultimate use of the product, in accordance with 19 CFR 353.29(i), we preliminarily determine that such forgings are the same class or kind of merchandise as unfinished TRB parts, and therefore are within the scope of the order on tapered roller bearings and parts thereof from Japan. The Department preliminarily determines these forgings to be within the scope based on the totality of the facts presented above and especially for the following reasons: (1) the ITC clearly includes precursor materials such as forgings within its definition of like product; (2) the physical characteristics, channels of trade, ultimate use of forgings, and expectations of ultimate purchasers indicate that such forgings are within the scope of the order.

We invite interested parties to comment on this preliminary determination no later than March 18, 1994. Rebuttal comments are due no later than March 25, 1994. The Department will consider such comments in reaching its final determination.

This preliminary scope ruling is in accordance with 19 CFR 353.29(d)(3).

Dated: February 18, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–4506 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

National Weather Service, Modernization Transition Committee

Time and Date: March 16, 1994 from 10 a.m.–12 noon and 1–3 p.m.; and March 17, 1994 from 10 a.m.–12 noon and 1–2:30 p.m. The Committee will tour the San Francisco WSFO before the meeting on March 16, and will tour the proposed Monterey WFO and the Naval Research Lab the morning of March 17.

Place: The meeting on March 16, 1994 will be held at the Dunfey San Mateo Hotel, 1770 S. Amphlett Boulevard, San Mateo, CA, 94402 in the Cypress room. The continuation of the meeting on March 17, 1994 will be held at the Fleet Numerical Meteorological and Oceanographic Center, Building 702, 7 Grace Hopper Avenue, Monterey, CA, 93943–5501.

Status: The meeting will be open to the public. Approximately 180 seats will be available on a first-come first-served basis for the public on March 16 and approximately 50 seats will be available on a first-come first-served basis for the March 17 portion of the meeting.

On March 16, 1994 the last hour will be set aside for oral comments from the public and on March 17, 1994, 11 am to 12 noon will be set aside for oral comments from the public. Persons wishing to speak during the public comment period must register on a sign-up sheet as they enter the meeting.

In order to conserve the time for the transaction of Committee business, these periods for oral public comment must be limited. Therefore, it may be necessary to allocate the time available for each speaker and/or limit the number of speakers. Time could be limited to 5 minutes per speaker and the number of speakers to 12 on a first-come first-serve basis. Accordingly, those wishing to comment on the proposed certification of the relocation are strongly encouraged to submit these comments in writing during the 60-day comment period following publication of the proposed certification in the **Federal Register**. It is anticipated that the proposed relocation certification will be published in the **Federal Register** shortly after the Committee completes consideration of this action. This comment period is established by section 706 of the Weather Service Modernization Act and provides the primary opportunity for such comments.

Matters to Be Considered: This meeting will include: (1) A brief on the Certification Package for the proposed relocation of the San Francisco office; (2) a presentation by Jan Null, meteorologist at WSFO San Francisco; (3) a presentation by Norman Hoffmann, Meteorologist-In-Charge of WSFO San Francisco; and (4) a briefing by Chet Hendrickson on a previous office move.

Contact Person for More Information: Mr. Senator Raygor, National Weather Service, Wx211, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910, telephone: (301) 713–0391.

Dated: February 22, 1994.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 94–4403 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 021094C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Receipt of Two Applications (P561 and P770#66) for Scientific Research Permits and Two Applications for Modifications to Scientific Research Permit 818 (P211C).

Notice is hereby given that the U.S. Department of Agriculture (USDA), Washington State Office (P561) and the NMFS Northwest Fisheries Science Center (P770#66) have applied in due form for permits, and the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for two modifications to Permit 818 (211C), to take listed species of Snake River salmon, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The USDA, Washington State Office requests authorization to take listed juvenile Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) in research activities to determine the presence or absence of those species in various backwater side channels and farm ponds associated with the Tucannon River and Asotin Creek. The purpose of the research is to prepare for habitat restoration in those streams, in coordination with local landowners, state agencies, the Bonneville Power Administration, and affected tribes. The applicant requests this authorization for a duration of two years.

The NMFS Northwest Fisheries Science Center requests authorization to conduct eight scientific research studies involving the take of listed juvenile Snake River spring/summer and fall chinook salmon and juvenile Snake

River sockeye salmon (*O. nerka*). The applicant requests this authorization for a duration of one to five years for the different studies.

ODFW requests two modifications to their scientific research Permit 818. The first request is for authorization to install trap boxes on eight diversion screens to enable the collection of information on species composition and migration timing of listed Snake River spring/summer chinook salmon. In addition, these traps would allow the movement of trapped fish to available water when the water supply in the irrigation stream channels is insufficient. The second request is for authorization to take scale samples from adult and juvenile Snake River spring/summer chinook salmon. The applicant requests authorization for both modifications for the duration of the permit, through December 31, 1996.

Written data or views, or requests for a public hearing on an application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above applications are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: February 15, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–4501 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 020994C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit no. 888 (P559).

SUMMARY: Notice is hereby given that Mr. Hiroyuki Suganuma, Ogasawara Marine Center, Byobudani, Chichijima Ogasawara-mura, Tokyo, 100–21, Japan, has been issued a permit to take humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: On January 4, 1994, notice was published in the **Federal Register** (59 FR 296) that a request for a scientific research permit to take humpback whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act.

Dated: February 18, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–4445 Filed 2–25–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Ad Hoc Study Panel on USAF Space Launch Capabilities of the USAF Scientific Advisory Board will meet on 22–23 March 1994 at Edwards AFB, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings for the SAB Ad Hoc Study on Assessment of USAF Space Launch Capabilities.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–4498 Filed 2–25–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Software Test and Evaluation Panel will meet from 8 a.m. to 5 p.m. on 12–13 Apr 1994 at AFOTEC, Kirtland AFB, NM.

The purpose of these meetings is to receive briefings and to have discussions concerning software test and evaluation. These meetings will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–4499 Filed 2–25–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) General Spring Board Meeting from 8 a.m. to 5 p.m. on 20–21 Apr 1994, at Scott AFB, IL.

The purpose of this meeting is to receive briefings and to have discussions concerning Air Mobility Command and USAF Scientific Advisory Board matters. This meeting will be closed to the public in accordance with section 552b of title 5,

United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–4500 Filed 2–25–94; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Urban Energy and Transportation Corporation

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(A) to Urban Energy and Transportation Corporation (UETC) under Cooperative Agreement Number DE–FC01–94EW54065. Estimated total funding in the amount of $15,000,000 will be provided to obtain local officials' participation and expertise in transportation activities including collection and dissemination of information, conducting regional and national workshops, providing technical assistance, and identification and analyses of issues related to transportation of hazardous materials through large urban areas. This activity will promote better understanding of local views concerning clean-up technologies, emergency management and training issues, and transportation operations and outreach. As a result, this will enable DOE to develop programs that will better meet those local needs.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(A) that UETC will provide continued activity which is necessary to the satisfactory completion of an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

The proposed effort is to establish and maintain networks of senior decision-makers from local communities who are responsible for or concerned about technology development, transportation, and emergency issues associated with energy-related facilities.

UETC has a vast array of techniques to accomplish the objectives of the proposed project, including professional techniques in structured meeting design and facilitation, information dissemination through printed products such as newsletters and electronic media, opinion surveys, planning and program evaluation, and public and institutional involvement.

The anticipated period of performance is 60 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Phyllis Morgan, HR–531.22, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94–4478 Filed 2–25–94; 8:45 am]

BILLING CODE 6450–01–M

Availability of a Study on the Safety of Shipments of Plutonium by Sea

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy, in conjunction with other Federal agencies, has completed a study and submitted it to Congress on February 8, 1994, on the Safety of Shipments of Plutonium by Sea. The study was conducted under the authority vested in the President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and section 2904 of the Energy Policy Act of 1992, Public Law 102–486. By memorandum dated January 7, 1993, the President authorized the Secretary of Energy, in consultation with the Nuclear Regulatory Commission and with the concurrence of the Secretary of State, the Secretary of Defense, the Secretary of Transportation, the Chairman of the Joint Chiefs of Staff, the Administrator of the Environmental Protection Agency, the Director of the Federal Emergency Management Agency, and the Commandant of the United States Coast Guard to proceed with the study.

ADDRESSES: The study is available at the Public Reading Room (Room 1E–190), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Monday-Friday, 9 a.m.-4 p.m. EST, excluding Federal holidays.

Copies of the study have also been placed in the following reading rooms: U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612; U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030; U.S. Department of Energy, Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, FL 34640; U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, P.O. Box 1625, Idaho Falls, ID 83402; U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439; U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent Public Library, 11140 Locust Street, Kansas City, MO 64137; U.S. Department of Energy, Albuquerque Operations Office, Public Reading Room, National Atomic Museum, 20358 Wyoming Street, S.E., Kirtland Air Force Base, P.O. Box 5400, Albuquerque, NM 87185; U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, NV 89109; U.S. Department of Energy, Public Reading Room, Miamisburg Library, 35 South Fifth Street, Miamisburg, OH 45342; U.S. Department of Energy, Public Reading Room, University of South Carolina, Aiken Campus Writing Center, 171 University Parkway, Aiken, SC 29801; U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Officer, 200 Administration Road, RM G–209, P.O. Box 2001, Oak Ridge, TN 37831; U.S. Department of Energy, Reading Room, Lynn Library—Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, TX 79109; U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, Room 157, P.O. Box 1970, Mail Stop A1–65, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Lillian, Deputy Director, Office of Transportation, Emergency Management, and Analytical Services (EM–26), U.S. Department of Energy, Washington, DC 20585, at 301–903–7270.

SUPPLEMENTARY INFORMATION: The subject study represents a review and evaluation of readily available pertinent technical reports which were discussed among the participating agencies during the course of the preparation of the study from October to December 1992. After reviewing the hazards posed by plutonium, applicable transportation safety and physical protection regulations, pertinent research and experience, and contingency plans, the agencies participating in this study conclude that plutonium can be shipped safely by sea.

Public Law 102–486 also requires the preparation and submittal to Congress of an Implementation Plan that describes the plan for implementing the recommendations contained in the study. The Implementation Plan must be submitted to Congress and made available for public viewing 90 days after issuance of the study. Subsequent to enactment of the legislation calling for this study and Implementation Plan, and subsequent to preparation of the study, several individual members of Congress have raised additional concerns relating to the shipment of radioactive materials by sea. These concerns include the safety of shipment of other material proposed to be shipped (e.g., glassified high-level nuclear waste and mixed oxide fuel), as well as the need to evaluate risk assessment elements. These elements are shipping routes, adequacy of the revised International Maritime Organization code for radioactive shipments, the consequences and probability of the "maximum credible accident" in shipping by sea, and the examination of threats of sabotage and terrorism. The participating Federal agencies will address these additional concerns in the Implementation Plan to the extent that they relate to the recommendations in the study. Where certain issues raised do not fall within the framework of the study and Implementation Plan, the agencies will ensure that they are addressed through direct communication with the members of Congress who raised them.

Issued in Washington, DC, on February 18, 1994.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Principal Deputy Assistant Secretary for Environmental Management.

[FR Doc. 94–4342 Filed 2–25–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL94–24–000, et al.]

Consumer Advocate Division of the Public Service Commission of West Virginia, et al.; Electric Rate and Corporate Regulation Filings

February 18, 1994.

Take notice that the following filings have been made with the Commission.

1. Consumer Advocate Division of the Public Service Commission of West Virginia, Maryland People's Counsel and Pennsylvania Office of Consumer Advocate v. Allegheny Generating Company

[Docket No. EL94–24–000]

Take notice that on January 31, 1994, the Consumer Advocate Division of the Public Service Commission of West Virginia (hereinafter, "WV Consumer Advocate"), the Maryland People's Counsel (hereinafter "People's Counsel") and the Pennsylvania Office of Consumer Advocate (hereinafter "POCA") submitted their joint complaint against Allegheny Generating Company (AGC). In their complaint WV Consumer Advocate, People's Counsel, and POCA request that the Commission (1) join this complaint with other proceedings filed concerning AGC's return on equity; (2) adjust AGC's allowed rate of return on equity to no more than 8.53%, effective on and after April 1, 1994; and (3) establish a refund effective date no later than 60 days after the filing of this complaint, or April 1, 1994, and that this complaint be set for hearing at the earliest date.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Seminole Electric Cooperative, Inc. v. Florida Power & Light Company

[Docket No. EL94–28–000]

Take notice that on February 4, 1994, Seminole Electric Cooperative, Inc. (Seminole) tendered for filing a complaint and motion to consolidated against Florida Power & Light Company (FPL).

In its complaint Seminole seeks an order from the Commission to: (1) Find the rate currently charged by FPL for partial requirements services under the Aggregated Billing Partial Service Agreement between FPL and Seminole, designated as FERC Rate Schedule 77, and for full requirements services under the Agreement for Full Requirements Electric Service Cooperative, Inc., are unjust and reasonable, produce excessive revenues from Seminole, and should be reduced consistent herewith; (2) establish a refund-effective date 60 days after the date of filing this complaint; (3) set this matter for hearing; (4) order consolidation of the consideration of the matters raised by this complaint with the ongoing proceedings in Docket Nos. ER93–465–000; and (5) afford Seminole such other relief as may be deemed appropriate.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Public Service Company

[Docket No. EL94–31–000]

Take notice that on February 4, 1994, Southwestern Public Service Company (SPS) tendered for filing a statement as to the Absence of Need for Waiver of Fuel Adjustment Clause Regulations or Alternative Request for Waiver. SPS states that it will illustrate why a waiver of the Commission's fuel adjustment clause (FAC) regulations was unnecessary for SPS to properly include certain costs in the computation of its fuel costs for wholesale FAC billings.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER93–985–000]

Take notice that on February 10, 1994, twenty-nine participants in the New England Power Pool (the Filing Participants) submitted additional information concerning the Thirtieth Amendment to the New England Power Pool (NEPOOL) Agreement (the Amendment), which had been filed with the Commission on September 29, 1993. This submittal responds to the Commission's letter dated January 14, 1994, in the captioned docket requesting additional information concerning the Amendment. In the submittal, the Filing Participants also renew their request that the Commission permit the Amendment to become effective as of September 30, 1993.

The Filing Participants state that this submittal were served upon all of the NEPOOL Participants, persons who have requested intervention in the proceeding, and the electric utility regulators in the six states in which the NEPOOL Participants are located and provide retail service.

Comment date: March 7, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 94–4471 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–327–000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 22, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corp.

[Docket No. ER94–327–000]

Take notice that on February 14, 1994, Wisconsin Public Service Corporation (the Company) of Green Bay, Wisconsin, filed a proposed Supplement No. 4 to Supplement No. 9 to the Company's Service Agreement with WPPI which relates to WPPI peak shaving for the period January 1, 1996 through October 15, 1997.

WPPI is the only customer currently peak shaving under the Company's W–1 full requirements tariff. WPPI supports the filing and the proposed effective date of January 1, 1996.

The filing does not change the level of the Company's rates. The Company states that it has furnished copies of the filing to WPPI, its other customers who are served under the full requirements tariff, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corp.

[Docket No. ER94–961–000]

Take notice that the Notice of Filing issued in the above-referenced docket on February 15, 1994 is rescinded.

3. Florida Power Corp.

[Docket No. ER94–961–000]

Take notice that Florida Power Corporation ("Florida Power") on February 8, 1994 tendered for filing a wholesale change in its full requirements, partial requirements and transmission rates.

The rates filed herein reflect a pre-filing settlement agreement between the Company and its wholesale customers that have participated in the Company's recent wholesale rate proceedings. Under that agreement, the rates for all classes of service except transmission service on a 1994 test year basis will increase on March 2, 1994, in the amount of (i) $9.9 million as compared to the 1993 settlement rates pending for approval by the Commission in Docket No. ER93–299–000, or (ii) $7.6 million as compared to the existing rates to be replaced by those 1993 settlement rates. The rates for transmission service on a 1994 test year basis will decrease on March 2, 1994, in the amount of (i) $1.1 millon as compared to the 1993 settlement rates pending for approval or (ii) $1.8 million as compared to the existing rates to be replaced by those 1993 settlement rates. The rates for transmission service on a 1994 test year basis will subsequently increase on May 1, 1994, in an amount of $1.0 million as compared with the March 2, 1994 level rates. The settlement rates are extended to all wholesale customers not participating in the pre-filing settlement agreement.

Florida Power requests that the Commission waive the 60 day minimum notice requirement of the Federal Power Act to achieve the March 2, 1994 effective date for the rate changes proposed for that date for (1) the parties to the pre-filing settlement agreement, (2) customers not parties to the pre-filing settlement agreement but consenting to the pre-filing settlement procedures and (3) any other customers who do not oppose the March 2, 1994 requested effective date. Florida Power further requests that the Commission establish an effective date of April 9, 1994, 60 days from the date of the filing, for any customers who oppose the March 2, 1994 effective date. The Company further requests that the rate increases proposed for March 2, 1994, April 9, 1994, if applicable, and May 1, 1994 be permitted to become effective without suspension or, if suspended, that the suspension be for the minimum one day period.

Florida Power states that it has served copies of its filing on the affected customers and the Florida Public Service Commission.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Atlantic City Electric Co.

[Docket No. ER94–970–000]

Take notice that on February 14, 1994, Atlantic City Electric Company (ACE) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between ACE and Delmarva Power & Light Company (DPL) dated February 2, 1994.

ACE states that the Agreement sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to DPL. ACE requests that the Commission waive its standard notice period and allow this Agreement to become effective on February 14, 1994.

ACE states that a copy of this filing has been sent to DPL and will be furnished to the New Jersey Board of Regulatory Commissioners, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Co.

[Docket No. ER94–972–000]

Take notice that on February 15, 1994, Central Maine Power Company (CMP), tendered for filing a proposed Power Sales Tariff revision to expand the available market for transactions under the Tariff.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. West Penn Power Co.

[Docket No. ER94–973–000]

Take notice that on February 15, 1994, West Penn Power Company, tendered for filing Addenda adding new delivery points for borderline service provided to Pennsylvania Power & Light Company in accordance with FERC Electric Tariff, First Revised Volume No. 1.

Copies of the filing were served upon the jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: March 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER94–975–000]

Take notice that on February 16, 1994, New England Power Company (NEP), tendered fourteen agreements with the Massachusetts Bay Transportation Authority. One agreement concerns the installation and maintenance of metering equipment. The other thirteen agreements are long-term service agreements under NEP's FERC Electric Tariff, Original Volume No. 8.

Comment date: March 7, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 94–4469 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–211–000, et al.]

Transwestern Pipeline Co., et al.; Natural Gas Certificate Filings

February 18, 1994.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Co.

[Docket No. CP94–211–000]

Take notice that on February 2, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–211–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for permission and approval to abandon by sale to Enron Oil & Gas Company (Enron) a certain small diameter pipeline, a meter station and related facilities located in Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that by the terms of a Purchase and Sale Agreement dated November 1, 1993, it has agreed to sell to Mewbourne, at the net book value of $75,000, the Vaca lateral, which includes approximately 0.71 miles of 4-inch pipeline, one meter station, and related facilities attached to Transwestern's 24-inch West Texas lateral in Lea County, New Mexico. Transwestern submits that no removal or modification to its pipeline facilities will occur as a result of the abandonment and that the facilities to be sold to Enron will be used as part of Enron's existing gathering systems.

Comment date: March 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Transwestern Pipeline Co.

[Docket No. CP94–213–000]

Take notice that on February 3, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–213–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for permission and approval to abandon by sale to Mewbourne Oil Company (Mewbourne) certain small diameter pipelines, meter stations and related facilities located in Lipscomb County, Texas and Ellis County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that by the terms of two Purchase and Sale Agreements dated January 27, 1994, it has agreed to sell to Mewbourne, at the net book value of $252,950:

1. Approximately five miles of 4- and 6-inch pipelines, two meter stations, and related facilities attached to Transwestern's 12-inch Leedy lateral in Ellis County, Oklahoma, and

2. Approximately six miles of 4-inch pipelines, six meter stations, and related facilities located off the east end of Transwestern's Mammoth Creek lateral in Lipscomb County, Texas.

Transwestern submits that no removal or modification to its pipeline facilities will occur as a result of the abandonment and that the facilities to be sold to Mewbourne will be used as part of Mewbourne's existing gathering systems.

Comment date: March 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Co.

[Docket No. CP94–224–000]

Take notice that on February 9, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000 filed an application pursuant to sections 7 (b) and (c) of the Natural Gas Act for: (a) A certificate of public convenience and necessity authorizing the construction and operation of approximately 11.95 miles of various size mainline and branchline looping pipeline; and (b) permission and approval to abandon and a certificate of public convenience and necessity for certain facilities for the modification of nine town border stations (TBS) in the State of Minnesota in order to expand pipeline capacity to provide incremental firm transportation service to Minnegasco, a Division of Arkla, Inc. (Minnegasco) and Great Plains Natural Gas Company (Great Plains), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northern proposes to construct the following facilities in order to provide firm transportation service Minnegasco and Great Plains.

(1) Approximately 2.82 miles of 30-inch pipeline at the end of the existing D-Line in a northerly direction parallel to Northern's existing mainline in Steele County, Minnesota. A tie-in to the B and C-Lines would be made at the end of the D-Line extension and the existing D to C regulator setting would be moved to the new tie-over point;

(2) Approximately 1.28 miles of 30-inch pipeline as an extension of Northern's C-Line parallel to Northern's existing mainline and ending with a tap on the B-Line in Washington County, Minnesota;

(3) Approximately 7.85 miles of 8-inch pipeline loop on the Alexandria Branchline in a westerly direction in Morrison County, Minnesota to accommodate a portion of the increased requirements for Minnegasco;

Northern proposes to modify the Clarkfield No. 1 TBS serving Great Plains and 8 TBS' serving Minnegasco as follows:

(1) Install one 3-inch rotary meter run and modify meter piping on Clarkfield No. 1;

(2) Install one 3-inch rotary meter run, modify meter piping, remove 1-inch regulators and install two 2-inch regulators on St. Michael No. 1;

(3) Remove existing meters and install one 3-inch rotary meter run and one 6-inch turbine meter run at Glenwood No. 1;

(4) Remove existing meter, install two 3-inch rotary meters and modify meter piping at St. Bonifacius No. 1;

(5) Remove existing meter and install diaphragm meter at Waconia No. 1B;

(6) Remove existing regulators and install two 2-inch regulators at Waconia No. 1;

(7) Remove existing meters and install one 3-inch and one 4-inch rotary meters at Prior Lake No. 1A;

(8) Replace existing regulators with two 1-inch regulators and modify piping under relief valve at Prior Lake No. 1;

(9) Replace existing regulator valve trim at Mound No. 1.

Northern estimates the cost of these facilities to be $6,065,000 which would be financed with internally generated funds.

Northern proposes to construct the facilities to provide additional capacity on Northern's mainline north between its Owatonna Compressor Station (Owatonna) in Steele County, Minnesota and its North Branch Compressor Station in Chicago County, Minnesota to serve additional market requirements of 19,788 Mcf of natural gas per day requested by Minnegasco and Great Plains during a thirty day open season from November 10, 1993 to December 9, 1993. Northern states that the Alexandria Branchline loop is required to meet Minnegasco's increased requirements served from the branchline. Northern states that the mainline facilities would increase the capacity of the mainline north of Owatonna by 19,288 Mcf of natural gas per day and is required for the 1994–95 heating season. The balance would be transported through existing capacity, it is indicated.

Northern states that Northern has entered into precedent agreements for firm transportation service for the five winter months of November through March with Minnegasco for 18,788 Mcf of natural gas per day and Great Plains for 1,000 Mcf of natural gas per day. Northern states that Northern would provide the firm transportation service for Minnegasco and Great Plains pursuant to Northern's currently effective Rate Schedule TFX for a primary term of ten years.

Comment date: March 11, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Co.

[Docket No. CP94–226–000]

Take notice that on February 14, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–226–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue the operation of an existing delivery point, installed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) in Lea County, New Mexico, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso, it is said, installed the Cabot Hobbs Meter Station under Section 311(a) of the NGPA and has exclusively used it for the transportation and delivery of natural gas under Part 284, Subpart B. El Paso states that the regulatory restriction placed on the operation of a facility installed under Section 311(a) of the NGPA prohibits El Paso's shippers from utilizing this delivery point under any transportation arrangement other than a Subpart B transportation arrangement.

El Paso states further that it now requests authorization to continue the operation of the facility under the Natural Gas Act.

Comment date: April 4, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corp.

[Docket No. CP94–229–000]

Take notice that on February 14, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–229–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by sale its transmission Line L–2103, together with its rights-of-way and appurtenances, to Ohio Cumberland Gas Company. In connection to the sale, Columbia also requests authorization to abandon 45 points of delivery to Columbia Gas of Ohio, Inc. for service to mainline tap customers, whose service will be continued by Ohio Cumberland, under the authorization issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that the facilities proposed for abandonment were utilized to move gas to and from Knox Storage Field until the abandonment of Knox. It is stated that the line was then transferred to transmission plant and is currently used to provide service to mainline customers of Columbia Gas of Ohio, Inc. Columbia states that the proposed abandonment will not result in any loss or change of service to existing Columbia customers.

Comment date: April 4, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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 the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4470 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–233–000]

Chandeleur Pipe Line Co.; Application

February 22, 1994.

Take notice that on February 14, 1994, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 740339, New

Orleans, LA 70174, filed in Docket No. CP94–233–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increase of maximum operating pressures and total system maximum capacity of its pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chandeleur states that it consists of a 79.9 mile 12-inch mainline, a parallel 82.3 mile 16-inch mainline (which loops the 12-inch line) and an 11.3 mile 12-inch lateral gas supply pipeline. The maximum operating pressure of the 12-inch mainline is 1100 psig. The maximum operating pressure of the 16-inch mainline 1000 psig. The maximum operating pressure of the 12-inch lateral is 1318 psig. The current authorized system capacity is 205,000 Mcf per day, with maximum capacity of 240,000 Mcf per day.

Specifically, Chandeleur requests authorization to increase the maximum operating pressures of both its 12-inch and 16-inch mainlines to 1200 psig. Chandeleur states that it has recently completed a new interconnection with Texas Eastern Transmission Corporation's ("TETCO") 24-inch mainline in offshore Louisiana in OCS Breton Sound Block 42 for the purpose of allowing Chandeleur's shippers to transport gas into TETCO's system, thereby increasing the shippers' delivery options. Chandeleur states that TETCO's maximum operating pressure is 1200 psig. To allow delivery of natural gas from Chandeleur into TETCO's 24-inch mainline when TETCO is operating at maximum pressure, Chandeleur states that its maximum operating pressure must match TETCO's and therefore must be increased to 1200 psig.

Chandeleur states that the requested increase in pressure to 1200 psig is within maximum allowable operating pressures for Chandeleur's pipeline as established by the Department of Transportation.

Chandeleur states that the requested increase in operating pressure and maximum capacity will allow its current and future shippers to increase the amount of gas they can transport to existing markets and to new markets which are not now economically accessible through Chandeleur.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 3, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Chandeleur to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4416 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG91–7–000]

Ozark Gas Transmission System; Filing

February 22, 1994.

Take notice that on August 2, 1991, Ozark Gas Transmission System (Ozark) made a filing, under protest, in the above-captioned docket concerning its compliance with Order Nos. 497 et al.[1] On December 23, 1993, in Order No. 497–E, the Commission confirmed that Ozark is subject to Order Nos. 497 et al. This notice of Ozark's prior compliance filing is being issued in accord with Order No. 497–E.

Ozark states that copies of this filing were served upon all parties on the official service list complied by the Secretary of the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 9, 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. 94–4417 Filed 2–25–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988), order on reh'g, Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989), order extending sunset date, Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990), order extending sunset date and amending final rule, Order No. 497–C, 57 FR 9 (Jan. 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), reh'g denied, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (1992), aff'd in part and remanded in part, Tenneco Gas v. *FERC, 969 F.2d 1187 (DC Cir. 1992); Order No. 497–D, (order on remand and extending sunset date), 57 FR 58,978 (December 4, 1992), III FERC Stat. and Reg. ¶ 30,958 (1992); Order No. 497-E, Order on rehearing and extending sunset date), 59 FR 243 (January 4, 1994), III FERC Stat. and Reg. ¶ 30,987 (December 23, 1993).*

Office of Energy Efficiency and Renewable Energy

Integrated Resource Planning Impact on Utility Systems and Consumers

AGENCY: Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The U.S. Department of Energy's (DOE) Integrated Resource Planning (IRP) Program is interested in soliciting the opinions of electric and gas utilities and their trade associations, electricity and gas consumer associations, State regulatory commissions and energy offices, consumer and other public interest groups, and universities, research and consulting firms concerning the likely effects of IRP on utility systems, consumers and small businesses. Responses to this request will assist the DOE in satisfying both its near-term and

longer-term IRP evaluation responsibilities.

DATES: Written comments must be submitted by April 1, 1994 to ensure their consideration.

ADDRESSES: Send comments to Andrew Krantz, Integrated Resource Planning Program, Office of Utility Technologies, U.S. Department of Energy, Forrestal Building, EE–10, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Andrew Krantz of the U.S. Department of Energy at the above address.

SUPPLEMENTARY INFORMATION:

I. EPAct's IRP Reporting Requirements of DOE

The Energy Policy Act of 1992 (EPAct) contains several requirements of DOE to report to the President and Congress on the status and likely impacts of electric and gas IRP development across the nation. These IRP-related reporting requirements can be found in EPAct, Title I—Energy Efficiency, Subtitle B—Utilities, Sections 111(e) and 115(e). The purpose of this notice is to obtain information relevant to the IRP evaluation and small business impact reporting requirements by soliciting the opinions of IRP stakeholders concerning the impact of IRP on electricity costs to consumers, reliability of electric service, dependence on particular energy sources, and small businesses engaged in providing energy services. In the near-term, DOE must satisfy these EPAct requirements which call for DOE to prepare this report to the President and Congress within two years of EPAct's enactment. The report must contain, among other IRP-related items, an evaluation which determines:

- Whether and to what extent IRP (electric only) is likely to result in—

a. Higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

b. Enhanced or reduced reliability of electric service; and

c. Increased or decreased dependence on particular energy resources; as well as

- The competitive impact of implementation of energy conservation, energy efficiency, and other DSM programs by utilities (electric and gas) on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other DSM measures; and whether any unfair, deceptive, or predatory acts exist, or are likely to exist, from implementation of such programs.

The DOE IRP Program will also use responses to this request for providing insight into the direction of the Program's longer-term research agenda related to assessing the national impacts of IRP. Responses to this request will be analyzed and reported by the staff of DOE's Integrated Resource Planning (IRP) Program, which is under the auspices of the Office of Utility Technologies which is under the Office of the Assistant Secretary for Energy Efficiency and Renewable Energy. This summary will characterize what various groups believe to be the likely impacts of electric IRP on the nation.

II. Purpose of Request

The overall legislative intent of Subsection 111 of EPAct is to promote energy efficiency, in particular by encouraging utilities and States to adopt the planning principles of IRP. The legislative intent of the requirements to report the impact of IRP on electricity costs to consumers, reliability of electric service, and dependence on particular energy resources is to assess the likely results of IRP implementation against the intended purpose and goals of EPAct's IRP-related provisions. It is also the intent of the provision to determine the competitive impacts of the energy conservation, energy efficiency, and other demand-side management programs of electric and gas utilities on small businesses to ensure that State regulatory commissions are considering the impact which expanded DSM programs may have on small businesses already engaged in similar activities, and are implementing measures to assure that utility actions will not provide utilities with an unfair competitive advantage over such small businesses.

The DOE's IRP Program is responsible for this report. The program views the Federal role in IRP development as a collector of important data, a conduit of the lessons learned by experienced IRP practitioners to new IRP adopters, a developer of new tools and data bases and monitorer of the outcomes of IRP processes around the country. Among the priorities in this effort is the fulfillment of these EPAct reporting requirements concerning the likely impacts of IRP on the nation.

Submitting this report to the President and Congress will be a component of a continuing effort by DOE's IRP Program to monitor and evaluate the impact of IRP on the nation's States, utilities and consumers. The IRP Program views as part of its role to think critically about IRP and its expected benefits. Because DOE implements national energy policies that emphasize IRP as a potential solution to some of the problems affecting the nation's utility energy services, an assessment as to whether and to what extent IRP is providing overall benefit to the nation, as it is practiced, is a necessary and important DOE responsibility.

III. Definitions of IRP

To ensure that all respondents to this notice have a common understanding of DOE's perspective on the role of IRP in utility planning, DOE offers the following to define IRP's scope and parameters and to describe the characteristics which distinguish IRP from traditional planning approaches.

Traditional planning techniques used by utilities once focus only on investing in supply-side resources to satisfy customers' needs. A distinguishing factor of the IRP process is that it includes both supply- and demand-side resources in meeting demands for utility energy services. According to Section 111 of EPAct, IRP for electric utility service is:

> A planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its customers at the lowest system cost.

In addition to promoting a mix of alternative resources, IRP infuses the interests of all stakeholders: Utilities, ratepayers, regulators, stockholders, and interest groups. The following explanation of IRP, also taken from EPAct Section 111, reflects the idea that IRP is a process that evaluates the issues raised by different stakeholders.

> The Process [will] take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; [will] take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; [and will] treat demand and supply resources on a consistent and integrated basis.

The DOE approach to IRP for utility and State energy planning is to treat all options—supply, storage, delivery, and demand-side—on a consistent basis using a systems approach without preconceptions or bias for or against any particular option, fuel type, or form of ownership. The following characteristics distinguish IRP from traditional planning techniques.

1. IRP examines the full range of energy and capacity resources including demand-side management programs, transmission and distribution systems, and non-traditional supply alternatives.

2. IRP gives consideration to the full range of economic, environmental, social, and technological factors.

3. IRP facilitates public involvement in utility planning.

4. IRP facilitates consideration of the risks and uncertainties posed by different resource portfolios and by external factors such as fluctuations in energy prices and economic conditions.

IV. Nature of Information Sought

DOE urges those interested in responding to this notice to consider the provided definition of IRP and its characteristics and to consider the following list of questions. DOE is also interested in gauging the evolution of IRP practices around the nation, particularly as those practices apply to the significant changes that are likely to occur in the utility services industry over the next several years. Therefore, DOE urges respondents to also consider each of the following questions and explain how they might answer those questions five years from now. Respondents are asked to please include their underlying assumptions which accompany their opinions on the future status and likely impact of IRP. This information will enhance DOE's ability to accurately interpret the response and compare it to the opinions of other respondents.

- Has the implementation of IRP changed (or is likely to change) the per unit cost as well as the total bill for electricity for consumers from pre-IRP levels? How, if at all, have different consumer classes or groups experienced (or are likely to experience) changes in the cost of their electric service as a result of IRP? Are these changes good or bad and why? What characteristics of IRP are most responsible for the changes in electricity costs which you have cited for the previous questions? What studies, reports, or other information underlie your comments?
- Has the implementation of IRP enhanced or reduced (or is likely to enhance or reduce) the overall reliability of electric service to customers? What, if any, are the IRP characteristics most responsible (or likely to be most responsible) for a change in the level of electric service reliability since IRP has been implemented? What studies, reports, or other information underlie your comments?
- (Regarding the electric utility or utilities of most immediate concern to you), has the implementation of IRP increased or decreased (or is likely to increase or decrease) a dependence on particular energy resources? How has the implementation of IRP affected (or is likely to affect) the portfolio of resources serving your state (or your service territory)? What characteristics of IRP are most responsible for any changes in such a resource portfolio and why? What studies, reports, or other information underlie your comments?
- What has been (or is likely to be) the competitive impact of utility (electric or gas) energy conservation, energy efficiency, or other demand-side management programs on small businesses providing energy services in your State (or service territory)? What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on competition within: wholesale markets, retail markets, fuel sources, and technologies? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- [For utilities only] To what extent have IRP principles been incorporated into your business planning practice? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on the regulatory process and proceedings? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on the level of public involvement with utility planning? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP had (or is likely to have) an effect on the environmental performance of the utility(s)? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- Has IRP affected (or is likely to affect) the way in which risk and uncertainty is treated in your business and/or regulatory planning process? If so, how? Please explain. What studies, reports, or other information underlie your comments?
- On net, has IRP been (or is likely to be) a positive or negative force? Please explain. What studies, reports, or other information underlie your comments?

V. DOE Plans for EPAct Report and Future IRP Evaluation Efforts

The staff of DOE's IRP Program will tabulate and summarize public comments received by the due date of April 1, 1994. Depending on the number of responses, the report to the President and Congress will identify areas of agreement and disagreement among respondents by type of stakeholder group (utilities, States, interest groups), and regions of the country, and other key segmentation variables as appropriate.

Issued in Washington, DC, on February 14, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–4477 Filed 2–25–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. FE C&E 94–1—Certification Notice—128]

Blackfoot Cogeneration Partners; Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Cogen Power, Inc. on behalf of itself and Blackfoot Cogeneration Partners, has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in acccordance with section 201(d).

Owner & Operator: Blackfoot Cogeneration Partners.

Location: Blackfoot, Idaho.

Plant Configuration: Topping cycle cogeneration.

Capacity: 8.5 megawatts.
Fuel: Natural gas.
Purchasing Utilities: Idaho Power Company.
Expected In-Service Date: January 1, 1997.

Issued in Washington, DC, February 22, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–4476 Filed 2–25–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62137; FRL–4758–4]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability of new edition.

SUMMARY: Effective February 28, 1994, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The February 28, 1994, directory, which supersedes the version released on November 30, 1993, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA - NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, Maryland 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan 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, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: February 3, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–4049 Filed 2–25–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Gen Docket No. 90–7; DA 94–131]

Private Land Mobile Radio Services; Washington, DC Metropolitan Area Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for the Washington, DC Metropolitan Area (Region 20). As a result of accepting the amendment for the Plan for Region 20, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 7, 1994
Released: February 17, 1994

By the Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Washington, DC Metropolitan Area (Region 20) Public Safety Plan (Plan) on March 26, 1990, 55 FR 13319 (April 10, 1990).

2. By letter dated November 24, 1993, the Region proposed to amend its Plan. The proposed amendment would give the Regional Plan Review Committee authority to reallocate its 13 intraregional interoperability channels, except channel 792, to general pool assignment. The Commission placed the letter on Public Notice for comments due on January 18, 1994, 58 FR 65712 (December 16, 1993). The Commission received one comment from County of Prince William urging the Commission to grant the proposed amendment.

3. We have reviewed the proposed amendment to the Region 20 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the region.

4. Accordingly, *It is ordered,* That the Public Safety Radio Plan for the Washington, DC Metropolitan Area (Region 20) is amended, as set forth in the Region's letter of November 24, 1993. This amendment is effective immediately.

Federal Communications Commission.

Edward R. Jacobs,

Deputy Chief, Land Mobile and Microwave Division.

[FR Doc. 94–4406 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–80; DA 94–132]

Private Land Mobile Radio Services; Hawaii Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Deputy Chief, Land Mobile and Microwave Division and the

Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Hawaii (Region 11). As a result of accepting the amendment for the Plan for Region 11, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 7, 1994;
Released: February 17, 1994.

By the Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Hawaii (Region 11) Public Safety Plan (Plan) on June 2, 1993, 58 FR 34049 (June 23, 1993).

2. By letter dated November 18, 1993, the Region proposed to amend its Plan. The proposed amendment would revise the current channel allotments. The Commission placed the letter on public notice for comments due on January 18, 1994, 58 FR 65712 (December 16, 1993), and received no comments.

3. We have reviewed the proposed amendment to the Region 11 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, it is ordered, That the Public Safety Radio Plan for Hawaii (Region 11) is amended, as set forth in the Region's letter of November 18, 1993. This Amendment is effective immediately.

Federal Communications Commission.

Edward R. Jacobs,

Deputy Chief, Land Mobile and Microwave Division.

[FR Doc. 94–4405 Filed 2–25–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–03]

Dorland Management, Inc. v. Nedlloyd Lijnen B.V. D/B/A Nedlloyd Lines; Filing of Complaint and Assignment

Notice is given that a complaint filed by Dorland Management, Inc. ("Complainant") against Nedlloyd Lijnen B.V. d/b/a Nedlloyd Lines ("Respondent") was served February 22, 1994. Complainant alleges that Respondent has violated sections 8(c), 10(b)(3), 10(b)(5) and 10(b)(12) of the Shipping Act of 1984, 46 U.S.C. app. 1707(c) and 1709(b)(3), (5) and (12), by refusing to make available, to complainant, the essential terms of a service contract published by Respondent.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, small commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 22, 1995, and the final decision of the Commission shall be issued by June 22, 1995.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–4410 Filed 2–25–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request to approve interview forms for A Descriptive Study of the Head Start Health Component. This study is sponsored by the Administration on Children, Youth and Families of the Administrator for Children and Families (ACYF).

The Administration for Children and Families is requesting any comments by March 25, 1994 in order to have the interviews forms completed during April and May of 1994, prior to the end of the Head Start academic year.

ADDRESSES: Copies of this information may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921. Written comments and questions regarding the requested approval for information collection should be sent by March 25, 1994 directly to:

Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: A Descriptive Study of the Head Start Health Component

OMB No.: New Request.

Description: The Administration on Children, Youth and Families (ACYF) will conduct A Descriptive Study of the Head Start Health Component. The study, conducted in 80 Head Start centers around the country, will include interviews with 1200 parents who have a 4-year-old child in Head Start, with a review of the Head Start health records of these children. There will also be interviews with the key Head Start staff responsible for administration and implementation of the Health Component.

During Phase I of the study, a Technical Advisory Panel, consisting of experts in the four health domains, assisted in developing the sampling, data collection and analysis plans, as well as the data collection instruments. In Phase II, the research team will collect health screening, examination, referral, treatment and services data for 15 randomly selected four-year-old children at each of the 80 participating Head Start centers, also selected at random from around the country. All data collection must be completed prior to the end of the Head Start academic year. These data will be analyzed to provide a description of how this nationwide sample of programs is implementing the Head Start Health Component.

Number of Respondents: 1560 (1200 parents; 360 staff).

Frequency: One time for all respondents, except for the Head Start program Budget Manager who has an additional questionnaire to complete and mail back at the end of FY 1993.

Average Burden Hours per Response: 0.62 hours/respondent (or 37.2 minutes/respondent).

Burden Hours: 959.9 total hours.

Dated: February 22, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–4461 Filed 2–25–94; 8:45 am]

BILLING CODE 4184–01–M

Agency for Toxic Substances and Disease Registry

[ATSDR–78]

Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) annually revise the Priority List of Hazardous Substances to include additional substances most commonly found at facilities on the CERCLA National Priorities List (NPL). This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available to ATSDR and EPA. This revised priority list includes newly listed substances which have been determined to pose the most significant potential threat to human health at or around NPL hazardous waste sites. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequent identification of priority data needs.

ADDRESSES: Requests for a copy of the revised Priority List of Hazardous Substances, a copy of the "Supplemental Document for the 1993 Revised Priority List of Hazardous Substances", or comments on this notice should bear the docket control number ATSDR–78, and should be submitted to: ATSDR, Division of Toxicology, Quality Assurance Branch, Mail Stop E–29, 1600 Clifton Rd., NE., Atlanta, GA 30333.

This is an informational notice only, and comments are not being solicited at this time. However, comments will be placed in a publicly accessible docket; therefore, please do not submit confidential business information.

Electronic Availability: The 1993 Revised Priority List is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is available in Wordperfect 5.1, Dbase III, and ASCII.

FOR FURTHER INFORMATION CONTACT: Quality Assurance Branch, Division of Toxicology, ATSDR, Atlanta, GA 30333, telephone (404) 639–6308.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances which are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended (42 U.S.C. 9604(i)(2)), requires that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, are determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, not less often than once every year thereafter, revise the list to include additional hazardous substances which are determined to pose the most significant potential threat to human health. Each substance on the CERCLA priority list of hazardous substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and the subsequent identification of priority data needs.

The previous priority lists of hazardous substances were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure of substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database; additional information from HazDat has become available for this year's listing activity. In the initial listing activities (1987–1990), new substances were added to the end of the list, without a comparative reranking. A notice announcing the intention of ATSDR and EPA to revise and rerank the priority list of hazardous substances was published on June 27, 1991 (56 FR 29485). In this year's listing activity, as in the previous two years, new candidate substances (substances found at three or more NPL sites) were assigned a toxicity/environmental score (TES) using the EPA Reportable Quantity methodology, and were added to the pool of substances previously considered for the annual list. All substances were then evaluated together for consideration on the priority list.

The approach used to generate the 1991 revised priority list was summarized in the "Revised Priority List of Hazardous Substances" (56 FR 52166, October 17, 1991). Using the same approach, and the same algorithm this year, over 700 candidate substances have been ranked to create the current list of 275 substances.

The additional information used in this year's listing activity was entered into ATSDR's HazDat database since the development of the 1992 Priority List of Hazardous Substances. As with other site-specific information used in the listing activity, this information has been collected from ATSDR Public Health Assessments and from site file data packages used in the development of Public Health Assessments. The new information includes more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure or potential exposure to substances present at NPL sites.

At this time the list includes 275 substances which ATSDR and EPA have determined to pose the most significant potential threat to human health based on the criteria of CERCLA section 104(i)(2) (42 U.S.C. 9604(i)(2)). All candidate substances have been analyzed and ranked with the current algorithm, and may become the subject of toxicological profiles in the future.

The addition of approximately 12,800 contaminant data records (for air, water and soil) to the HazDat database since October 1992 has allowed the agencies to better assess the potential for human exposure to substances at NPL hazardous waste sites. With this additional data, 10 new candidate substances have been added to the list, and 13 substances under consideration last year have moved onto the list. Accordingly, 23 substances have been replaced on the list of the 275 substances. These changes in the order of substances appearing on the CERCLA priority list of hazardous substances will be reflected in the program activities which rely on the list for

future direction. For example, Dicofol moved up significantly (to number 107) on the 1993 list when compared to last year's list. As a result it will be included in the pool of substances that may become the subject of new toxicological profiles in the next fiscal year. Similarly, alpha-Endosulfan (number 33) moved well into the range of those substances to be considered for the development of updated toxicological profiles (CERCLA also requires ATSDR to evaluate new information on profiled substances for potential revision every three years). These changes reflect the dynamic nature of scientific data on substances present at NPL (and other) hazardous waste sites.

This annual evaluation activity and announcement of a revised priority list of hazardous substances fulfills the conditions of CERCLA section 104(i), as amended, which requires ATSDR and EPA to revise the list yearly to include additional hazardous substances. The agencies intend to revise the list of hazardous substances annually thereafter to reflect changes and improvements in data collection and availability. Additional information on the methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the **Federal Register** notices mentioned above.

Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR–78 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal legal holidays, at the Agency for Toxic Substances and Disease Registry, #4 Executive Park Drive, Suite 2400, Atlanta, Georgia.

Dated: February 18, 1994.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–4446 Filed 2–25–94; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

Compressed Medical Gas Industry; Notice of Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration's (FDA's), Atlanta District Office, Center for Drug Evaluation and Research, and Office of Small Business, Scientific and Trade Affairs are sponsoring three public workshops on FDA requirements and guidelines that apply to the compressed medical gas industry. These workshops are designed to assist the industry in complying with and conforming to legal requirements or guidelines for manufacturing and repacking medical gases.

DATES: The public workshops will be held on March 21, 1994; March 23, 1994; and on March 25, 1994; 8:30 a.m. to 4 p.m.

ADDRESSES: The public workshops will be held at the following locations:

March 21, 1994: Sheraton Colony Square Hotel, 188 14th St. NE., Atlanta, GA.

March 23, 1994: Radisson Inn-Airport, 5991 Rivers Ave., North Charleston, SC.

March 25, 1994: North Raleigh Hilton, 3415 Wake Forest Rd., Raleigh, NC.

FOR FURTHER INFORMATION CONTACT:

Eric S. Weilage or Dawn Todd, Investigations Branch, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–3218 or FAX 404–347–1913, or

Jeanne White or Sharon Schneider, Office of Small Business, Scientific and Trade Affairs (HF–51), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

Those persons interested in attending any of these workshops should FAX their registration by March 10, 1994, including name, firm name, address, and telephone number to 404–347–1913. There is no registration fee for these workshops, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's inspectional history of the compressed medical gas industry shows that a high percentage of medical gas firms are unaware of applicable regulations and guidelines or are not operating in compliance with or conformance to applicable requirements or guidelines. These workshops are designed to assist the medical gas industry and are free of charge to attendees.

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4411 Filed 2–25–94; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 58 FR 35960, July 2, 1993) is amended to reflect a reorganization within the Center for Devices and Radiological Health (CDRH), Office of Operations, Food and Drug Administration (FDA). FDA proposes to reorganize its Office of Training and Assistance (which will be retitled as the Office of Health and Industry Programs) within CDRH. The Office functions will be revised and now include implementation of the Mammography Quality Standards Act of 1992.

Under section HF–B, Organization:

1. Under the Office of Operations (HFA9), Center for the Devices and Radiological Health (HFW), delete subparagraph *Office of Training and Assistance (HFWG)* in its entirety and insert a new subparagraph *Office of Health and Industry Programs (HFWG)* reading as follows:

Analyzes medical device and radiation-emitting product user-related problems and conduct research applying systems analysis and human factors to problem identification and solution strategies. Implements and evaluates user-related solution strategies.

Conducts and evaluates programs to provide technical and other non-financial assistance to small manufacturers of medical devices to promote their understanding of compliance with the medical device amendments and regulations.

Provides, maintains, and applies expertise in communications technology in support of Center and FDA programs.

Develops and implements strategies for obtaining, analyzing, and incorporating the views and needs of health professionals, lay device users, and industry into the Center policy and decision-making processes as well as in problem analysis, resolution strategy development, implementation, and evaluation processes.

Establishes and operates a program to implement the Mammography Quality Standards Act of 1992.

Under Chapter HF, Section HF–D, *Prior Delegations of Authority.* Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: February 16, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94–4459 Filed 2–25–94; 8:45 am]

BILLING CODE 4160–1–M

Videoconferencing Facility; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a videoconferencing facility. The videoconferencing facility was established to improve communications between the agency and interested parties. The facility will be used for a variety of purposes, including meetings, with the public and regulated industries, internal FDA meetings, and training. The facility will be used to supplement face-to-face meetings and allow broader participation in discussions with FDA.

FOR FURTHER INFORMATION CONTACT: Angela M. Youngblood, Center for Drug Evaluation and Research (HFD–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0724.

SUPPLEMENTARY INFORMATION: FDA has established a videoconferencing facility for general use by FDA. The facility, which became operational on June 1, 1993, is located in rm. 13B–37 in the Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. The facility has a capacity for 25 to 30 people and can be used to conduct videoconferences with FDA. The establishment of the facility culminates a 3-year project by FDA and the Pharmaceutical Manufacturers Association to improve communications between the agency and interested parties.

The agency does not intend to restrict the use of the videoconferencing facility to any specific purpose. The facility can be used to expedite meetings with the public and regulated industries, or to facilitate training and internal FDA meetings. In addition to improving communications, FDA believes that the facility may even shorten FDA review times for applications because the facility can be used to facilitate prompt resolution of specific issues. Videoconferencing will also facilitate broader participation by industry staff in FDA meetings and make meetings more productive.

Policies and Procedures for Use

FDA has established videoconferencing as an optional means of communicating with FDA. The decision on whether to conduct a face-to-face meeting or videoconference, or a combination of meetings and videoconferences, must be agreed to by both the agency and the interested party. Use of the videoconferencing facility is not intended to limit, in any way, either face-to-face, telephone, written, or any other type of interaction involving FDA personnel. In fact, videoconferences can be used to supplement face-to-face meetings and enable more persons outside the Rockville, MD area to participate in discussions with FDA.

All existing confidentiality rules that apply to face-to-face meetings also apply to videoconferences. The transmission signal between the videoconferencing sites is conducted through cables and is scrambled to provide security. Ordinarily, there will be no videotaping of videoconferences, but videotaping may be permitted if all parties agree to videotaping before the videoconference is held. FDA will not permit videoconferences to be broadcasted, however, because some information presented at such meetings may be confidential or otherwise protected from disclosure.

All current FDA procedures for conducting meetings will apply to videoconferences. Because some participants may not always be in view of the camera, FDA recommends that each videoconference begin by introducing or identifying all participants.

FDA will schedule videoconferences in response to a specific request. The request should be made to the contact person listed above. FDA recommends that parties request a videoconference at least several weeks in advance, and there is no time limit on how far in advance a videoconference may be scheduled.

Scheduling will be done on a first-come, first-served basis. FDA will consider the geographical location of the parties when scheduling a videoconference; thus, for example, FDA will schedule morning meetings with parties in the Eastern United States, and schedule afternoon meetings with parties in the Western United States. The agency does not intend to establish prereserved blocks of time for parties in the Western United States.

Once a videoconference has been scheduled, the agency will not reschedule the videoconference except in emergencies. This policy is in consideration of the substantial amount of scheduling and preparation involved in setting up a videoconference. Additionally, videoconferencing should be reserved for meetings that are likely to run at least 30 minutes. If a videoconference extends beyond its scheduled time, the videoconference may be extended, provided the facility is still available.

The agenda and all materials planned to be presented during a videoconference should be sent to the Project Management Officer, Consumer Safety Officer, or appropriate official (in nonindustry-related meetings) at least 14 days before the scheduled videoconference. The materials will be used as reference or backup material and will help assure high quality communication.

During the videoconferencing facility's first year of operation, FDA will maintain a log on the use of the facility to determine the demand and variety of uses for the facility and to determine how much use is for internal FDA purposes or for FDA and nongovernmental entities. In addition, FDA will provide a questionnaire to participants to obtain their opinions on the value of the videoconferencing facility.

Persons interested in obtaining information concerning the policies and procedures, which are continuing to evolve at this time, for using FDA's videoconferencing facility, as well as a listing of public videoconferencing rooms, should notify the contact person listed above.

Dated: February 17, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4412 Filed 2–25–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Availability of Training Fellowships Under the Intramural Research Training Award Program

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of training fellowships under the Intramural Research Training Award (IRTA) Program, created pursuant to section 405(b)(1)(C) of the Public Health Service (PHS) Act (42 U.S.C. 284(b)(1)(C)), section 464W of the PHS Act (42 U.S.C. 285q–1), section 472 of the PHS Act (42 U.S.C. 286b–3), and section 485B(b) of the PHS Act (42 U.S.C. 287c(b)). Women and minorities are encouraged to apply.

FOR FURTHER INFORMATION CONTACT: Office of Education, National Institutes of Health, Building 10, room 1C129, 9000 Rockville Pike, Bethesda, Maryland 20892, Telephone (301) 496–2427.

SUPPLEMENTARY INFORMATION: The IRTA Program is designed to provide opportunities for developmental

training and practical research experience in the laboratories of the NIH. Training fellowships are available to postdoctoral scientists at the beginning stages of their professional research careers, and to high school, college, graduate and professional (e.g. medical dental, etc.) school students pursuing studies in academic disciplines related to biomedical research. Candidates must be U.S. citizens, noncitizen nationals of the United States, or individuals lawfully admitted for permanent residence in the U.S. Applicants may not be excluded from consideration for the IRTA Program on the basis of race, color, religion, sex, handicap, age, national origin, political affiliation, or any other nonmerit factor. Subject to the availability of funds, IRTA Fellowship awards are made on the basis of NIH's assessment of the mutuality of research interests, the qualifications of the candidates, and their potential to benefit from the training assignment. Recipient are not Federal employees.

Fellowship awards are granted in the following three categories:

Postdoctoral IRTA Fellowship Awards

Postdoctoral Fellowships are awarded to promising physicians and Ph.D. level investigators, to enhance their research capabilities in the early postdoctoral stage of their careers. Postdoctoral Fellowships may be awarded to individuals with Ph.D., M.D., D.D.S., D.M.D., D.V.M., or equivalent degrees, and five years or less of relevant postdoctoral research experience. Awards are made initially for one or two years, and may be renewed in one-year increments up to a maximum of five years in the Program. Initial stipends range between $25,000 and $30,000 per annum for investigators with less than one year of postdoctoral experience, between $26,500 and $32,000 per annum for investigators with one to two years of postdoctoral experience, between $28,000 and $34,000 per annum for investigators with two to three years of postdoctoral experience, between $29,500 and $36,000 per annuam for investigators with three to four years of postdoctoral experience, and between $31,000 and $38,000 for investigators with four to five years of postdoctoral experience.

Predoctoral IRTA Fellowship Awards

Predoctoral Fellowships are awarded to students enrolled in Ph.D., M.D., D.D.S., D.M.D., D.V.M., or equivalent degree programs at fully accredited U.S. universities. Predoctoral Fellowships are designed to support a period of full-time research training in NIH laboratories, undertaken as an integral part of participants' academic program. Awards are generally granted for the purpose of developing and writing a thesis in an NIH intramural laboratory, although other academically related training may occasionally be supported. For students pursuing a degree for which a thesis is not required (e.g., M.D., D.V.M., etc.), a full-time training program in biomedical research will be designed.

Students must be admitted to graduate or professional school and be a doctoral degree candidate before they can be considered. Normally, most students will have completed their first year of graduate course work before beginning the Program. Written agreement from the school is required. Predoctoral IRTA Fellows are normally expected to devote full-time to their NIH training assignments. IRTA awards are not intended as grants to support academic training and Predoctoral IRTA Fellows are normally expected to pay any university tuition, fees, or other costs themselves.

Predoctoral awards are made initially for one or two years, and may be renewed in one-year increments. The maximum duration is normally three years or until students receive their doctoral degree, whichever comes first. In individual cases, renewals beyond three years may be approved provided the student is making reasonable and acceptable progress towards obtaining the doctoral degree.

Per annum stipends are paid to participants based on their number of years of post-baccalaureate education: $16,000 for one year or less post-baccalaureate education; $17,000 for one to two years post-baccalaureate education; $18,000 for two to three years post-baccalaureate education; $19,000 for three to four years post-baccalaureate education; $20,000 for four to five years post-baccalaureate education; and $21,000 for more than five years post-baccalaureate education.

Summer IRTA Fellowship Awards

Summer IRTA Fellowships are awarded to promising high school, undergraduate, graduate, or professional (e.g., medical, dental, etc.) school students who have a strong interest or are pursuing studies in biomedical disciplines. Research training activities are designed to supplement and give practical meaning to students' academic course work. Students must be at least 16 years old, in good academic standing, and enrolled at least half-time in a degree granting program.

Fellowships begin between May 1 and June 30 of the given year, and must end by September 30. Participants are paid a monthly stipend, based on the amount of education completed at the time the Fellowship begins. Rates are: $800 per month before high school graduation and $900 after graduation; $1,000 after completion of one undergraduate year of college, $1,100 after two years, and $1,200 after three years; and $1,400 with a bachelor's degree and less than one year of graduate education, $1,600 after one graduate year of education, $1,800 after two years, and $2,000 after three years.

How to Apply

Interested persons may apply directly to a specific NIH research institute, to the National Center for Nursing Research, to the National Center for Human Genome Research, to the National Library of Medicine (for postbaccalaureate awards only; awards to prebaccalaureate students are not authorized), or to the Office of Education, Building 10, room 1C129, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, for concurrent referral to all research institutes and other listed organizations which may have possible interest. Interested individuals may apply at any time by submitting the following:

Applicants for Predoctoral and Postdoctoral Fellowship Awards

—Curriculum Vitae
—Bibliography
—Three letters of reference emphasizing research potential
—Applicant's statement of research goals and type and purpose of training desired
—Official copy of graduate or medical school transcripts
—For Predoctoral Fellowship applicants, verification from the university that the applicant is in good academic standing, is enrolled in a doctoral degree program, and that the university agrees to the applicant's participation in the IRTA Program
—For Postdoctoral Fellowship applicants, official copy of the doctoral degree
—Brief summary of doctoral dissertation, if applicable

Applicants for Summer Fellowship Awards

—Curriculum Vitae
—Bibliography (if applicable)
—Two letters of reference from school officials having direct knowledge of the applicant's scientific interest and abilities
—Applicant's statement describing future academic plans, interest in

biomedical sciences, and reasons for seeking an NIH Summer IRTA Fellowship
—Information on honors and achievement (both academic and nonacademic), hobbies and outside interests
—Official school transcript or list of courses, including grade point average
—Verification from the school that the applicant is in good academic standing and is or will be enrolled at least half-time in a degree granting program

This information must be submitted in order to receive due consideration for an award and will be used to determine the eligibility and quality of potential awardees. The requested information will be available only to NIH program officials unless otherwise required by law. The information collection requirements associated with the IRTA Program have been approved by the Office of Management and Budget (OMB) under the requirements of 5 CFR part 1320, and assigned OMB #0925–0299.

Dated: January 17, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–4437 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

Genome Research Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, March 10, 1994, at the Embassy Suites Hotel, 4300 Military Road, Washington, DC.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 10 from 10 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892, (301) 402–0838, will furnish the meeting agenda, roster of committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Gwen Williams, (301) 402–0838, two weeks in advance of the meeting.

This notice is being published less than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4439 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, April 7–8, 1994, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The two-day meeting will be open to the public from 9 a.m. to 5 p.m. on April 7 and 9 a.m. to adjournment on April 8. Attendance by the public will be limited to space available. The Board will review: (1) Progress achieved by the Center in developing medical rehabilitation research and reports on workshops, conferences, grants, and other activities; (2) progress on peer review of medical rehabilitation research grant applications; (3) appropriation status of the Center; and (4) a plan for establishing centers of excellence in medical rehabilitation research. Reports on medical rehabilitation research being sponsored by a variety of Federal agencies will be given. The meeting will have a specific period of time set aside for public comment on the activities of the Center and medical rehabilitation research.

Ms. Mary Plummer, Committee Management Specialist, NICHD, 6100 Building, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4438 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 24 and 25, 1994 in Building 31, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 24, from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 24, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on March 25, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Deborah P. Beebe, Scientific Review Administrator, Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 555, National Institutes of Health, Bethesda, Maryland

20892, (301) 594–7418, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4440 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 24 and 25, 1994 in Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 24, from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 24, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on March 25, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Jeffrey H. Hurst, Scientific Review Administrator, Heart, Lung, and Blood Research Review Committee B, Westwood Building, room 555, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7418, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4441 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Community Intervention to Reduce Myocardial Infarction Delay.

Dates of Meeting: March 10–11, 1994.

Time of Meeting: 7:30 p.m.

Place of Meeting: Crystal City Sheraton, Arlington, Virginia.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. C. James Scheirer, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594–7452.

Name of Panel: NHLBI SEP on Cardiac Valvuloseptal Morphogenesis.

Dates of Meeting: March 15–17, 1994.

Time of Meeting: 7 p.m.

Place of Meeting: Clarion Hotel, Rockville, Maryland.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. Jon Ranhand, 5333 Westbard Avenue, room 554, Bethesda, Maryland 20892, (301) 594–7439.

Name of Panel: NHLBI SEP on the Clinical Investigator Development Award (KO8).

Dates of Meeting: March 23–24, 1994.

Time of Meeting: 8:30 a.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. Lynn M. Amende, 5333 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 594–7485.

Name of Panel: NHLBI SEP on RFA for Hemoglobin-Based Oxygen Carriers: Mechanisms of Toxicity.

Dates of Meeting: March 29–30, 1994.

Time of Meeting: 8 p.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. Andre Premen, 5333 Westbard Avenue, room 5A10, Bethesda, Maryland 20892, (301) 594–7481.

This notice is being published less than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 22, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–4444 Filed 2–25–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3723; FR 3629–N–01]

Fair Housing Assistance Program: Announcement of Funding Awards for FY 1992

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, 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 those State and local agencies that were certified by the Department as substantially equivalent agencies under 24 CFR part 115, and that received funding under the Department's Fair Housing Assistance Program. The announcement contains the names and addresses of the State and local agencies and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban

Development, 451 Seventh Street, Washington, DC 20410–2000. Telephone Number 202–708–0455 (voice/TDD). This is not a toll free number.

SUPPLEMENTARY INFORMATION

I. Background

Under the Fair Housing Act (42 U.S.C. 3600–3619), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards and procedures are set forth in 24 CFR part 115.

Under the Fair Housing Assistance Program (FHAP), the regulations for which are codified in 24 CFR part 111, the Department may provide assistance to "substantially equivalent" State and local agencies. This assistance is designed to provide support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The regulations in 24 CFR part 111 provide for FHAP funding to be announced through a Notice of Funding Availability (NOFA) published in the **Federal Register**.

Although the regulations in part 111 provide for the announcement of the availability of FHAP funding through a NOFA (and 24 CFR part 12 also makes note of the NOFA requirement), FHAP is not a competitive program. FHAP funds are not awarded on the basis of a competition. Accordingly, a waiver of the requirement to make FHAP funding available through a NOFA was requested and granted.

In accordance with the requirements of section 106 of the HUD Reform Act of 1989 (42 U.S.C. 3535(q)(g)), the Secretary, on June 2, 1993, waived the FHAP NOFA requirement set forth in 24 CFR part 12 on the basis that the FHAP is not a competitive program. The Department intends to amend 24 CFR part 12 to reflect the fact that FHAP is not a competitive program.

In accordance with the requirements of section 102(a)(4)(C) of the HUD Reform Act of 1989, the names and addresses of the substantially equivalent agencies which received FHAP funds for FY 1992, on a noncompetitive basis, and the amount of the awards, are set forth in Appendix A to this notice.

Dated: February 14, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

APPENDIX A

REGION I	
Massachusetts Commission Against Discrimination in Housing, One Ashburton Place, Boston, MA 02108, Michael T. Duffy, Chairman	$157,600
Cambridge Human Rights Commission, 57 Inman Street, 2nd Floor, Cambridge, MA 02138, Margot P. Kosberg, Executive Director	13,400
Connecticut Commission on Human Rights and Opportunities, 90 Washington Street, Hartford, CN 06015, Mr. Lewis Martin, Executive Director	58,600
REGION II	
None	
REGION III	
Pennsylvania Human Relations Commission, 101 South 2nd Street, Suite 300, Harrisburg, PA 17101, Homer Floyd, Executive Director	216,900
Virginia Real Estate Board, 3600 West Broad Street, 5th Floor, Richmond, VA 23230–4917, Susan Scovill, Fair Housing Administrator	44,000
West Virginia Human Rights Commission, 1321 Plaza East, Room 106, Charleston, WV 25301, Quewanncoii Stephens, Executive Director	16,700
Charleston Human Rights Commission, 115 Lee Street West, Charleston, WV 25302–1400, William Berkley, Jr. Executive Director	8,900
REGION IV	
Florida Commission on Human Relations, 325 John Knox Road, Bldg F, Suite 240, Tallahassee, FL 32303–4149, Ronald McElrath, Executive Director	129,800
Clearwater Office of Community Relations, P.O. Box 4748, Clearwater, FL 34618, Sally A. Ruby, Director	18,000
Orlando Human Relations Commission, 400 S. Orange Avenue, Room 103, Orlando, FL 32801, Albert Nelson, Director	33,000
Pinellas County Office of Human Rights, 315 Court Street, Clearwater, FL 34616, Leon Russell, Director	52,100
St. Petersburg Human Relations Department, P.O. Box 2842, St. Petersburg, FL 33731, James R. Yates, Director	32,000
Tampa Office of Community, 712 W. Ross Avenue, Tampa, FL 33602, George A. Davis, Director	35,000
Georgia Commission on Equal Opportunity, 710 Cain Towers, Peachtree Center, 229 Peachtree Street, NE, Atlanta, GA 30303, Mustafa A. Aziz, Administrator	65,000
Kentucky Commission on Human Rights, The Heyburn Bldg., 7th Floor, 322 West Broadway, Louisville, KY 40202–0069, Beverly Watts, Executive Director	30,200
Louisville & Jefferson County Human Relations Commission, 200 South 7th Street, Suite 200, Louisville, KY 40202, Gwendolyn M. Young, Executive Director	51,600
North Carolina Human Relations Commission, 121 W. Jones Street, Raleigh, NC 27603, William Barber, Executive Director	103,400
Asheville-Buncombe County Fair Housing Commission, 70 Woodfin Place, Park Place Office Building, Suite 326, Asheville, NC 28801, Marvin E. Vierra, Director	65,000
Charlotte-Mecklenburg Community Relations Committee, 817 E. Trade Street, 2nd Floor, Charlotte, NC 28202, Jack L. Bullard, Director	25,400
Greensboro Human Relations Department, P.O. Box 3136, Greensboro, NC 27402, John E. Shaw, Director	20,600
New Hanover Human Relations Commission, 320 Chestnut Street, Room 409, Administration Building, Wilmington, NC 28401, William Jessup, Director	17,000
Winston-Salem Human Relations P.O. Box 2511, Winston-Salem, NC 27102, Emery L. Rann, III, Director	9,800
South Carolina Human Affairs Commission, P.O. Box 4490, Columbia, SC 29240, Dr. Willis Ham, Commissioner	79,400
Tennessee Human Rights Commission, 530 Church Street, Suite 400, Cornerstone Square Building, Nashville, TN 37243–0745, Dr. Warren Moore, Executive Director	63,400

APPENDIX A—Continued

Knoxville Department of Community Development, P.O. Box 1631 City/County Building, Knoxville, TN 37901, J. Laurens Tullock, Coordinator	33,800
REGION V	
Illinois Department of Human Rights, 100 W. Randolph Street, Chicago, IL 60602, Rose Mary Bombela, Executive Director	89,200
Springfield Department of Human Relations, 227 South 7th Street, Springfield, IL 62701, Carolyn Toney, Director	26,600
Elgin Human Relations Commission, 150 Dexter Court, Elgin, IL 60120, Olufemi Folarin, Director	14,600
Evanston Human Relations Commission, 2100 Ridge Avenue, Evanston, IL 60201, Owen Thomas, Executive Director	5,000
Indiana Civil Rights Commission, 100 North Senate Avenue, Indianapolis, IN 46204, Sandra Leek, Executive Director	92,200
Gary Human Relations Commission, 475 Broadway, Gary, IN 46402, Jonathan Comer, Executive Director	90,400
Ohio Civil Rights Commission, 220 Parsons Avenue, Columbus, OH 43266, Joseph T. Carmichael, Executive Director	180,400
Dayton Human Relations Commission, 40 South Main Street, Dayton, OH 45402, Jerald L. Steed, Director	23,000
Shaker Heights Law Department, 3400 Lee Road, Shaker Heights, OH 44120, Terrence Brennan, Assistant City Attorney	65,000
REGION VI	
Louisiana Department of Justice, P.O. Box 94005, Baton Rouge, LA 70804, Richard P. Ieyoub, Attorney General	65,000
Oklahoma Human Rights Commission, 2101 N. Lincoln Blvd, Room 480, Oklahoma City, OK 73105, Ronald Lee Johnson, Executive Director	71,200
Texas Commission on Human Rights, 8100 Cameron Road, Building B, Suite 525, Austin, TX 78754, William Hale, Executive Director	805,437
City of Dallas, 1500 Marilla, Room 1BN, Dallas, TX 75201, Holly C. Malloy, Director	65,000
REGION VII	
Iowa Civil Rights Commission, 211 East Maple Street, 2nd Floor, c/o Grimes State Office Building, Des Moines, IA 50319, Don Grove, Executive Director	35,000
Dubuque Department of Human Rights, City Hall, 13th and Central, Dubuque, IA 52001, Charles Azebeokhai, Executive Director	11,000
Kansas Commission on Civil Rights, Landon State Office Building, 900 SW Jackson, Suite 851 South, Topeka, KS 66612, Michael J. Brungardt, Executive Director	73,000
Salina Human Relations Department, P.O. Box 736, Salina, KS 67402–0736, W.A. Burnett, Executive Director	20,400
Missouri Commission on Human Rights, 3315 W. Truman, P.O. Box 1129, Jefferson City, MO 65102, Alvin A. Plummer, Executive Director	126,400
Kansas City, Missouri Human Relations, 414 East 12th Street, City Hall, Kansas City, MO 64106, Michael Bates, Executives	55,400
Nebraska Equal Opportunity Commission, P.O. Box 94934, Lincoln, NE 58509, Lawrence R. Myers, Executive Director	31,400
Omaha Human Relations Department, 1819 Farnam Street, Omaha/Douglas Civic Center, Omaha, NE 68183, Diane L. Thomas, Director	26,600
REGION VIII	
Colorado Civil Rights Division, Jack Lang y Marquez, Director, 1560 Broadway, Suite 1050, Denver, CO 80202–5143, 303–894–2997	76,200
Montana Human Rights Division, Anne L. MacIntyre, Administrator, 1236 Sixth Avenue, P.O. Box 1728, Helena, MT 59624, 406–444–2884	77,600
REGION IX	
Arizona Attorney General's Office, 1275 West Washington Street, Phoenix, AZ 85007, Cecil Patterson, Jr. Chief Counsel	65,000
Phoenix Equal Opportunity Department, 550 West Washington Street, Phoenix, AZ 85003, Rose Newsome, Director	34,800
Hawaii Civil Rights Division, 888 Mililani Street, 2nd Floor, Honolulu, HI 96813, Linda Tseu, Executive Director	65,000
REGION X	
King County Office of Civil Rights and Compliance, Manfert Lee, Administrator, King County Courthouse, Room E–224, 516 Third Avenue, Seattle, WA 98104, 206–296–7592	25,400

[FR Doc. 94–4483 Filed 2–25–94; 8:45 am]
BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–406A–02]

Area Closures to ORV/Motorized Vehicles

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, effective immediately, that the following lands located on the north side of the Snake River and about eight miles down stream of American Falls Dam are closed to ORV/motorized vehicles.

T. 9 S., R. 20 E.,
Section 1: NE¼NE¼, SW¼NE¼, NE¼SW¼, NW¼SW¼
Section 2: SE¼, SE¼, SW¼, SE¼,
T. 8 S., R. 30 E.,
Section 20: SE¼, SE¼, SW¼, SE¼,
Section 29: NE¼NE¼, NW¼, NE¼SW¼, NW¼SE¼.

Approximately 600 acres.

This action follows the Monument Resource Management Plan (MRMP) prescriptions published in January, 1986. The MRMP designates that these areas of the Cedar Fields Special Recreation Management Area, which are also within the Bureau of Reclamation's (BOR) American Falls Natural Resource Area, be designated as to be consistent with BOR's limitations on adjacent lands. Effective by the December 28, 1993 **Federal Register** Notices, the BOR activated the enforcement of the off-road motor vehicle closure of the lands within the American Falls Natural Resource Area.

Exemptions to this order are granted to the following:

Law enforcement patrol and emergency services administratively approved access for actions such as monitoring or research studies.

Other actions would be considered on a case by case basis.

FOR FURTHER INFORMATION CONTACT: Tom Dyer, Snake River Resource Area Manager, Rt. 3, Box 1, Burley, ID 83318, (208) 678–5514. A map showing the location of the closed areas is available from the Burley District BLM Office.

Dated: February 17, 1994.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 94–4418 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Land Management

[NV–930–4210–05; N–58491]

Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, The Heguy Brothers, a general partnership, has applied for conveyance of the Federal mineral estate described as follows:

Mount Diablo Meridian, Nevada

T. 42 N., R. 57 E.,
Sec. 5, lots 1,3,4, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 6, lot 1;
Sec. 9, S½SW¼;
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼, S½.
T. 43 N., R. 57 E.,
Sec. 31, lots 2–4, S½NE¼, SE¼NW¼, E½ SW¼, SE¼;
Sec. 32, SW¼, W½SE¼.

Comprising of 1749.83 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Resource Area, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register,** the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, whichever occurs first.

Dated: February 16, 1994.

Rodney Harris,

District Manager.

[FR Doc. 94–4502 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Memorandum of Understanding Establishing Jurisdictional Responsibilities for Offshore Facilities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The memorandum of understanding (MOU) establishing Federal jurisdictional boundaries for offshore facilities, including pipelines, became effective on February 3, 1994. The MOU divides the responsibilities associated with oil-spill prevention and control, response planning, and response equipment inspection for offshore facilities. The MOU is among the Department of the Interior (DOI), Department of Transportation (DOT), and the Environmental Protection Agency (EPA).

The coast line marks the boundary that determines which agency is responsible for a facility. The MMS of the DOI is responsible for offshore facilities, including pipelines but not deepwater ports, located seaward of the coast line. The EPA is responsible for non-transportation-related offshore facilities located landward of the coast line. The U.S. Coast Guard and the Research and Special Programs Administration of the DOT will handle transportation-related offshore facilities, including pipelines, located landward of the coast line.

Any exceptions to the MOU will be determined on a facility-specific basis, and the affected parties will be notified.

FOR FURTHER INFORMATION CONTACT: Sharon L. Buffington, Engineering and Technology Division; MS–4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12777 (56 FR 54757) delegated to DOI, DOT, and EPA various responsibilities identified in the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101–380). The E.O. 12777 assigned the responsibilities associated with oil-spill prevention and control, contingency planning, and response equipment inspection for offshore facilities to DOI. However, section 311(a)(11) of the CWA defines "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities in the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters. Without this MOU, as many as four Federal agencies could have overlapping responsibilities for some coastal facilities.

To avoid any confusion caused by the definition of "offshore facility", MMS coordinated an effort to establish jurisdictional boundaries for oil-spill prevention and control, response planning, and response equipment inspection activities. Pursuant to section 2(i) of E.O. 12777, the Secretary of the Interior redelegated those functions vested in DOI to give EPA non-transportation-related offshore facilities located landward of the coast line and give DOT transportation-related offshore facilities landward of the coast line. The divisions agreed to in the MOU (Appendix A) is more consistent with traditional agency expertise and jurisdiction. This MOU does not include jurisdictional boundaries for oil-spill financial responsibility.

Dated: February 17, 1994.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

Appendix A—Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency

Purpose

This Memorandum of Understanding (MOU) establishes the jurisdictional responsibilities for offshore facilities, including pipelines, pursuant to section 311 (j)(1)(c), (j)(5), and (j)(6)(A) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101–380). The Secretary of the Department of the Interior (DOI), Secretary of Department of Transportation (DOT), and Administrator of the Environmental Protection Agency (EPA) agree to the division of responsibilities set forth below for spill prevention and control, response planning, and equipment inspection activities pursuant to those provisions.

Background

Executive Order (E.O.) 12777 (56 FR 54757) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters.

Responsibilities

Pursuant to section 2(i) of E.O. 12777, DOI redelegates, and EPA and DOT agree to assume, the functions vested in DOI by

sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 as set forth below.

For purposes of this MOU, the term "coast line" shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

1. To EPA, DOI redelegates responsibility for non-transportation-related offshore facilities located landward of the coast line.

2. To DOT, DOI redelegates responsibility for transportation-related facilities, including pipelines, located landward of the coast line. The DOT retains jurisdiction for deepwater ports and their associated seaward pipelines, as delegated by E.O. 12777.

3. The DOI retains jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by E.O. 12777 to DOT.

Effective Date

This MOU is effective on the date of final execution by the indicated signatories.

Limitations

1. The DOI, DOT, and EPA may agree in writing to exceptions to this MOU on a facility-specific basis. Affected parties will receive notification of the exceptions.

2. Nothing in this MOU is intended to replace, supersede, or modify and existing agreements between or among DOI, DOT, or EPA.

Modification and Termination

Any party to this agreement may propose modifications by submitting them in writing to the heads of the other agency/department. No modification may be adopted except with the consent of all parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of any party, representatives of all parties shall meet for the purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

Bruce Babbitt,

Secretary of the Interior.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Federico Peña,

Secretary of Transportation.

[FR Doc. 94–4481 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Availability of Plan of Operations and Environmental Assessment for Continuing Operation of the Doty-Jackson Unit A Well No. 1; Locin Oil Corporation, Big Thicket National Preserve, Hardin County, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Locin Oil Corporation a Plan of Operations for the Continuing Operation of the Doty-Jackson Unit A Well No. 1 within Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fee, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: February 16, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–4473 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–70–M

Inventory Completion for Native American Human Remains From Hawaii in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains from Hawaii in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard.

The human remains came to the Peabody Museum as part of 16 collections between 1867 and 1959. There are no associated funerary objects. A detailed inventory and assessment of the human remains has been made by the staff of the Peabody Museum in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs, and the Kaua'i/Nihau, Maui/Lanai, Molokai, and O'ahu Burial Councils.

The human remains consist of the following:

One cranium (19–5–70/59745) from Nohile sand dunes, Kaua'i County, Kaua'i Island.

Twenty-one crania (36–96–70/N3482–N3502) and eight mandibles (36–96–70/N3503) from dune burials in Kaua'i County.

Twenty-one crania (67–39–70/1115–1135) from southerly shore sand dunes, Kaua'i County.

One cranium (72–20–70/6792) from Kaua'i County.

Two crania (16–8–70/59647 and 59648) from an "ancient burial place". Maui County

Twenty-one crania, two partial crania, and one partial cranium together with fragmentary axial elements (78–45–70/15267–15290) from Maui County.

One skeleton (80–25–70/23518), complete except for fragmentary extremities, from an ancient burial place, Maui County.

Five crania (16–8–70/59641–59645) from the beach beyond Diamond Sand Dunes Hill, Oahu.

Six crania (23–5–70/60363–60368) found during the excavation of a canal in Waikiki, Oahu.

Two almost complete skeletons and fragmentary postcranial remains from five more individuals (23–5–70/60369–60372) found while excavating for a sewer system in Honolulu County, Oahu.

Three partial crania and six crania (36–4–70/N1324–N1332) from lava caves near Honolulu, Oahu.

Four crania and three fragmentary crania (85–7–70/37592–37397a) that, from circumstantial documentary evidence, may come from Oahu.

One cranium, one partial cranium and one partial cranium with two right femurs (86–58–70/61492–61494) from Honolulu, Oahu.

Twenty seven crania (00/N939; 16–8–70/59646; 20–4–70/59931 and 59932; 50–70–70/N7476; 59–27–70/N8615–N8620; 80–25–70/23503–23517), fragmentary appendicular elements (27–5–70/60797), and twenty four mandibles (00/N1013; 80–25–70/23519) are attributed to Hawai'i with no further information. Six of these crania (59–27–70/N8615–N8620) came to the Peabody Museum from the Warren Anatomical Museum.

Based on the above mentioned information, officials of the Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization which believes itself to be culturally affiliated with these human remains should contact Mrs. Barbara Isaac, Assistant Director, Peabody Museum of Archaeology and

Ethnology, Harvard University, 11 Divinity Avenue, Cambridge MA 02138, or call (617) 495–2248, before March 30, 1994.

Dated: February 18, 1994.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist,Chief, Archeological Assistance Division.

[FR Doc. 94–4492 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–70–F

Inventory Completion of Native American Human Remains and Funerary Objects From Hawaii in the Control of the U.S. Marine Corps Air Station, Kaneohe Bay

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and funerary objects from Hawaii in the control of the U.S. Marine Corps Air Station, Kaneohe Bay. The remains are curated in the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed inventory and assessment of these human remains and funerary objects has been made for the U.S. Marine Corps by the staff of the Bishop Museum, in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. The latter two organizations qualify as Native Hawaiian organizations as defined in 25 U.S.C. 3001(11).

The human remains and funerary objects represent a minimum of 1582 individuals and 281 funerary objects recovered from the Mokapu Peninsula, U.S. Marine Corps Air Station, Kaneohe Bay, Island of Oahu, and curated at the Bishop Museum. The majority of the remains were recovered during archaeological excavations conducted in 1938–1940 by Gordon T. Bowles (University of Hawaii) and Kenneth P. Emory (Bishop Museum), and in 1957 by Robert N. Bowen (University of Hawaii). The rest of the remains were recovered from inadvertent discoveries and archaeological monitoring of construction activities on the peninsula.

A minimum of 1,544 individuals were recovered from pre-contact (prior to 1778) graves. A number of these individuals were represented by incomplete sets of skeletal remains, and several of the isolated individuals represented secondarily deposited incomplete sets of remains removed from their original context. The pre-contact funerary objects included *kupe'e* (wristlets made of dog teeth), basalt flakes, marine shells, *kukui* (Aleurites moluccana) nuts, and the bones of fish, birds, pigs, dogs, and turtles.

A minimum of 38 individuals were recovered from post-Contact (after 1778) graves during a construction project in 1975. The post-Contact funerary objects included *kupe'e*, and *lei 'opu'u* and *lei niho* (pendants made of calcite, shell, and whale bone), as well as bone and shell buttons, metal fragments, mirror glass, bottle fragments, a metal ring, ivory beads, bone and glass, metal nails, and metal parts of a smoking pipe.

Based on the Bishop Museum report of the results of the inventory and assessment, officials of the U.S. Marine Corps have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations. U.S. Marine Corps officials, based on the Bishop Museum report, determined that no lineal descendants of the human remains could be identified.

This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization which believes itself to be culturally affiliated with these human remains and funerary objects should contact Mr. John Bigay, Planner-in-Charge, Pacific Division, Naval Engineering Facilities Command, Pearl Harbor, HI, 96860–7300, (808) 471–9338, before April 1, 1994.

Dated: February 23, 1994.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 94–4491 Filed 2–25–94; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or the Method of Collection

(1) Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(2) None. Civil Rights Division.

(3) On occasion.

(4) State or local governments. Jurisdictions under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that changes are not racially discriminatory. These procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) 5,800 annual responses at 13.2 hours per response.

(6) 76,560 annual burden hours.

(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: February 23, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–4493 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–13–M

Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that three proposed consent decrees in *United States* v. *Lowe,* Civil Action No. H–91–0830, were lodged on February 14, 1993 with the United States District Court for the Southern District of Texas. The consent decrees resolve the liability under CERCLA of defendants Ralph Lowe, Dixie Oil Processors, Tex Tin Corporation, and Lowenco, Inc. for the Dixie Oil Processors Superfund Site in Harris County, Texas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Lowe,* DOJ Ref. #90–11–2–323.

The proposed consent decrees may be examined at the office of the United States Attorney, 440 Louisiana, Suite 900, Houston, Texas 77002; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $18.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–4513 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 83–94]

Privacy Act of 1974, New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Office of Legal Counsel (OLC), proposes to establish a new system of records entitled, "Office of Legal Counsel, Freedom of Information Act and Privacy Act Files (Justice/OLC–003)."

5 U.S.C. 552a(e)(4) and (11) require that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system.

Therefore, please submit any comments by March 30, 1994. The public, OMB, and Congress are invited to send written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Room 850 WCTR, Department of Justice, Washington, DC 20530.

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Dated: February 15, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

(OLC) Office of Legal Counsel Justice/OLC–003

SYSTEM NAME:

Office of Legal Counsel, Freedom of Information Act and Privacy Act Files (Justice/OLC–003).

SYSTEM LOCATION:

U.S. Department of Justice, Office of Legal Counsel, 10th Street and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, and persons who request access to or correction of records pertaining to themselves contained in Office of Legal Counsel (OLC) systems of records pursuant to the Privacy Act (PA), 5 U.S.C. 552a.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copies of (1) FOIA/PA requests received by OLC; (2) copies of OLC responses to requesters; (3) copies of document responsive to the requests; (4) copies of documents withheld; (5) internal memoranda and correspondence related to the requests; (6) records relating to administrative appeals and/or litigation; and (7) disclosure accounting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 *et seq.*; 44 U.S.C. 3301 *et seq.*; 5 U.S.C. 552, 552a.

PURPOSES:

This system is maintained for the purpose of processing access requests, administrative appeals and litigation under the Freedom of Information Act and the Privacy Act and to comply with the reporting requirements of those Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record may be disclosed to a Federal agency that has furnished the record to the Department, in order to permit that agency to make a decision as to access or correction or to consult with that agency as to the propriety of access or correction.

b. A record may be disclosed to any appropriate Federal, State, local, or foreign agency to verify the accuracy of information submitted by an individual who has requested amendment or correction or records.

c. A record may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

d. A record may be disclosed as necessary to respond to inquiries by congressional offices on behalf of individual constituents who are subjects of OLC records.

e. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in file folders in cabinets.

RETRIEVABILITY:

These folders are filed alphabetically according to the name of the requester.

SAFEGUARDS:

These records are stored in cabinets in an office that is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

These records are disposed of in accordance with General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, 10th Street and Constitution Avenue, NW., Washington DC 20530.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the Supervisory Paralegal Specialist, Office of Legal Counsel, at the address above.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system include (1) the individuals covered by the system and (2) records responsive to FOIA/PA requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–4512 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation

Notice is hereby given that, on January 24, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Terrasciences, Inc., Houston, TX; X/Open Company Limited, Reading, UNITED KINGDOM; Saudi Arabian Oil Company, Dhahran, SAUDI ARABIA; Agip S.p.A., Milan, ITALY.

No other changes have been made in either the membership or planned activity of POSC. Membership in this group research project remains open, and POSC intends to file additional written notifications disclosing all changes in membership.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, 56 FR 5021. The last notification was filed with the Department on October 14, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 18, 1993, 58 FR 60880.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94–4514 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on January 19, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spray Drift Task Force has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A H Marks & Company, Limited, Yorkshire, ENGLAND, and Rohm & Haas Company, Philadelphia, PA, have become members.

No other changes have been made in either the membership or planned activity of the group research project.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. On July 5, 1990, the Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act (55 FR 27701). The last notification was filed with the Department on November 8, 1993. A notice was published in the **Federal Register** on December 17, 1993 (58 FR 66023).

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94–4515 Filed 2–25–94; 8:45 am]

BILLING CODE 4410–01–M

Office of the Attorney General

[AG Order No. 1853–94]

Designation of the National Crime Information Center Under the Brady Handgun Violence Prevention Act

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Under section 102(a)(1) of the Brady Handgun Violence Prevention Act, Public Law 103–159, Title I, 107 Stat. 1536 (to be codified at 18 U.S.C. 922(s)(2)), the Attorney General is required to designate a national system to be used by law enforcement for criminal history record background checks. Under this section the chief law enforcement officer of the place of residence of a handgun transferee must make a reasonable effort to ascertain within 5 business days whether receipt or possession of a handgun by the prospective transferee would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

This notice by the Attorney General designates the National Crime Information Center (NCIC) as the national system.

EFFECTIVE DATE: This designation is effective on February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Virgil L. Young, Jr., Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation, room 9939, 10th and Pennsylvania Avenues, NW., Washington, DC 20537–9700, (202) 324–5084.

Notice of Designation of the National Crime Information Center

By the authority vested in me as Attorney General under section 102(a)(1) of the Brady Handgun Violence Protection Act, (to be codified at 18 U.S.C. 922(s)(2)), I hereby designate the National Crime Information Center (NCIC) as the national system to be used by law enforcement for crime history record background checks under the interim provisions of the Brady Handgun Violence Prevention Act (the "Act").

The prescribed use of the NCIC under the Act will require two inquiries. One inquiry will be an NCIC Persons inquiry, which will furnish matching records on all fugitives listed in NCIC, including foreign fugitives, as well as those individuals listed in the Bureau of Alcohol, Tobacco, and Firearms Violent Felon File. The second inquiry will be to the Interstate Identification Index, which will furnish automated criminal history records available through NCIC.

Dated: February 24, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–4621 Filed 2–24–94; 4:29 pm]

BILLING CODE 4410–01–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 12, 1994, 9:30 a.m. to 4 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under section 384 of the Adult Education Act, as amended by title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on March 12, 1994 from 9:30 a.m. to 4 p.m. The meeting of the Board is open to the public. The agenda includes discussions of planned program activities. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 94–4431 Filed 2–25–94; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 10–12, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on January 21, 1994.

Thursday, March 10, 1994

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:15 a.m.: Advanced Light Water Reactor (ALWR) Policy Issue—Source Term (Open)—The Committee will review and comment on a draft Commission Paper related to the source term to be used for ALWRs. Representatives of the NRC staff will participate.

10:30 a.m.–11:15 a.m.: ABWR Review Regarding the Final Design Approval (FDA) (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the FDA of the ABWR. Representatives of the General Electric Nuclear Energy (GENE) will participate, as appropriate.

11:15 a.m.–12:30 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss matters scheduled for discussion during its meeting with the NRC Commissioners.

2 p.m.–3:30 p.m.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, to discuss matters of mutual interest.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on the Final Design Approval for the ABWR, and the proposed source term for ALWRs.

Friday, March 11, 1994

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:30 a.m.: Multiple System Responses Program (MSRP) (Open)—The Committee will review and comment on the status of resolution of issues identified by the MSRP. Representatives of the NRC staff will participate.

9:30 a.m.–10:30 a.m.: Turbine Generator Failure Event at Fermi 2 (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the results of the AIT investigation of the December 25, 1993 turbine generator failure event at Fermi Unit 2.

10:45 a.m.–11:45 a.m.: Loss of Offsite Power and Steam Generator Dryout Event at McGuire (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the results of the AIT investigation of the December 27, 1993 loss of offsite power and steam generator dryout event at McGuire.

11:45 a.m.–12 noon: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

1 p.m.–2:30 p.m.: Revision of the LLNL Probabilistic Seismic Hazard Methodology for the Eastern U.S. (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the recent revisions of the LLNL probabilistic seismic hazard methodology for the Eastern United States. Representatives of LLNL and industry will participate, as appropriate.

2:30 p.m.–3:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during return ACRS meetings.

3:30 p.m.–4:30 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and

internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory Committee, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Saturday, March 12, 1994

8:30 a.m.–12 noon: Preparation of ACRS Reports (Open)—The Committee will complete its reports on matters considered during this meeting.

12 noon–12:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities, including a report of the March 8, 1994 meeting of the ABB-CE Standard Plant Designs Subcommittee.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

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 ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. EST.

Dated: February 22, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–4451 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insight into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as well as feedback on differences that may exist on technical issues. NRC staff will provide information regarding on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Four plenary sessions are planned, three of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: Conference will be held May 3–4, 1994.

ADDRESSES: The conference will be held at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. Telephone: (202) 347–3000, FAX (202) 466–9083 (Refer to Group NRC–94).

FOR REGISTRATION INFORMATION CONTACT: Lynn Wilson, ES Inc., by facsimile on (202) 835–0118 or by phone on (202) 835–1585.

PARTICIPATION: This conference is open to the general public; however, advance registration is required by April 11, 1994. The following is the preliminary program for the conference:

Tuesday, May 3, 1994—(8:30–5:15)

1. Welcome and Introductory Remarks * * * William T. Russell, Director, Office of Nuclear Reactor Regulation.
2. *Morning Plenary Session:* Regulatory Trends.
3. *Breakout Sessions:*
   1. License Renewal Update.
   2. Fire Protection Issues.
   3. Technical Specifications Improvement.
   4. Steam Generator Issues.
4. *Luncheon Speaker:* Commissioner Kenneth C. Rogers.
5. *Afternoon Plenary Session:* Operational and Regional Issues.
   - Senior Management Review Process.
   - Operation and Maintenance Cost Reduction and Safety.
   - Licensee Self Assessment.
   - Region IV—V Consolidation.
6. *Breakout Sessions:*
   1. Licensee Interim Spent Fuel Storage.
   2. Reactor Pressure Vessel Issues.
   3. Valve Performance Issues.
   4. Experience with the Use of 10 CFR 50.54(x).
7. *Dinner Speaker:* Commissioner Forrest J. Remick.

Wednesday, May 4, 1994—(8:30–4:30)

1. Opening Remarks * * * James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations & Research.
2. *Morning Plenary Session:* Implementing Regulatory Review Group Recommendations.
3. *Breakout Sessions:*
   1. Cost Beneficial Licensing Actions Program.
   2. PRA Applications in Reactor Regulation.
   3. ALWR Review and Design Certification.
   4. Graded QA, part 21 Revision and Commercial Grade Dedication.
4. *Luncheon Speaker:* James M. Taylor, Executive Director for Operations.
5. *Breakout Sessions:*
   1. Maintenance Rule Implementation.
   2. Allegations and Protecting Allegers Against Retaliation.
   3. Decommissioning Issues.
   4. Digital I&C Retrofit and 10 CFR 50.59.
6. *Closing Plenary Session:* NRR Executive Team and Regional Administrators.

Note: There will be a question and answer period after each session each day.

Next year's conference is scheduled for May 9–10, 1995, at the Holiday Inn, Crowne Plaza, Rockville, MD.

Dated in Rockville, Maryland this 18th day of February 1994.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Chief, Planning, Program, and Management Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4454 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., (Fermi 2); Exemption

I

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF–43 which authorizes operation of the Fermi 2 Nuclear Plant at steady-state reactor power levels not in excess of 3430 megawatts thermal. The Fermi 2 facility is a boiling water reactor located at the licensee's site in Monroe County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.A.6.(b) of Appendix J to 10 CFR part 50 requires, in part, that if two consecutive periodic Type A tests fail to meet the applicable acceptable criteria in III.A.5.(b), a Type A test shall be performed at each refueling shutdown or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria, after which the normal inspection interval specified in III.D may be resumed.

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated May 24, 1993, the licensee requested a one-time exemption from the requirements of 10 CFR part 50, Appendix J, III.A.6.(b) identified above, which were in effect due to "As-Found" Type A failure in 1989 and 1992. The licensee has verified that Type C leakage rates were the reason for the "As-Found" failures.

The two "As-Found" Type A failures were caused by the addition of Type C penalties. The licensee indicated that to date all containment deficiencies have been identified during Type C testing and; therefore, it is proposed that Type C testing be relied upon in lieu of the increased frequency Type A test. Fermi 2 has established stringent LLRT [local leak rate test] administrative leak rate acceptance criteria on a per valve basis, based on ASME Code guidance, individual valve test maintenance history, design, function, and service. Test acceptance criteria range from 0.20 scfh [standard cubic feet per hour] to 15.00 scfh. This ensures valve leak tight integrity is maintained from Type A test to Type A test. The licensee indicated that if valves are repaired when they exceed their individual administrative acceptance criteria, and corrective modifications or replacement are implemented, the overall containment integrity will be assured with future integrated leak rate tests (ILRTs) meeting their "As-Found" acceptance criteria. The licensee indicated that the implementation of the proposed Corrective Action Plan and continued Type C leakage testing provide reasonable assurance that the underlying purpose of Appendix J is being met. For details concerning the licensee's corrective actions for the previous Type C valve leakage, see the staff's Safety Evaluation dated February 22, 1994.

Information Notice (IN) No. 85–71, "Containment Integrated Leak Rate Tests," states that if Type B and C local leakage rates constitute an identified contributor to the failure of the "As-Found" Type A test, the licensee may submit a Corrective Action Plan with an alternate leakage test program proposal as an exemption request. If the submittal is approved and an exemption granted, the licensee may implement the corrective action and alternate leakage rate test program in lieu of the required increase in Type A test frequency incurred after the failure of two successive Type A tests.

IV

Accordingly, the Commission concluded that the licensee's Corrective Action Plan and proposed alternative test schedule are acceptable and that a Type A test during refueling outage four (RFO 4) is not necessary. The licensee has identified the problem penetrations that caused previous Type A failures in 1989 and 1992, and has implemented corrective actions to address these problems. There is reasonable assurance that the containment leakage-limiting function will be maintained. The normal Type A test schedule in Section III.D of Appendix J (three tests in 10 years) will require the next Type A test to be performed during RFO 5.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. As stated in part in 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of Section III.A.6.(b) of Appendix J is to establish an increased testing frequency for Type A tests, where previous testing has demonstrated unsatisfactory performance, in order to provide increased assurance that previous problems have been corrected. After two consecutive tests at the increased testing frequency pass, the normal testing frequency of Section III.D. may be resumed. By verifying that previous Type A test failures were due to Type C leakage and by implementing a Corrective Action Plan to effectively correct previous Type C failure, the licensee has provided additional assurance that containment integrity will be maintained. Consequently, the Commission concludes that the special circumstances of 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants a one-time exemption as described in Section III above from the requirement in 10 CFR part 50, Appendix J, III.A.6.(b) to perform Type A containment ILRTs at an increased test frequency.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 6977).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4453 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8584]

Kennecott Uranium Co.; Sweetwater Uranium Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request to amend Source Material License SUA–1350 to allow for disposal of byproduct material at Kennecott Uranium Company's Sweetwater Uranium Mill.

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1. Proposed Action

By letter dated July 21, 1993, Kennecott Uranium Company, holder of Source Material License SUA–1350 for the Sweetwater Uranium Mill, requested an amendment to License Condition No. 10.6 to allow for disposal of byproduct material from U.S. Energy's Green Mountain Ion Exchange Facility, which is being decommissioned.

2. Reason for Request to Amend License

Kennecott Uranium Company's Sweetwater Mill is currently in a standby status. As a result, License Condition No. 10.6 limits disposal in the tailings impoundment to byproduct material in the form of debris generated by routine site maintenance. Kennecott has requested that the license condition be amended to allow for disposal of byproduct material from U.S. Energy Corporation's Green Mountain Ion Exchange Facility. This material is characterized as byproduct material as defined in 10 CFR 40.4.

Upon completion of the NRC staff's review of Kennecott's request, notice of the action to be taken regarding the amendment request will be published in the **Federal Register** with an opportunity to request a hearing, in accordance with Subpart L of 10 CFR 2.

Signed in Denver, Colorado this 15th day of February 1994.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 94–4452 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Company of Colorado; Fort St. Vrain Nuclear Generating Station

Exemption

I

The Public Service Company of Colorado (PSC or the licensee) is the holder of Possession-Only License (POL) No. DPR–34, which authorizes possession and maintenance of the Fort St. Vrain Nuclear Generating Station (FSV). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission now or hereafter in effect.

FSV is a high-temperature, gas-cooled reactor that is located at the licensee's site in Weld County, Colorado. FSV operated from January 31, 1974, to August 18, 1989. PSC shut down FSV due to control rod drive failures, and subsequently made the shut down permanent due to a discovery of degradation of the steam generator ring headers. On November 5, 1990, PSC submitted a Decommissioning Plan (DP) pursuant to 10 CFR 50.82 that proposed dismantling of FSV. On May 21, 1991, the NRC revised License No. DPR–34 to POL that allows possession but not operation of FSV. The DP was approved by NRC Order dated November 23, 1993. PSC is activately dismantling FSV. In addition, FSV has been defueled and all fuel was transferred to the PSC Independent Spent Fuel Storage Installation (ISFSI) The ISFSI is licensed under 10 CFR part 72.

II

By letter dated February 25, 1993, the licensee requested a reduction in their primary financial coverage and an exemption from participation in the industry retrospective rating plan for secondary level coverage as required in 10 CFR 140.11(a)(4).

III

The justification presented by the licensee for the exemption request is that FSV is not authorized to operate, all nuclear fuel has been removed from the reactor facility and transferred to the ISFSI, and the risk of accidents resulting in a radiological release is now considerably less than during plant operation. The licensee contends that, with all nuclear fuel removed from the reactor facility, the potential accidents as evaluated in the FSV DP only involve events such as fires, electrical power outages, and the dropping of activated or contaminated materials during dismantling. PSC concludes that these events result in doses to an individual located at the emergency planning zone boundary that are orders of magnitude below 10 CFR part 100 guidelines, and are a small fraction of U.S. Environmental Protection Agency's "Protective Action Guidelines." The NRC staff Safety Evaluation of the FSV DP (NRC Decommissioning Order dated November 23, 1992) confirmed the PSC conclusion.

Because the possession-only license and the decommissioning order prohibits operation of FSV, and all spent fuel has been transferred from the reactor, the licensee contended that FSV is outside the ambit of 10 CFR 140.11(a)(4) and that 10 CFR 140.12 applies with its minimum requirement of $4,500,000 for financial protection.

Therefore, the licensee indicated that it believed that reduced financial protection is warranted and that $50,000,000 in primary financial protection provides adequate coverage for liability stemming from any potential accident. PSC also cited the FSV DP to demonstrate that there were no credible accidents associated with FSV that are comparable, in consequence or severity, to the design basis accidents of an operating facility. PSC concluded that the requested $50,000,000 in primary financial protection insurance coverage is adequate for any fire, accident, or other hazardous event that could credibly occur while decommissioning FSV.

PSC concluded that the requirement for secondary insurance only applies to plants licensed to operate and is not applicable to FSV. PSC stated that it should not be unfairly burdened with financial liability at another nuclear facility because potential damages from an accident at FSV are reduced to the extent that it could not benefit from the secondary protection. The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shutdown reactors in SECY–93–127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," May 10, 1993. In this evaluation, the staff concluded that the NRC has discretionary authority to respond to licensee requests for reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Lastly, the staff concluded that accidents and hazards insured against under Price-Anderson go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR part 100 and in interpreting the

application of that regulation. The Commission issued a Staff Requirements Memorandum (SRM) based on SECY–93–127 on July 13, 1993. In the SRM, the Commission approved the staff's recommendation to permit, through the exemption process, a reduction of primary level coverage to $100,000,000 and a withdrawal from participation in the secondary financial protection layer.

In the exercise of its discretionary authority, the NRC may, so long as a potential hazard exists at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time that the hazard is determined to no longer exist, the NRC may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shutdown. The staff concluded that, aside from the handling, storage, and transportation of radioactive materials, no reasonably conceivable potential accident exists at FSV that could cause significant offsite damage.

A severe transportation accident could potentially result in local contamination requiring cleanup and offsite liabilities resulting from traffic disruption and loss of use. This type of accident would warrant maintaining some level of liability insurance.

The most significant accident sequence for a permanently defueled and shut down reactor with no fuel onsite involves a fire or the dropping of contaminated or activated components during decommissioning operations.

The NRC staff independently evaluated the legal and technical justifications for the exemption presented by PSC. The NRC recognizes that FSV is: (1) Permanently shutdown; (2) defueled; (3) licensed with "possession only" status under a decommissioning order and an amended license that does not permit fuel at the reactor facility; and (4) actively being dismantled. The staff concurred with the PSC's evaluation of credible accidents at FSV and their minimal associated offsite consequences. The licensee identified need for continuing liability coverage, $50,000,000, was limited to liability stemming from any fire, accident, or other hazardous events. However, coverage needs associated with transportation of radioactive materials or precautionary evacuations were not identified. Although the licensee presented legal views and opinions regarding the applicability of 10 CFR 140.12 versus 10 CFR 140.11(a)(4), the staff did not concur with these legal views and opinions.

The licensee also contended that compliance with existing regulations would result in potential payment of retrospective assessments under the secondary indemnity plan and payments of insurance premiums under the primary financial protection plan. These payments would constitute an "unfair burden" to the licensee and its ratepayers. The staff recognizes that relief from financial protection requirements is warranted because the potential hazards and consequences associated with a permanently shut down reactor with no spent fuel are greatly reduced, and that a permanently shut down reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor.

The staff, on its own initiative, did consider liability coverage needs associated with decommissioning activities and transportation of radioactive materials. The results of our evaluation, as embodied in the July 13, 1993, SRM, based on SECY–93–127, allow a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shut down. FSV meets the criterion established in SECY–93–127 for relief from financial protection requirements.

Although the licensee requested a new primary financial protection coverage level of $50,000,000, the staff has also concluded that claims settlement experience at the Three Mile Island Unit 2 (TMI–2) (an accident which did not result in a significant release of radioactivity) provides a reasonable basis for establishing the appropriate level of primary insurance coverage. Because TMI–2 claims have reached $60,000,000 and a large number of TMI–2 claims are still unsettled, the staff concluded that a level of $100,000,000 for primary financial protection coverage is warranted. This level of primary insurance coverage is consistent with the SRM dated July 13, 1993.

IV

The staff, based on its independent evaluation as embodied in the July 13, 1993, SRM on SECY–93–127 "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the FSV. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences of any accidents or reduce the margin of safety at this facility.

V

Based on Sections III and IV above, the NRC has determined, that pursuant to 10 CFR 140.8, that this exemption is authorized by law and is otherwise in the public interest. Therefore, the NRC grants an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and that an exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for FSV.

Pursuant to 10 CFR 51.32, the NRC has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 6311, dated February 10, 1994).

A copy of the licensee's request for the exemption and supporting documentation dated February 25, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20037, and at the Weld Library District—Downtown Branch, 919 7th Street, Greeley, CO 80631.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of February, 1994.

For the Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–4455 Filed 2–25–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of USTR Determination of Violation of Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Affirmative Determination under section 1377 of the Omnibus Trade and Competitiveness Act of 1988

of a Violation of a Trade Agreement by Japan.

SUMMARY: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) requires the U.S. Trade Representative (USTR) to review annually the operation and effectiveness of each telecommunications trade agreement in force between the United States and another country or countries, and to determine whether any act, policy, or practice of the foreign country that entered into the agreement (1) is not in compliance with the terms of the agreement, or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to U.S. telecommunications products and services.

Pursuant to section 1377, USTR has determined that certain practices of Japan with respect to cellular telephone products and services are not in compliance with Japan's commitments under a June 28, 1989 agreement on third party radio and cellular telecommunications equipment. Section 1377 requires this affirmative determination to be treated as an affirmative determination under section 304(a)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2414(a)(1)(A)). Accordingly, USTR will request the section 301 Committee to recommend what action, if any, should be taken under section 301 (19 U.S.C. 2411). USTR will publish notice of any proposed action and will provide an opportunity for interested persons to present views.

FOR FURTHER INFORMATION CONTACT: Questions concerning this affirmative determination should be directed to David Long, Office of Industry Affairs, (202) 395–6160, or Laura B. Sherman, Office of the General Counsel, (202) 395–3150, Office of the United States Trade Representative, 600 Seventh Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: This determination is the second affirmative determination under section 1377 on this issue. In the first determination, made on April 28, 1989 (54 FR 19624), USTR found that, for the reasons cited below, Japan was not in compliance with agreements on third party radio and cellular telecommunications equipment encompassed in a series of letters and joint communications between the United States and Japan pursuant to the "MOSS" (Market-Oriented Sector-Selective) discussions that took place between 1985 and 1987.

Specifically, USTR found that the Japanese Ministry of Posts and Telecommunications (MPT) had declined to license the operation in the Tokyo and Nagoya area of a cellular telephone system based on U.S. technology. This system was licensed in the rest of Japan, but subscribers to the system could not use their cellular telephones in the Tokyo-Nagoya area, i.e. they could not "roam" into Tokyo-Nagoya. Users of competing Japanese-technology cellular systems could "roam" throughout the country. USTR determined that the failure to approve operation of a U.S. technology-based system in the Tokyo-Nagoya area was inconsistent with the MOSS agreements, in which the Government of Japan committed to take measures with respect to roaming in Tokyo-Nagoya by users of the U.S. technology-based system.

Following that determination, consultations led to the June 28, 1989 third party radio and cellular agreement that is the subject of this determination. In the 1989 agreement, the Government of Japan committed to measures to enable users of the U.S. technology-based system to roam in the Tokyo-Nagoya region. In the agreement, Japan reaffirmed its commitment to the principle of "comparable market access."

In its review of the 1989 agreement, USTR found the following. To install the U.S. technology-based system in the Tokyo-Nagoya region, MPT selected, notwithstanding concerns expressed by USTR and U.S. industry, a company that operates a competing system in the Tokyo-Nagoya area using Japanese technology. This company has substantially delayed installing the U.S. technology-based system in Tokyo. Nearly five years after the 1989 agreement, and nine years after the MOSS discussions began, the new system covers only 40 percent of the Tokyo-Nagoya area. As a result, because users of the U.S. technology-based system still are unable to roam throughout Tokyo-Nagoya, the U.S. technology-based system does not have comparable market access with the Japanese systems, which offer full geographic coverage.

USTR has consulted with other executive agencies and the private sector during this review, and has had discussions with the Japanese Government regarding this agreement on more than seven occasions between July, 1993 and February 15, 1994.

As a result of this review, USTR has determined that MPT's failure to ensure full coverage for the U.S. technology-based system in the Tokyo-Nagoya area nearly five years after the 1989 third party radio and cellular agreement is inconsistent with the terms of that agreement, and denies, within the context of the terms of that agreement, mutually advantageous market opportunities in Japan for telecommunications products and services of the United States.

Irving Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–4612 Filed 2–25–94; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by the Office of Management and Budget

Agency Clearance Office: John J. Lane, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Revision: Rule 13h–1 and Form 13H. File No. 270–358.

New: Rule 17a–23 and Form 17A–23. File No. 270–387.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of the following rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*).

Proposed Rule 13h–1 and Form 13H provide for the Large Trader Reporting System, and would require that investors and broker-dealers disclose to the Commission information regarding large accounts and transactions.

It is anticipated that approximately 630 broker-dealers and 750 investors will spend a total of 11,454 hours annually complying with Rule 13h–1 and Form 13H.

Proposed rule 17a–23 and Form 17A–23 would establish recordkeeping and reporting requirements for brokers and dealers that operate automated trading systems.

It is anticipated that approximately 60 broker-dealers will spend a total of 6,612 hours annually complying with Rule 17a–23 and Form 17A–23.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office

of Management and Budget, (Paperwork Reduction Act numbers 3235–0408; new), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 15, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4426 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33641; File No. SR–CBOE–93–48]

Self-Regulatory Organizations; Order Approving Proposal Rule Change by the Chicago Board Options Exchange, Inc., Relating to Fines for Position Limit Infractions

February 18, 1994.

On October 25, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend paragraph (g)(1) of Exchange Rule 17.50, "Imposition of Fines for Minor Rule Violations," to establish a separate fine schedule for position limit violations which occur in non-CBOE member customer accounts carried by CBOE member firms, including the accounts of non-member broker-dealers.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33291 (December 6, 1993), 58 FR 65207. No comments were received on the proposed rule change.

Currently, paragraph (g)(1) of Exchange Rule 17.50 provides the following fine schedule for persons who violate the position limits established in CBOE Rule 4.11, "Position Limits," and 24.4, "Position Limits for Board-Based Index Options:" (1) A letter of caution plus $1 per contract over 5% of the applicable limit for one to three position limit violations within one calendar year; (2) $1 per contract over the limit for four to six position limit violations within one calendar year; and (3) $5 per contract over the applicable limit for seven or more position limit violations within one calendar year. The CBOE proposes to amend paragraph (g)(1) to establish a separate fine schedule for position limit violations which occur in non-CBOE member customer accounts (*i.e.*, accounts of customers who are not CBOE members) carried by CBOE member firms, including the accounts of non-member broker-dealers. The proposal will increase the number of cumulative infractions that may occur in non-member customer accounts before a fine is triggered. Specifically, under new subparagraph (a), the following fines, which will be imposed on CBOE member firms, will apply to position limit violations occurring in non-member customer accounts: (1) A letter of caution for position limit violations up to 5% in excess of the applicable limit plus $1 per contract above that level for one to six violations within one calendar year; (2) $1 per contract over the applicable limit for seven to 12 position limit violations within one calendar year; and (3) $5 per contract over the applicable limit for 13 or more position limit violations within one calendar year. In calculating the fine thresholds for each CBOE member, all non-member customer account position limit violations occurring within a single calendar year in all of the member's non-member customer accounts will be added together.

In addition, the Exchange proposes to rephrase the current language of subparagraph (b) to indicate more clearly that a letter of caution is given for position limit violations of up to 5% of the applicable limit for one to three position limit violations occurring within a single calendar year, and that a fine of $1 per contract applies to violations exceeding that limit.

The Exchange believes that the proposal accommodates key monitoring-related differences between non-member customer accounts and the accounts of members. The CBOE states that although CBOE members are well positioned generally to prevent, or to detect and promptly correct, position limit infractions in their own accounts or in accounts they carry for CBOE market makers, the CBOE and its member are positioned less effectively to monitor the aggregate trading commitments of non-CBOE broker-dealers or customers and to ensure the prompt correction of position limit violations by such persons. The CBOE states that factors such as customers trading through multiple firms, customers entering into Clearing Member Trade Assignment ("CMTA") agreements,[3] firms having multiple registered representatives, and investment advisors managing several accounts make it more difficult as a practical matter for member firms to prevent, or to detect and correct, a position limit violation by a customer, including a broker-dealer "customer," who is not a CBOE member. As a result, the CBOE believes that the fine tiers suitable with respect to CBOE members' own accounts can be inappropriately strict when applied to firms carrying a number of non-member customer accounts.

The Exchange believes that the proposal will permit the effective enforcement of the Exchange's position limit rules while taking into account compliance and monitoring realities. The CBOE states that situations involving numerous violations and/or substantial overages will continue to be referred to the CBOE's Business Conduct Committee ("BCC") for appropriate sanctions on a case by case basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members, and persons associated with its members, be appropriately disciplined for violation of the rules of the exchange. Specifically, the Commission believes that the proposal, in this limited context, should provide the CBOE with a prompt and effective means to enforce compliance with position limits while taking into account the difficulties of CBOE members in detecting and correcting position limit infractions by non-member customers.

The Commission believes that the CBOE's proposal strikes a reasonable balance between the Exchange's need to enforce its position limit rules and its desire to take into consideration the difficulties of CBOE members in detecting position limit violations that occur in non-member customer accounts. Further, the Commission believes that the revised fine schedule will prove sufficient to deter position limit violations. In this regard, by tallying the infractions in all of a member's non-member customer accounts cumulatively for purposes of the fine schedule, the proposal will

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 249.19b–4 (1993).

[3] The CMTA is a process offered by the Options Clearing Corporation ("OCC") which enables an OCC clearing member to have trades executed on its behalf on an exchange without holding exchange membership. In order to participate in this process, the OCC clearing member who has authorized an exchange member to execute trades on its behalf must file a CMTA agreement with the OCC.

require members to continually monitor compliance for position limit violations in non-member customer accounts. In addition, the Commission notes that the CBOE plans to refer cases involving numerous violations and/or substantial overages to the Exchange's BCC, thus providing the Exchange with the flexibility to impose a stricter sanction for more egregious infractions.

The Commission finds that the CBOE's rephrasing of the current language of new subparagraph (b) is consistent with the Act in that it clarifies Exchange Rule 17.50(b), thereby facilitating the enforcement of the rule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–CBOE–93–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4425 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33642; File No. SR–NYSE–93–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating To Initiation of On-Floor Orders in a Stock by Floor Professionals Who Have a Listed Option Position in That Stock

February 18, 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 March 14, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exchange Rule 96 currently prohibits a member registered as a Competitive Trader [1] or Registered Competitive Market Maker ("RCMM") [2] from initiating, while on the Floor of the Exchange, the purchase or sale, for his own account or his member organization's account, of any stock in which he has an option position, or in which he knows his firm has an option position. Rule 96 currently applies to all options, including those traded on a national securities exchange ("listed options"). The proposed rule change would remove the prohibition in Rule 96 as to listed options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 96 was adopted in the mid-1930's after extensive investigations and public hearings by the Commission concerning manipulative practices and "pool" operations involving the use of options. At present, Rule 96 prohibits a member registered as a Competitive Trader or RCMM from initiating, while on the Floor, the purchase or sale, for his own account or his member organization's account, of any stock in which he has an option position, or in which he knows his firm has an option position. Rule 96 does not prohibit a Competitive Trader or RCMM from trading in options; rather, the rule simply provides that such members may not initiate a proprietary trade in a stock on the Floor where they have an option position in the stock. Rule 96 currently applies to all options, including those traded over-the-counter ("OTC options") and listed options.

The purpose of the proposed rule change is to remove the prohibition in Rule 96 as to listed options. Thus, under the proposed rule change, a Competitive Trader or RCMM would be permitted to initiate a proprietary purchase or sale of stock on the Floor where he has a listed option position in that stock, but not where he has an OTC option position in that stock.

The Exchange believes that the proposed rule change is appropriate for three reasons:

(1) By removing a restraint on members' initiating transactions on the Floor, the proposed rule change can be expected to add to the depth and liquidity of the Exchange market.

(2) Listed options are substantially different from the OTC options which Rule 96 was originally intended to regulate, and any regulatory concerns that might arise as to listed options can be addressed by monitoring and surveillance of revised Rule 96.

(3) The proposed rule change will remove a competitive barrier to fair competition, since no other professionals are subject to comparable restrictions.

Enhancement to the Exchange Market

The Exchange established the membership categories of Competitive Trader and RCMM to provide a means whereby members, subject to certain conditions, could add to the quality of the Exchange market by initiating proprietary transactions on the Floor. The current restriction in Rule 96 defeats this purpose in some instances by precluding Floor professionals from initiating such Floor transactions in any stock where they have an option position overlying such stock (or where they know their member organization has such an option position).

The Exchange believes the proposed rule change will further the purposes of Rule 107 by facilitating RCMM participation as dealers on the Exchange. Currently, the prohibition in Rule 96 conflicts with the purposes of Rule 107 by effectively precluding RCMMs from participating as dealers in any stock where they have an option positin in that stock. By deleting the prohibition in Rule 96 as to listed options, the proposed rule change will eliminate this barrier to RCMM dealer participation, thereby permitting RCMMs to add to the depth and

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[4] 15 U.S.C. 72s(b)(2) (1988).

[5] 17 CFR 200.30–3(a)(12) (1993).

[1] A Competitive Trader is a NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange but who is not registered as a specialist, odd-lot dealer or Registered Competitive Market Maker. See NYSE Rules 111 & 112(e). Competitive Traders exist pursuant to, and must comply with the requirements of, Section 11(a)(1)(G) of the Act. See also SEC Rule 11a1–1(T). In addition, the NYSE requires that 75 percent of a Competitive Trader's monthly transactions must be stabilizing transactions under the tick-test. See NYSE Rule 112(d).

[2] A RCMM is a NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange. See NYSE Rule 107. RCMMs are not subject to the same tick-test as Competitive Traders; however, they must comply with a complex series of rules about the price at which they can trade and the size of those trades. *Id.* Unlike Competitive Traders, RCMMs have an affirmative obligation to maintain a fair and orderly market. See NYSE Rule 109(B)(4).

liquidity of the Exchange market in situation where they currently may not do so.

In a similar vein, the proposed rule change will facilitate transactions by Competitive Traders on the Floor by permitting them to initiate such transactions in a stock where they have an option position in such stock. This enhanced ability to initiate transactions on the Floor will, as with RCMMs, add to the depth and liquidity of the Exchange market.

Regulatory Concerns

Rule 96 was adopted in the mid-1930's to regulate trading where members have a position in OTC options, not listed options, and the trading abuses in the OTC market that gave rise to Rule 96 are simply not present with respect to today's closely surveilled trading in listed options. The Exchange believes that regulatory concerns as to listed option trading can be addressed by monitoring and surveillance of revised Rule 96.

The Exchange notes that if the prohibition in Rule 96 were to be removed as to listed options, RCMMs and Competitive Traders would remain subject to the restrictions on members' on-Floor proprietary transactions stated in Rules 108 and 112,[3] and thus would not be in any greater position to exploit their alleged time and place advantage over public investors.

Removal of Barrier to Fair Competition

The Exchange notes that off-Floor professionals (including specialists and market makers on regional exchanges) are not subject to any restrictions in effacing off-Floor proprietary trades in a stock where they have an option position (whether a listed or OTC option) in that stock. Thus, off-Floor professional can be said to enjoy a significant competitive advantage over Floor professionals on the Exchange, who are restricted in their on-Floor proprietary transactions in a stock where they have an option position in that stock.

The Exchange acknowledges that a floor professional my initiate an off-Floor order in a stock where he has an option position in that stock. However, a significant reason why Competitive Traders and RCMMs become registered as such is to be able, in the routine conduct of their business, to initiate proprietary trades *on the Floor rather than "upstairs."* Thus, the ability of Floor professionals to initiate off-Floor orders in a stock in which they have an option position is largely meaningless when viewed in the context of the way such professionals routinely conduct their business. The Exchange does not believe that any viewed in the context of the way such professionals routinely conduct their business, when off-Floor professionals are not subject to comparable restrictions in the routine conduct of their business.

SEC Staff Comments on SR–NYSE–76–54

In response to proposed changes to Rules 96, 102, and 105 that were submitted in file No. SR–NYSE–76–54, the SEC staff suggested that the Exchange's proposals be revised so that Floor professionals would be permitted to use listed options only for hedging purposes.[4] Most of the SEC staff's comments were directed specifically at specialists' trading of specialty stock options pursuant to Rule 105.

While Rule 105 permits specialists to use listed options to offset the risks of making markets in stocks in which they are registered, the Exchange does not believe that it would be appropriate to re-structure Rule 96 along the lines of Rule 105. A "hedging limitation" in such a re-structured version of Rule 96 would have the effect of requiring Competitive Traders and RCMMs to use listed options only to offset the risk of loss in stock positions which they acquired as a result of orders in such stocks that were initiated on the Floor. In practice, such a limitation would be even more restrictive than the current regulation, which, as noted above, permits Floor professionals to trade in listed options, but simply precludes them from initiating an order on the Floor in a stock which underlies such option position. The Exchange does not believe that making Rule 96 even more stringent than it is today would serve any valid regulatory purpose.

As noted above, Rule 96 does not prohibit a Competitive Trader or RCMM from trading in options, but provides only that he may not initiate a proprietary order on the Floor in any stock where he has an option position in that stock. The Exchange does not believe that any sort of "reverse hedging limitation" in Rule 96 would make sense because it would mean, in effect, that a Competitive Trader or RCMM could initiate a proprietary trade on the Floor if necessary to hedge an option position. However, the primary dealings of RCMMs and Competitive Traders are in stocks, not the overlying options. In the Exchange's view, a "reverse hedging limitation" in Rule 96 would bear no relation to the practical business dealings of RCMMs and Competitive Traders, and would constitute an unnecessary burden of over-regulation given the minimal potential for trading abuse.

2. Statutory Basis

The statutory bases for the proposed rule change are sections 6(b)(5), 6(b)(8) and 11A(a)(1)(c)(ii) of the Act. By removing the prohibition on Competitive Traders and RCMMs initiating proprietary transactions on the Floor in a stock where they have a listed option position in such stock, and thereby permitting such members to add to the depth and liquidity of the Exchange market in situations where they may not currently do so, the proposed rule change will have the effect of "facilitating transactions in securities" and will "perfect the mechanism of a free and open market," as called for in section 6(b)(5).

To the extent that the proposed rule change permits Floor professionals to initiate transactions on a more equal regulatory footing with other securities professionals, the proposed rule change is designed to eliminate unfair discrimination between brokers or dealers, as called for in section 6(b)(5); to remove a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as called for in section 6(b)(8); and to promote fair competition among brokers and dealers, as called for in section 11A(a)(1)(C)(ii).

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 that is not

[3] Under Rule 108, an on-Floor order placed by a member to establish or increase a position in the member's proprietary account is not entitled to priority, or precedence based on size, over an off-Floor order placed by a public customer. On-Floor and off-floor are defined in rule 112; that rule also prohibits frontrunning of block transactions.

[4] The NYSE submitted File No. SR–NYSE–76–54 to the Commission on October 22, 1976. The proposed rule change was noticed for comment in Securities Exchange Act Release 12924 (October 27, 1976), 41 FR 48430 (November 3, 1976). The file, like other options proposals that raised significant regulatory issues, became dormant during the "options moratorium" in order to allow the Commission to complete its Special Study of the Options Markets. Shortly thereafter, the NYSE refiled its proposals to amend Rule 96 (File No. SR–NYSE–82–19) and Rules 102 and 105 (File No. SR–NYSE–82–20). In early 1985, the Commission approved the latter rule filing, thereby permitting NYSE specialists to trade options on their specialty stock but, consistent with the staff's earlier comments, only for hedging purposes. *See* Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 (February 11, 1985). The amendments to Rule 96, however, were noticed but never received Commission approval. *See* Securities Exchange Act Release No. 20006 (July 26, 1983), 48 FR 35217 (August 3, 1983). On March 15, 1993, the NYSE withdrew File No. SR–NYSE–82–19 and resubmitted the substance of that proposal as this File No. SR–NYSE–93–17.

necessary or appropriate in furtherance of the purposes of the Act. In fact, the proposed rule change will enhance competition by permitting Floor professionals to initiate proprietary transactions on a more equal regulatory plane with all other securities professionals.

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 other 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–17 and should be submitted by March 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4474 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20084; 812–8594]

Bando McGlocklin Capital Corporation; Notice of Application

February 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Bando McGlocklin Capital Corporation.

RELEVANT SECTIONS: Exemption requested under sections 6(c), 17(d), and 23(c), and rule 17d–1 from the provisions of sections 17(d), 18(d), and 23, and rule 17d–1.

SUMMARY OF APPLICATION: Applicant, a diversified closed-end registered investment company, seeks a conditional order permitting it to offer key employees of applicant and its subsidiaries deferred equity compensation in the form of stock options.

FILING DATES: The application was filed on September 28, 1993, and amended on January 14, 1994, and February 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 15, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 13555 Bishops Court, Brookfield, Wisconsin 53005.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an internally managed, diversified closed-end registered investment company. As of December 31, 1993, applicant had outstanding 3,875,600 shares of common stock. Applicant's common stock is quoted on the NASDAQ National Market System.

2. Before March 26, 1993, applicant was licensed to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958, as amended, and provided long-term, primarily variable rate, secured loans to finance the growth, expansion, and modernization of small businesses. Applicant was granted an exemption from various provisions of the Act and the rules thereunder to permit it to create a holding company structure.[1] The purpose of the holding company structure was to allow applicant to expand its business beyond that of an SBIC. Although applicant is no longer an SBIC, it will continue to provide secured loans to finance the growth, expansion, and modernization of small business entities.

3. On March 26, 1993, applicant transferred its SBIC license to Bando McGlocklin Small Business Investment Corporation (the "Subsidiary"), a Wisconsin corporation, under a plan of reorganization under section 351 of the Internal Revenue Code of 1986 (the "Code"). Under the plan, virtually all of applicant's assets were transferred to the Subsidiary; virtually all of applicant's liabilities were assumed by the Subsidiary; and all of the issued and outstanding shares of the Subsidiary's common stock were issued to applicant. Since March 26, 1993, substantially all of applicant's business has been conducted through the Subsidiary.

4. As an internally-managed investment company, applicant employs its own personnel and advisory staff. Applicant currently maintains two incentive stock option plans in accordance with two orders issued to applicant when it was an SBIC.[2]

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[1] Investment Company Act Release Nos. 19030 (Oct. 15, 1992) (notice) and 19092 (Nov. 10, 1992) (order).

[2] Investment Company Act Release Nos. 17837 (Nov. 1, 1990) (notice) and 17978 (Nov. 27, 1990) (order) (the "1990 Plan"); and 15909 (Aug. 3, 1987) (notice) and 15958 (Sept. 2, 1987) (order) (the "1987 Plan").

5. To induce key employees to remain in the employ of applicant and its subsidiaries and to increase the incentive and personal interest of such employees in the welfare of applicant and its subsidiaries, applicant's Board of Directors on August 25, 1993, approved the 1993 Incentive Stock Option Plan (the "Plan"). Applicant's shareholders subsequently approved the Plan.

6. The Plan, which is substantially similar to the previous plans, provides for the grant of options to purchase a maximum of 100,000 shares of applicant's common stock. Applicant has agreed not to issue more than 85,672 shares under the Plan, so that the total number of shares that may be issued under all of applicant's incentive stock option plans will not exceed 7.5% of applicant's currently issued and outstanding shares without a subsequent SEC order.

7. Only key employees of applicant and its subsidiaries will be eligible to receive options. The Plan provides that if an option granted under the Plan expires or is terminated unexercised, the shares of common stock covered by that option will again be available for the grant of new options under the Plan. In addition, the Plan provides that not more than 29,985 shares may be issued to one participant through the exercise of options granted under the Plan.

8. Applicant currently has five key employees (its three executive officers, its controller, and its general counsel), who serve in identical capacities with the Subsidiary. Applicant anticipates that options to purchase shares of common stock under the Plan will be granted to applicant's three executive officers when and if the requested order is received. The number and specific terms of the options to be granted to such persons have not yet been determined.

9. Applicant's executive officers not only have the responsibility for making applicant's investments, but also for making all executive and operational decisions. As the executive officers of applicant, their performance directly affects applicant's performance and the value of applicant's common stock. To a lesser extent, the performance of applicant's controller and its general counsel, who participate in operational decisions, but do not make executive decisions, also directly affects the value of applicant's common stock. The performance of applicant's other employees does not directly affect applicant's performance. It therefore would be inconsistent with the purposes of the Plan to grant such employees stock options, since no matter how competently they performed their duties, their performance probably would not affect the value of applicant's common stock.

10. The Plan will be administered by the Compensation Committee of applicant's Board of Directors. The Compensation Committee consists of five directors of applicant, a majority of whose members are not "interested persons" of applicant, as defined in section 2(a)(19). Members of the Compensation Committee may not receive options under the Plan.

11. All of the options to be granted pursuant to the Plan will be incentive stock options within the meaning of section 422 (formerly section 422A) of the Code. As incentive stock options, the following restrictions apply:

(a) The Plan must state the aggregate number of shares that may be issued pursuant to the exercise of options and the class of employees eligible to receive options; the Plan also must be approved by applicant's shareholders.

(b) All options must be granted within ten years of the date the Plan was adopted.

(c) Options may not be exercised more than ten years after the date on which they are granted.

(d) The exercise price of the options may not be less than the fair market value of the underlying stock on the date of grant. In accordance with this provision, options will be granted at the last quoted sale price of the underlying stock on the date of grant or, if there is no sale on such date, the options will be granted at the mean between the closing bid and asked quotations.

(e) Options may not be transferable by an optionee (otherwise than by will or the laws of descent and distribution), and may be exercised during the lifetime of the optionee only by the optionee.

(f) Options may not be granted to persons owning more than 10% of the voting power of the outstanding shares of applicant's common stock at the time the options are granted.

(g) The aggregate fair market value (determined at the time the option is granted) of the stock with respect to which options are exercisable for the first time by an individual in any calendar year may not exceed $100,000.

(h) Stock acquired upon exercise of options may not be sold for two years from the grant date or one year from the exercise date, whichever is later.

(i) Options may be exercised by the optionee only if the optionee was an employee or officer of applicant during the entire period commencing with the grant date and ending three months prior to the exercise date, unless termination of employment is caused by death or disability, in which case the option may be exercised within one year following termination of employment.

12. The Plan does not provide for the grant of stock appreciation rights. The Plan does permit the exercise price of an option to be paid in cash or by tendering previously acquired shares of stock, valued at the fair market value as determined by the Compensation Committee. In placing a fair market value on previously acquired shares of applicant's common stock, applicant will use the same standards as are used in determining the fair market value at the time of the grant of the option.

13. The Compensation Committee may determine in its sole discretion that an adjustment in the number or kind of shares reserved for issuance under the Plan but not yet covered by options or of the stock then subject to options is necessary, or that an adjustment in the option price in each stock option agreement is necessary because of a change in the number or kind of outstanding shares of stock of applicant (or of any stock or other securities into which such shares of stock shall have been changed or for which it shall have been exchanged), whether through reorganization, recapitalization, stock split, combination of shares, merger or consolidation, or any other change in the number or kind of outstanding shares of stock.

14. Applicant also has a profit sharing plan qualified under section 401(a) of the Code, which is intended to provide a source of retirement income for employees. In accordance with the requirements of the Employee Retirement Income Security Act of 1974, as amended, applicant's profit sharing plan does not discriminate in favor of shareholders, officers, and highly compensated employees as to coverage, benefits, contributions, or otherwise. Applicant to date has not contributed the maximum permissible amount in any year. The Plan is not a substitute for a profit-sharing plan qualified under section 401(a), as it is intended to provide incentive compensation and does not establish a source of income for an employee's retirement years.

Applicant's Legal Conclusions

1. Section 18(d) prohibits any registered management investment company from issuing warrants or rights to subscribe to or purchase its securities except those issued ratably to a class of security holders with an exercise period of up to 120 days, or in exchange for warrants in connection with a reorganization. The issuance of stock options by applicant to its employees

would not satisfy these statutory exceptions.

2. The issuance of stock options to applicant's employees also would be prohibited under section 23. Section 23(a) generally prevents a registered closed-end investment company from issuing any of its securities for services or for property other than cash or securities. Because the issuance of stock options by applicant may constitute the issuance of securities for services, absent exemptive relief, it would be prohibited by section 23(a). Section 23(b) prohibits the sale by a closed-end investment company of any stock of which it is the issuer at a price below current net asset value, except with the consent of a majority of its common stockholders at the time of issuance or under certain other enumerated circumstances. If the net asset value of applicant's common stock were to increase following the grant of an option, the option exercise price may be less than the net asset value of a share of applicant's common stock on the date of exercise. Furthermore, section 23(c) generally prohibits the purchase by a registered closed-end investment company of any securities of which it is the issuer. Thus, to the extent that payment for stock options with previously acquired shares of applicant's common stock is considered to be a purchase by applicant of its own securities, section 23(c) would prohibit the transaction.

3. Section 17(d) and rule 17d–1(a) thereunder also prohibit an affiliated person of a registered investment company from participating in, or offering a transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the registered company is a participant unless an order permitting the transaction has been granted by the SEC. Paragraph (c) of rule 17d–1 includes stock option plans in the definition of joint enterprise, joint arrangement or profit-sharing plan prohibited by section 17(d). These provisions therefore may prohibit any stock option plan absent an order from the SEC.

4. Although applicant is engaged primarily in the business of making loans to small businesses, it is no longer an SBIC and therefore is unable to rely on an existing SEC order permitting SBICs to issue stock options to their employees [3] or on rule 17d–1(d)(4). Additionally, both the order and the rule specifically provide that the options granted must be "qualified stock options" under former section 422 of the Code and must conform to the requirements of 13 CFR 805(b) adopted by the Small Business Administration. "Qualified stock options" were eliminated in 1976. Thus, although the incentive stock options provided for in the Plan have many of the same characteristics as qualified stock options under former section 422, they have some minor differences, which are fully described in the application. Applicant is also unable to rely upon a similar order granted to the Association of Publicly Traded Investment Funds [4] because the order does not extend to registered closed-end investment companies that are engaged primarily in the business of making loans to small businesses.

5. Section 6(c) provides that the SEC may grant an exemption from the provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Rule 17d–1(b) requires the SEC, in passing upon an application regarding a joint enterprise, joint arrangement or profit-sharing plan, to consider whether the participation of the investment company in the transaction is consistent with the policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Section 23(c)(3) requires the SEC to insure that repurchases by closed-end funds of their own securities are on a basis which does not unfairly discriminate against any holders of the class of securities to be purchased.

6. Applicant submits that the limitations on the requested order will provide protection to investors against dilution of their *pro rata* interests that are similar to those the SEC previously has found consistent with the purposes and policies of the Act and even greater than those Congress imposed on stock options to be issued by business development companies. The Plan has been approved by applicant's shareholders, and any options granted under the Plan must be approved by a majority of applicant's directors who are not interested persons of applicant and who cannot participate in the Plan. In addition, the total percentage of shares that could be issued under the Plan, the 1987 Plan, and the 1990 Plan will be limited to 7.5% of the outstanding shares of applicant's common stock.

7. Applicant states that the abuses and adverse effects of investment company stock options would have no applicability to stock options granted under the Plan. The limited stock options that could be granted under the Plan would offer no opportunity for any change in control of applicant or quick sale at a profit. Additionally, the options themselves would not be transferable. Moreover, the existence and nature of the stock options granted by applicant would be fully disclosed in accordance with the standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the SEC, and will be neither so extensive nor so complex as to make the financial statements of applicant or management remuneration more difficult to understand.

8. Applicant's investments (other than investments in idle funds) are in small businesses, the securities of which will not be publicly traded. In addition, all of applicant's investments in small businesses consist of non-convertible secured loans. Under these circumstances, applicant believes that it is difficult to conceive a scenario in which applicant's portfolio investments could create a short-term artificial increase in the price of applicant's stock.

9. Applicant submits that, in the event this application is granted, any adverse impact on investor interests protected by the Act will be minimal, and further, will be more than outweighed by the benefits to investors that will result from permitting applicant to compete for top quality personnel on a more equal footing with its competitors. Applicant competes primarily with banks and other entities that are not investment companies registered under the Act. These organizations are able to offer stock options to employees and have an advantage over applicant in attracting and retaining highly qualified personnel. In order for applicant to compete on a more equal basis with such organizations, it has to have personnel as competent as such organizations, and in order to attract and retain such personnel, applicant must be able to offer comparable compensation packages.

10. For the foregoing reasons, applicant believes that the applicant satisfies the standards for relief set forth in sections 6(c), 17(d), and 23(c) of the Act and rule 17d–1 thereunder.

[3] National Association of Small Business Investment Companies, Investment Company Act Release No. 6523 (May 14, 1971).

[4] Investment Company Act Release Nos. 14541 (May 28, 1985) (notice) and 14594 (June 21, 1985) (order) (permitting the issuance of incentive stock options by member closed-end investment companies with portfolios of marketable securities).

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Applicant's directors, including a majority of the directors who are not interested persons of applicant, will review periodically the potential impact that the grant or exercise of stock options could have on applicant's earnings and net asset value per share, such review to take place prior to any decisions to grant stock options, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review by applicant's directors, and the directors will have the authority to take appropriate steps if necessary to ensure that neither the grant nor the exercise of stock options would have an effect contrary to the interests of investors in these areas. The directors' authority will include, in addition to the authority to prevent or limit the grant of additional stock options, the authority to limit the number of stock options exercised in a given period of time if the directors conclude that the effect on applicant's expenses or earnings would be contrary to the interests of investors or that net asset value per share might be excessively diluted.

2. No more than 85,672 shares will be issued pursuant to the Plan, absent a subsequent exemptive order from the SEC with respect to the remaining 14,328 shares authorized under the Plan.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4422 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25990]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 18, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 14, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

DQE, Inc. et al. (70–8096)

DQE, Inc. ("DQE"), P.O. Box 68, Pittsburgh, Pennsylvania 15230–0068, and its wholly owned subsidiary company, Duquesne Enterprises, Inc. ("DE"), Grant Building, 330 Grant Street, suite 2420, Pittsburgh, Pennsylvania 15219, both Pennsylvania public-utility holding companies exempt from registration under section 3(a)(1) of the Act pursuant to Rule 2, have filed an application under sections 9(a)(2) and 10 of the Act in connection with the acquisition of Allegheny Development Corporation ("ADC"), a wholly owned subsidiary of DE, that operates an energy services business.

DQE was organized in 1989 for the purpose of becoming a holding company for Duquesne Light Company ("DLC"), an electric utility company, and other energy-related subsidiaries. DLC is engaged in the generation, transmission, distribution and sale of electric energy and serves an area of approximately 800 square miles which includes the City of Pittsburgh. DE's subsidiaries other than ADC are engaged in real estate ventures.

In 1987 a competitive bidding process was initiated by the County of Allegheny, Pennsylvania ("County") for the design, installation and operation of facilities to provide a complete energy services package to the new Midfield Terminal Complex being developed to replace the then existing airline terminal at the Greater Pittsburgh International Airport ("Airport"). DLC was the supplier of electric energy to the Airport at that time. The applicants state that DLC, a utility subject to the jurisdiction of the Pennsylvania Public Utility Commission, was not in a position to submit a competitive bid; however, it was important to participate in the bidding to avoid the loss of a significant DLC customer when the Airport ceased operation. Consequently, ADC then a wholly-owned subsidiary of DLC, submitted a bid to the County and was awarded the contract out of a field of 12 bidders. As a result, ADC became a public utility company within the meaning of the Act.

On July 7, 1989, DLC became a wholly-owned subsidiary of QE by virtue of a merger transaction. ADC was still a wholly-owned subsidiary of DLC. An Energy Services Agreement ("Agreement") dated May 31, 1989 between the County and ADC was entered into on July 27, 1989. In December 1989, DLC distributed all of the stock of ADC to DQE as a dividend and later in December 1989, DQE contributed the ADC stock to the capital of DE.

The Agreement requires ADC to supply all of the electrical and thermal requirements of the Midfield Terminal Complex, including electricity, hot water and chilled water. ADC purchases electricity at tariff rates from DLC and sells a portion to the County at the unit costs specified in the Agreement. The County also is required to pay to ADC an annual fixed charge related to ADC's investment in the facilities. The County is the sole customer for the energy services provided by ADC.

OLS Acquisition Corp., et al. (70–8311)

OLS Acquisition Corporation ("Acquisition Corp.") and OLS Energy-Berkeley ("Berkeley"), One Upper Pond Road, Parsippany, New Jersey 07054, both indirect nonutility subsidiaries of Energy Initiatives, Inc. ("EII"), an indirect subsidiary of General Public Utilities Corporation, a registered holding company, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(a), and 12(b) of the Act and Rule 45 thereunder.

By order dated August 1, 1989 (HCAR No. 24931), the Commission authorized OLS Power Limited Partnership, a Delaware limited partnership and an indirect subsidiary of EII, to, among other things, acquire indirectly through Acquisition Corp. all of the outstanding common stock of OLS-Energy-Chino, a California corporation ("Chino"), OLS Energy-Camarillo, a California corporation ("Camarillo"), and Berkeley.

Berkeley, Chino and Camarillo are each lessees, pursuant to leases ("Leases") with General Electric Capital Corporation or a wholly owned subsidiary (collectively, "GECC") of operating cogeneration facilities ("Facilities") located in California, which are all qualifying facilities under the Public Utility Regulatory Policies Act of 1978. The Leases expire, in the

cases of Chino and Camarillo, on December 31, 2007, and in the case of Berkeley, on August 7, 2007, but may be renewed, subject to certain conditions, for up to 10 years at the lessee's option. Rent payable during such renewal term would be the then fair market rent for the respective Facility, or, for an initial three year renewal term, an amount which has been agreed upon if the renewal option which provides for payment of rent in such agreed upon amount is elected by the lessee.

At the time of the acquisition, Berkeley, Chino and Camarillo each were parties to revolving credit agreements ("Credit Agreement(s)") with FECC that provided for the short-term working capital requirements of their respective Facilities. Berkeley, Chino and Camarillo have issued secured promissory notes to GECC evidencing these borrowings.

After the acquisition, each company was unable to generate sufficient revenue from sales of steam and electricity to pay its operating expenses and rent under its Lease on a current basis. In order to remedy the problem, the OLS Companies ultimately reached agreement with GECC and their host institutions to restructure their Leases and the energy services agreements under which they sell electricity and steam to their host institutions ("Energy Services Agreements").

On August 30, 1991, Chino and Camarillo entered into agreements with GECC and their respective host institutions which, among other things, reduced the rent payable to GECC under their respective Leases, increased the amount each could borrow and reduced the rate of interest payable under their respective Credit Agreements and reduced certain rebates payable to their host institutions under their respective Energy Service Agreements. The amendments to Chino's and Camarillo's Credit Agreements were authorized by orders of the Commission dated February 9, 1990 and December 26, 1990 (HCAR Nos. 25038 and 25230).

Pursuant to authorization granted in five previous orders of the Commission issued from 1990 through 1992, Berkeley has previously amended its Credit Agreement to, among other things, increase the aggregate amount of the borrowings which may be outstanding at any time from $1 million to $1.25 million, extend the time period for borrowings to December 31, 1994, and reduce the rate of interest from 5% over the prime rate, as defined, to 3% over the prime rate.

Pursuant to negotiations with GECC and the University of California at Berkeley ("University"), where the Berkeley Facility is located, Berkeley now proposes to restructure ("Restructure") the Lease with GECC as well as the Energy Services Agreement with the University and related agreements. Berkeley also proposes to further amend the Credit Agreement.

The Restructure contemplates, among other things, that (i) rent payable to GECC under Berkeley's Lease will be reduced, effective December 31, 1993, by approximately $780,000 per year and will be payable quarterly in amounts which track expected revenue, rather than semi-annually in equal payments, and (ii) rebates payable to the University under the Energy Services Agreement will be reduced or deferred to increase the cash retained by Berkeley to pay operating expenses.

As part of the Restructure, Berkeley proposes to borrow, subject to the satisfaction of certain conditions precedent, up to an aggregate amount outstanding of $1 million under a loan facility ("Overhaul Loan Facility") as part of the Berkeley Credit Agreement with GECC. The Overhaul Loan Facility would be used to fund the cost of major repairs, nonroutine maintenance activities and overhauls of its Facility; provided that the initial advance under the Overhaul Loan Facility may be used to pay amounts due fuel suppliers and the operator of the Facility, costs incurred to consummate the Restructure, prepayments of working capital advances and rent under Lease.

Borrowings under the Overhaul Loan Facility may be made from time to time until August 7, 2007, and would bear interest at a rate per annum of 3% in excess of the rate of interest per annum publicly announced by Morgan Guaranty Trust Company as its commercial reference rate, or certain substantially equivalent rates of interest per annum if Morgan Guaranty Trust Company ceases to announce such a rate of interest. Borrowings would be repayable on a fixed amortization schedule over the lesser of three years or the remaining term of Berkeley's restructured Lease (August 7, 2007).

The obligation of GECC to make each loan under the Overhaul Loan Facility would be subject, among other conditions, to the delivery of certain documentation, the absence of a material adverse change in the financial condition of Berkeley, the showing by Berkeley in form and substance satisfactory to GECC that Berkeley will have sufficient cash to repay the loan and the absence of a default under, among other agreements, the amended Lease and the amended Credit Agreement.

Berkeley also proposes to make the following amendments to the Credit Agreement: (1) Provide for the Overhaul Loan Facility with GECC and borrow thereunder from time to time prior to August 7, 2007 in amounts of up to $1 million at any time outstanding and issue to GECC its promissory note evidencing such borrowings; (2) change the aggregate amount of the borrowings which may be outstanding at any time thereunder to the lesser of $1.25 million or $1.5 million less the aggregate face amount of outstanding letters of credit issued under the Credit Agreement; (3) extend until August 7, 2007, which is the end of the term of Berkeley's restructured lease, for borrowings to be made and letters of credit to be outstanding under the Credit Agreement; (4) provide that borrowings under the Credit Agreement may be made only upon the satisfaction of certain conditions precedent, such as certain documentation and the absence of a default under, among other agreements, the amended lease and the amended Credit Agreement; and (5) provide for an origination fee of $2,500 for the issuance of letters of credit in replacement of those presently outstanding under the Credit Agreement, plus an annual fee of 1% per annum of the face amount of any such replacement letter of credit.

Acquisition Corp. also proposes to enter into a pledge agreement with U.S. Trust Company of New York, the owner trustee and lessor or Berkeley's facility under its lease, pledging Berkeley's stock as security for Berkeley's obligations under its amended Credit Agreement and in connection with the Restructure. Outstanding borrowings under the amended Credit Agreement would be required to be repaid in full annually and the amended Credit Agreement would contain certain other mandatory and optional prepayment provisions.

Monongahela Power Company, et al. (70–8349)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edision"), 10435 Downsville Pike, Hagerstown, Maryland 21740–1766, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601 (collectively, "Applicants"), each an electric utility subsidiary of Allegheny Power System, Inc., a registered holding company, have filed an application-declaration under sections 9(a), 10 and 12(c) of the Act.

Applicants propose, through December 31, 1996, to redeem all of the shares of certain series of their preferred stock, which are eligible for optional redemption at specified premiums over their respective par values, as follows:

Company	Series	Dividend rate	No. of shares	Par value	Current optional redemption price	Date price applicable
Monongahela	G	$8.80	50,000	$100	$104.20	After 5/1/86.
Monongahela	H	7.92	50,000	100	103.52	After 4/1/87.
Monongahela	I	7.92	100,000	100	103.52	After 11/1/88.
Monongahela	J	8.60	150,000	100	103.33	After 12/1/91.
Potomac Edison	F	8.32	50,000	100	103.54	After 5/1/86.
Potomac Edison	G	8.00	100,000	100	103.25	After 5/1/87.
West Penn	G	8.08	100,000	100	103.27	After 7/1/87.
West Penn	H	7.60	100,000	100	103.23	After 6/1/87.
West Penn	I	7.64	100,000	100	103.16	After 11/1/88.
West Penn	J	8.20	200,000	100	103.30	After 12/1/91.

Applicants propose to effect such redemptions by issuing new preferred stock with a lower dividend rate.

Applicants will not enter into the proposed refunding transactions unless, in each instance, the estimated present value savings derived from the net difference between interest payments on the new issue of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after tax interest rate on the securities to be issued.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4424 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20085; 811–5960]

Smith Barney Shearson 1990s Fund; Application for Deregistration

February 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney Shearson 1990s Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on January 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 15, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Mary Key Frech, Staff Attorney, at (202) 272–7648, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On November 21, 1989, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on January 11, 1990, and applicant commenced its initial public offering shortly thereafter.

2. On June 11, 1993, applicant's board of directors approved a plan of reorganization whereby applicant agreed to transfer substantially all of its assets to Smith Barney Shearson Aggressive Growth Fund Inc. (the "Acquiring Fund"), in exchange for shares of beneficial interest of the Acquiring Fund and the assumption by the Acquiring Fund of certain liabilities of applicant. In accordance with rule 17a–8 of the Act, applicant's directors determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

3. In approving the reorganization, the directors considered various factors, including, (a) the generally similar investment objectives and policies of applicant and the Acquiring Fund, (b) the fact that the funds have the same investment adviser, administrator, custodian, and transfer agent, (c) the significant savings in expenses for application's shareholders, and (d) the fact that the larger asset base of the combined funds should result in further reduction of expenses.

4. Proxy materials soliciting shareholder approval of the reorganization were distributed to applicant's shareholders of record on or about August 18, 1993. Preliminary and definitive copies of the proxy materials were filed with the SEC. Applicant's shareholders approved the reorganization at a special meeting held on October 12, 1993.

5. As of October 15, 1993 (the "Closing Date"), applicant had 2,634,771 and 48,102 shares of Class A and Class B, respectively, outstanding,

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[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

having a net asset value of $26,604,523 and $482,443, respectively, and a per share net asset value of $10.10 and $10.03, respectively. On the Closing Date, the reorganization was consummated. Applicant transferred all, or substantially all, of its assets and certain stated liabilities to the Acquiring Fund. In exchange, the shareholders of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of their investment in applicant. Holders of Class A shares of applicant received Class A shares of the Acquiring Fund, and holders of Class B shares of applicant received Class B shares of the Acquiring Fund.

6. On the Closing Date, applicant paid a capital gain distribution of $0.5240 per share which, together with all previous such dividends, had the effect of distributing to its shareholders all of its respective investment company taxable income for the taxable year ending on or prior to the Closing Date (computed without regard to any deduction for dividends paid) and all of its respective net capital gain realized in the taxable year ending on or prior to the Closing Date (after reduction for any capital loss carry forward).

7. The expenses in connection with the reorganization consisted of legal, accounting, printing, and administrative expenses totalling approximately $20,000. These expenses were borne by applicant.

8. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4423 Filed 2–25–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

Availability of Public Docket 49416

On February 10, 1993, the Department of Transportation's (DOT) Office of Commercial Space Transportation (OCST) conducted a public meeting for the purpose of gathering information relating to the low earth orbit (LEO) space market. Notice of the meeting was published in the **Federal Register** on February 3, 1994 59 FR (5219).

Written submissions provided to OCST at the meeting or in response to the Notice are available for public inspection under Docket No. 49416, in room 4107. DOT Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. Submissions designated as proprietary or confidential are not available to the public.

For additional information or questions, please contact Linda Strine at 202/366–5770.

Dated: February 17, 1994.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 94–4429 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

Privacy Act of 1974; DOT/CG 623 Military Pay and Personnel System

The Department of Transportation, on behalf of the United States Coast Guard, herewith publishes a proposal to amend the system of records DOT/CG 623 Military Pay and Personnel System to add an additional routine use.

Any person or agency may submit written comments on the proposed altered system to Commandant (G-PD–3), ATTN: Mr. David M. Swatloski, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, room 4611. Comments to be considered must be received by March 31, 1994.

If no comments are received, the proposed change will become effective on the above mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the change.

Issued in Washington, DC, February 18, 1994.

Paula R. Ewen,

Chief, Information Requirements Division.

DOT/CG–623

SYSTEM NAME:

Military Pay and Personnel System.

SYSTEM LOCATION:

Department of Transportation (DOT),

a. U.S. Coast Guard (CG), Department of Transportation Computer Center, 400 7th Street, SW., Washington, DC 20590–0001.

b. U.S. Coast Guard Pay and Personnel Center, 444 SE Quincy Street, Topeka, KS 66683–3591.

c. U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

d. Decentralized data segments are located at the unit maintaining the individual's pay and personnel record and permanent duty unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. All Coast Guard military personnel, active duty and reserve.

b. Retired reserve Coast Guard military personnel waiting for pay at age 60.

c. Active duty National Oceanic and Atmospheric Administration (NOAA) officers.

d. Personnel separated from service in all the preceding categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records are electronic and/or paper, and may include identifying information, such as name(s), date of birth, home residence, mailing address, social security number, payroll information, and home telephone number. Records reflect:

a. Work experience, educational level achieved, and specialized education or training obtained in and outside of military service.

b. Military duty assignments, ranks held, pay and allowances, personnel actions such as promotions, demotions, or separations.

c. Enrollment or declination of enrollment in insurance programs.

d. Performance evaluation.

e. The individual's desires for future assignments, training requested, and notations by assignment officers.

f. Information for determinations of waivers and remissions of indebtedness to the U.S. Government.

g. Information for the purpose of validating legal requirements for garnishment of wages.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Title 37 U.S.C. as implemented in GAO Manual for Guidance of Federal Agencies, Title 2 GAO, Title 6 GAO and Title 14 U.S.C. 92(i).

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To the Department of Treasury for the purpose of disbursement of salary, U.S. Savings Bonds, allotments, or travel claim payments.

b. To government agencies to disclose earnings and tax information.

c. To the Department of Defense and Veterans Administration for determinations of benefit eligibility for military members and their dependents.

d. To contractors to manage payment and collection of benefit claims.

e. To the Department of Defense for manpower and readiness planning.

f. To the Comptroller General for the purpose of processing waivers and remissions.

g. To contractors for the purpose of system enhancement, maintenance, and operations.

h. To federal, state, and local agencies for determination of eligibility for benefits connected with the Federal Housing Administration programs.

i. To provide an official of another federal agency information needed in the performance of official duties to reconcile or reconstruct data files in support of functions for which the records were collected and maintained.

j. To an individual's spouse, or person responsible for the care of the individual concerned when the individual to whom the record pertains is mentally incompetent, critically ill or under other legal disability for the purpose of assuring the individual is receiving benefits or compensation they are entitled to receive.

k. To a requesting government agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while a member of government service.

l. To businesses for the purpose of electronic fund transfers or allotted pay transactions authorized by the individual concerned.

m. To credit agencies and financial institutions for the purpose of processing credit arrangements authorized by the individual concerned.

n. To other government agencies for the purpose of earnings garnishment.

o. To prepare the Officer Register and Reserve Officer Register which is provided to all Coast Guard officers and the Department of Defense.

p. To other federal agencies and collection agencies for the collection of indebtedness and outstanding travel advances to the federal government.

q. The home mailing addresses and telephone numbers of members and their dependent/s to duly appointed Family Ombudsman and personnel within the Coast Guard for the purpose of providing entitlement information to members or their dependents.

See Prefatory Statement of General Routine Uses, 3 and 5 do not apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks, magnetic tape microfilm, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by name or social security number and can be accessed by employees in pay and personnel offices and other pay and personnel employees located elsewhere who have a need for the record in the performance of their duties.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. The magnetic tape backups have limited access in that users must justify the need and obtain tape numbers and volume identifiers from a central source before they are provided data tapes. Paper record and microfilm records are in limited access areas in locking storage cabinets.

RETENTION AND DISPOSAL:

Leave and Earnings Statements, and pay records are microfilmed and retained on site four years, then archived at the Federal Record Center, and destroyed when 50 years old. The official copy of the personnel record is maintained in the Official Officer Service Records, DOT/CG 626 for active duty officers, the Enlisted Personnel Record System, DOT/CG 629 for active duty enlisted personnel or the Official Coast Guard Reserve Service Record, OST/CG 576 for inactive duty reservists. Duplicate magnetic copies of the pay and personnel record are retained at an off site facility for a useful life of seven years. Paper records for waivers and remissions are retained on site six years three months after the determination and then destroyed. Paper records to determine legal sufficiency for garnishment are retained on site six years three months after the member separates from the service or the garnishment is terminated and then destroyed.

SYSTEM MANAGERS AND ADDRESS:

a. All information on Coast Guard members other than b., c., and d. below:

(1) For active duty members of the Coast Guard: Chief, Office of Personnel, Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

(2) For Coast Guard inactive duty reserve members and retired Coast Guard reservists awaiting pay at age 60: Chief, Office of Readiness and Reserve, Department of Transportation, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

b. For Coast Guard Waivers and Remissions: Chief, Personnel Services Division (G–PMP), Office of Personnel, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20590–0001.

c. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer (LGL), U.S. Coast Guard Pay and Personnel Center, 444 SE. Quincy Street, Topeka, KS 66683–3591.

d. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters.

e. For NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

Inquiries should be directed to:

a. For all information on Coast Guard members other than b., c., and d. Below: Department of Transportation, U.S. Coast Guard Headquarters (G–TPS), 2100 2nd Street, SW., Washington, DC 20593–0001.

b. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer, U.S. Coast Guard Pay and Personnel Center, 444 SE. Quincy Street, Topeka, KS 66683–3591.

c. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters. Addresses for the units handling the individual's pay and personnel record are available from the individual's commanding officer.

d. For all information on NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

RECORD ACCESS PROCEDURES:

Contact the addressee under notification procedures and specify the exact information you desire. Requests must include the full name and social security number of the individual concerned. Prior written notification of personal visits is required to ensure that the records will be available at the time

of visit. Photographic proof of identity will be required prior to release of records. A military identification card, driver's license or similar document will be considered suitable identification.

CONTESTING RECORD PROCEDURES:

Contact the addressee under notification procedures and specify the exact information or items you are contesting and provide any documentation that justifies your claim. Correspondence contesting records must include the full name and social security number of the individual concerned.

RECORD SOURCE CATEGORIES:

a. The individual's record from the following systems of records:

(1) Official Officer Service Records, DOT/CG 626.

(2) Enlisted Personnel Record System, DOT/CG 629.

(3) Official Coast Guard Reserve Service Record, DOT/CG 676.

b. Information is obtained from the individual, Coast Guard personnel officials, National Oceanic and Atmospheric Administration personnel officials, and the Department of Defense.

[FR Doc. 94–4430 Filed 2–25–94; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Acceptance Noise Exposure Maps for Saipan International Airport, Saipan, MP

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Commonwealth Ports Authority for Saipan International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 14, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, HNL–621, Federal Aviation Administration, Honolulu Airports District Office, P.O. Box 50244, Honolulu, Hawaii 96850–0001, Telephone (808) 541–1243.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Saipan International Airport are in compliance with applicable requirements of part 150 effective February 14, 1994.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Commonwealth Ports Authority. The specific maps under consideration are Figures 4–1 and 6–2 in the submission. The FAA has determined that these maps for Saipan International Airport are in compliance with applicable requirements. This determination is effective on February 14, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3E24, 15000 Aviation Boulevard, Hawthorne, California 90261

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813

Commonwealth Ports Authority, Saipan International Airport, Saipan, MP 96950

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on February 14, 1994.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 94–4462 Filed 2–25–94; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc., RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the RTCA Technical Management Committee meeting to be held March 18, starting at 9 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

Order of Business

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approve summary of January 14 meeting; (3) Consider/Approve: (a)

Revised Terms of reference and work plan for Special Committee 181, Navigation Standards (b) Revised Terms of Reference for Special Committee 179, Recommendations for the Use of Portable GNSS Receivers (c) Action on a request for a new Special Committee to develop standards for form/fit/function of airport taxi-holding position lights. (Request made by Airline Pilots Association, Air Transport Association, Airports Council International North America, and American Association of Airport Executives); (4) Other business; (5) Date and place of Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–4463 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 162, Aviation Systems Design Guidelines for Open Systems Interconnection; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 162 meeting to be held March 29–31, starting at 9:30 a.m. The meeting will be held at the Stanford Telecom (STEL): Steve VanTrees, Phone: (703) 438–8014.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the twentieth meeting held May 12–13, 1993. RTCA Paper No. 276–93/SC162–166 (previously distributed); (3) Reports of Related Activities being conducted by other organizations; (5) Review and plan the activity of Working Group 1, "ATN MASPS & Router MOPS."; (6) Plan the activity of Working Group 2, "Rewrite DO–205, Part 1."; (7) Review industry systems management activity; (8) Other business; (9) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Note: The first day, March 29, the SC–162 plenary will meet. The following two days, March 30–31, will be a working session to begin drafting the Avionics Router MOPS. The meeting will be held at STEL for all three days.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–4466 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 135 meeting to be held March 10–11, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary of the twenty-first meeting in September 1993; (3) Review changes proposed for Section 21; (4) Review changes proposed for Section 20 (SC135 HIRF WG and EUROCAE WG33); (5) Review changes proposed for Section 22 (AEAL and EUROCAE WG31); (6) Review changes proposed for Section 8; (7) MOPS/TSO Process and DO–160; (8) Review changes proposed for all other sections in sequence; (9) EEHWG review status; (10) Review milestones for D–160/ED–14 revision "D" completion; (11) Other business; (12) Date and place of next meeting. (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the pubic may present a written statement to the committee at any time.

Issued in Washington, DC, on February 15, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–4467 Filed 2–24–94; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee, Flight Service Technology Subcommittee; Meeting; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction.

SUMMARY: On page 59, No. 31, FR 7292 in the issue of Tuesday, February 15, 1994, make the following correction: The date published for the Research, Engineering and Development Advisory Committee, Flight Service Technology Subcommittee meeting was Tuesday, March 8, 1994, at 9:30 a.m. This should be changed to read Tuesday, March 22, 1994, 9:30 a.m.

Dated: February 22, 1994

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–4464 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

Airborne Area Navigation Equipment Using Multi-Sensor Inputs

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on a proposed technical standard order (TSO) pertaining to airborne area navigation equipment using multi-sensor inputs. The proposed TSO prescribes the minimum performance standards that airborne area navigation equipment using multi-sensor inputs must meet to be identified with the marking "TSO–C115b."

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

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division Aircraft Certification Service—File No. TSO–C115b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments must identify the TSO file number. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. 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 TSO.

Background

This Technical Standard Order (TSO) is being revised to incorporate standards for Global Positioning System (GPS) technology into the standards for multi-sensor navigation systems. In December 1992, TSO–C129 was issued to provide minimum operational standards for GPS navigation equipment. This TSO established requirements on multi-sensor equipment that uses GPS as a navigation source. This revision to TSO–C115a incorporates those criteria in the multi-sensor standard. No new criteria have been established by these changes. This revision incorporates only previously published standards into this TSO.

How to Obtain Copies

A copy of the proposed TSO–C115b may be obtained by contacting "For Further Information Contact." Copies of RTCA Document No. DO–187, "Minimum Operational Performance Standards for Airborne Area Navigation Equipment Using Multi-Sensor Inputs," may be purchased from RTCA, Inc., 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

Issued in Washington, DC, on February 22, 1994.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 94–4465 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance; Burlington Northern Railroad Company FRA Waiver Petition Docket Number RST–93–3

Notice is hereby given that the Burlington Northern Railroad Company (BN) has submitted a petition requesting that the use of "Bulldog" Clamps be approved for an additional two years. BN had previously been granted a waiver of the requirements of portions of the Track Safety Standards (49 CFR part 213) to allow the carrier to apply Bulldog Clamps to certain internal rail defects in lieu of conventional rail joint bars on certain BN line segments. See 55 FR 50266 and 56 FR 13515. BN is presently required to remove the clamp within five days of its application to the rail. If the internal defect has not been removed in that time, bolted joint bars have to be applied. In its petition, BN also requests that the five day period be increased to twenty days.

FRA is seeking information and comments from all interested parties and are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it.

All written communications concerning this petition should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–93–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before March 29, 1994 will be considered by FRA before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on February 22, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94–4419 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–06–P

Federal Railroad Administration Petition for Waivers of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Southern California Regional Rail Authority (SCAX)

Due to the devastation caused by the January 17 earthquake in the Los Angeles, California area, a transportation emergency now exists. To alleviate this situation SCAX has arranged to lease 25 bi-level passenger cars and 7 power cars from GO Transit of Toronto, Ontario. The SCAX presently operates 94 bi-level cars over Metrolink, a regional rail network which links downtown Los Angeles and surrounding counties. The GO Transit cars are nearly identical to the 94 cars purchased by SCAX.

The SCAX seeks waivers of compliance from certain sections of the Federal Railroad Administration regulations which are described herein.

FRA Docket Number SA–94–2

The SCAX is requesting that it be permitted to operate 25 GO Transit bi-level commuter passenger cars and 7 power cars which do not fully comply with the Railroad Safety Appliance Standards (49 CFR part 231). Section 231.14(b)(2) ("Passenger-train cars without platforms") requires that the top tread of the sill step have a minimum clear depth of 8 inches. Section 231.14(c)(3) requires that the side corner handholds be located specifically in relation to the center line of the coupler. SCAX says that these safety appliances may not be properly configured.

FRA Docket Number RSGM–94–3

The SCAX seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for 25 GO Transit passenger cars and 7 power cars. The glazing material installed in the equipment is manufactured to CSA-D263–1972 (ANSI Z.26.1) standards, laminated safety glass suitable for locomotives and railway cars. The side facing and end facing glazing material is not in compliance with 49 CFR 223.15.

FRA Docket Number RST–94–1

The SCAX is requesting a waiver of compliance from the requirements of § 213.57(b) of the Track Safety Standards (49 CFR part 213). Section 213.57(b) limits the operation of trains on curved track to speeds which produce no more than three 3 inches of underbalance. SCAX requests a waiver to operate their passenger equipment at

curving speeds producing no more than four 4 inches of underbalance. SCAX maintains that curving speeds producing 4 inches of underbalance still provides a large measure of safety for passenger train operations.

Due to the transportation emergency existing in the Los Angeles area, FRA has, on a temporary basis, conditionally waived compliance with the relevant portions of the rail safety regulations. FRA has, however, reserved the right to withdraw such approval upon receipt by FRA of public comment raising substantial issues of safety.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comments, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–94–3) and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before March 29, 1994, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on February 22, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety

[FR Doc. 94–4415 Filed 2–25–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94–17]

Extension of Inchcape Testing Services—Caleb Brett, Inc.'s Customs Gauger Approval to the New Site Located in Deer Park, TX

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Inchcape Testing Services—Caleb Brett, Inc.'s Customs gauger approval to include their new gauging facility, which is located at 2318 Center Street, Suite 308, Deer Park, Texas.

SUMMARY: Inchcape Testing Services—Caleb Brett, Inc., a Customs approved gauger and accredited laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval to include its new facility in Deer Park, Texas. Specifically, the extension given to the Deer Park site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of gauging reports for certain products from Customs approved gaugers. Inchcape Testing Services—Caleb Brett, Inc., a Customs-approved commercial gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval to its Deer Park, Texas facility. Review of the qualifications of Inchcape Testing Services—Caleb Brett, Inc., Deer Park site shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 (202) 927–1060.

Dated: February 18, 1994.

George D. Heavey,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 94–4509 Filed 2–25–94; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 94–16]

Extension of Camin Cargo Control, Inc.'s, Customs Gauger Approval and Laboratory Accreditation to the Site Located in Ingleside, TX

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Camin Cargo Control, Inc.'s Customs gauger approval and laboratory accreditation to include their Ingleside, Texas facility.

SUMMARY: Camin Cargo Control, Inc., of Linden, New Jersey, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Ingleside, Texas site. Specifically, the extension given to the Ingleside site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditation to perform the following laboratory analyses: API gravity, sediment and water by centrifuge, antiknock index, distillation characteristic, Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, sulfur percent by weight and lead percent by weight.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Camin Cargo Control, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and certain laboratory accreditations to its Ingleside, Texas facility. Review of the qualifications of the Ingleside site shows that the extension is warranted and, accordingly, has been granted.

Approved-Accredited Sites

Camin Cargo Control, Inc., has been approved and/or accredited by the U.S. Customs Service at the following locations: Linden, New Jersey; Thorofare, New Jersey; Everett, Massachusetts; Deer Park, Texas; and Ingleside, Texas.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 at (202) 927–1060.

Dated: February 18, 1994.

George D. Heavey,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 94–4508 Filed 2–25–94; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 94–15]

Extension of Atlantic Petroleum Services, Inc.'s, Customs Gauger Approval and Laboratory Accreditation to the New Laboratory Located in Staten Island, NY

AGENCY: Customs Service, Treasury.

ACTION: Notice of the extension of Atlantic Petroleum Services Inc.'s Customs gauger approval and laboratory accreditations to include their new laboratory facility, which is located at 500 Western Ave. (GATX Terminal), Staten Island, New York.

SUMMARY: Atlantic Petroleum Services, Inc., of Staten Island, New York, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditation to include the Staten Island (GATX Terminal), New York laboratory. Specifically, the extension given to the Staten Island site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditation to perform the following laboratory analyses: API gravity, sediment and water by centrifuge, antiknock index, distillation characteristics, Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, sulfur percent by weight and lead percent by weight.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Atlantic Petroleum Services, Inc., a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval and certain laboratory accreditation to its Staten Island, New York laboratory facility. Review of the qualifications of the Staten Island laboratory facility shows that the extension is warranted and, accordingly, has been granted.

Approved-Accredited Sites

Atlantic Petroleum Services, Inc., has been approved and/or accredited by the U.S. Customs Service at the following locations: 210 Granite Ave., Mariner's Harbor, New York and 500 Western Ave. (GATX Terminal), Staten Island, New York.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–927–1060).

Dated: February 17, 1994.

George D. Heavey,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 94–4404 Filed 2–25–94; 8:45 am]

BILLING CODE 4820–02–P

Office of Thrift Supervision

[No. 94–13]

Public Disclosure of Reports of Condition

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The Office of Thrift Supervision (OTS) hereby gives notice that the information collected on the schedule CMR will not be available to the public. Schedule CMR replaced the previous schedule MR. This action is being taken pursuant to section 5(v) of the Home Owners' Loan Act.

FOR FURTHER INFORMATION CONTACT: John C. Price, (Acting) Assistant Director for Policy, (202) 906–5745, or Anthony G. Cornyn, Deputy Assistant Director, Policy, (202) 906–5727, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Pursuant to section 5(v) of the Home Owners' Loan Act, 12 U.S.C. 1464(v), each savings association is required to make reports of condition to the OTS in a form prescribed by OTS. Section 5(v) further requires that such reports and all of the information they contain be available to the public unless the Director determines that public disclosure of a particular item would not protect the safety or soundness of a particular institution or institutions or the Savings Association Insurance Fund, or would not otherwise be in the public interest. If the Director restricts disclosure of any item for savings associations generally, that fact and the reason therefor are to be disclosed in the **Federal Register**.

On August 7, 1990, the OTS gave notice that certain information collected on the Thrift Financial Report (TFR) would not be publicly disclosed.[1] In that notice, OTS specifically discussed maturity/repricing/rate information collected on Schedule MR and used to measure interest rate risk. The agency indicated that it would be premature and misleading to release such information at that time, because it was in the process of expanding and enhancing its collection and analysis of such data. OTS anticipated that after such enhancements were complete, it might be appropriate to disclose this interest-rate-risk related schedule.

Since that time, OTS has issued an interest-rate-risk regulation[2] and has replaced Schedule MR with Schedule CMR. As that regulation and schedule have evolved, it has become apparent to the agency that releasing the information collected on Schedule CMR would not be in the public interest and would be detrimental to the safety and soundness of the thrift industry.

OTS uses the information collected on Schedule CMR to monitor the interest-rate-risk profiles of both individual thrifts and the entire industry. Under the new regulation, however, small (under $300 million in assets), highly capitalized (a risk-based capital ratio in excess of 12 percent) institutions are generally not required to file Schedule CMR. This exemption covers well over half of the industry. OTS exempted these institutions from the filing requirements applicable to other savings associations because it believed that they generally held sufficient capital against potential interest rate risk. OTS encourages these savings associations to voluntarily file Schedule CMR with the agency to enable it to measure the industry's overall interest rate risk more accurately. The OTS can then provide these institutions with an assessment of their interest rate risk.

Making Schedule CMR data publicly available could have several adverse consequences. First, the publication of data from only those required to file Schedule CMR would give a distorted view of the industry's interest rate risk profile because such a large portion of the industry is exempt from filing this schedule of the TFR.

Second, OTS is concerned that if Schedule CMR data from individual institutions were made publicly available, current and potential voluntary filers would be far less likely to file Schedule CMR. In fact, a number of institutions have indicated that they will not file Schedule CMR voluntarily if the information is disclosed publicly. They have indicated that information on Schedule CMR has competitive significance. In particular, these institutions are concerned that disclosure would allow their

[1] 55 FR 32168 (Aug. 7, 1990).

[2] 58 FR 45799 (Aug. 31, 1993).

competitors to gain access to important financial information about their portfolios, pricing strategies, and risk exposures.

If such voluntarily filing thrifts chose not to file Schedule CMR, OTS's ability to measure the interest rate risk of these institutions would be severely hampered. Because understanding and effectively managing interest rate risk has historically been, and remains, of critical importance to a healthy thrift industry, OTS believes it is in the public interest to encourage, not discourage, voluntary reporting of Schedule CMR data by otherwise exempt savings associations.

Finally, if the data from only mandatory filers were made publicly available, such institutions would be competitively disadvantaged in comparison not only to exempt thrifts, but also to commercial banks and state-chartered savings banks, who are not required to file similar data with their regulators.

For these reasons, the OTS has determined not to make publicly available the data of individual institutions reported on Schedule CMR. The agency, however, does intend to make publicly available aggregate CMR data for selected industry peer groups.

Dated: February 22, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–4428 Filed 2–25–94; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register
Vol. 59 No. 39
Monday, February 28, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 25, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4653 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 18, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4654 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 11, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4655 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 4, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4656 Filed 2–24–94; 2:52 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, March 3, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–01: Robert Schramm on behalf of the Western Pistachio Association
Notice of Proposed Rulemaking—National Voter Registration Act
Legislative Recommendations—1994
Public Release of Regulations Agenda Documents (continued from meeting of February 17, 1994)
Administrative Matters

DATE AND TIME: Thursday, March 3, 1994 Executive Session will convene after the open meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–4658 Filed 2–24–94; 2:52 pm]

BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 8682, February 23, 1994].

STATUS Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 17, 1994.

CHANGE IN THE MEETING: Time Change.

The closed meeting scheduled for Wednesday, February 23, 1994 at 4:00 p.m., was changed to Wednesday, February 23, 1994 at 11:30 a.m.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Ramsey at (202) 272–2100.

Dated: February 23, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4657 Filed 2–24–94; 2:52 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 39
Monday, February 28, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33607; File No. SR–NASD–94–2]

Self–Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines for Communications to the Public About Variable Life and Annuity Products

Correction

In notice document 94-3426 beginning on page 7279 in the issue of Tuesday, February 15, 1994, the release number should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33597; File No. SR–DTC–93–10]

Self–Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Foreign Currency Redemption Service

Correction

In notice document 94-3479 beginning on page 7272 in the issue of Tuesday, February 15, 1994, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

Correction

In notice document 93-30747 appearing on page 66072, in the issue of Friday, December 17, 1993, in the second column, under the **SUMMARY**, in the fifth and sixth lines, "and 2,2,4-trimethyl-1,3-pentanediol diisobutyrate" should be deleted.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 47

[T.D. 8497]
RIN 1545-AS06

Vaccine Floor Stocks Tax of 1993

Correction

In rule document 93-28910 beginning on page 62524 in the issue of Monday, November 29, 1993, make the following correction:

§§ 47.1-1T through 47.1-5T [Reserved] [Corrected]

On page 62525, in the second column, the heading "**§§ 47.1-5T [Reserved],**" should read "**§§ 47.1-1T through 47.1-5T [Reserved].**"

BILLING CODE 1505-01-D

federal register

Monday
February 28, 1994

Part II

Department of Education

34 CFR Parts 668 and 690
Student Assistance General Provisions and Federal Pell Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

RIN 1840–AB85

Student Assistance General Provisions and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend Subparts A and B of the Student Assistance General Provisions regulations and the Federal Pell Grant Program regulations to reflect changes made by the Higher Education Amendments of 1992 and the Higher Education Technical Amendments of 1993 to the Higher Education Act of 1965, as amended (HEA). These proposed regulations would seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

DATES: Comments must be received on or before March 30, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Wendy L. Macias, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202–5346.

FOR FURTHER INFORMATION CONTACT: Wendy L. Macias. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 6 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In order to approve a postsecondary education institution to participate in the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs) and many other Federal programs, the Secretary must determine, in part, that the institution satisfies the statutory definition of an "institution of higher education." Under the HEA and other Federal statutes, one element of that definition requires an eligible institution of higher education to be accredited or preaccredited by an accrediting agency recognized by the Secretary as a reliable authority as to the quality of the education or training provided by the institution. Another element requires an eligible institution to be legally authorized to provide an educational program beyond the secondary level in the State in which it is located. Thus, the statutory definition of an institution of higher education provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the "gate" to the Title IV, HEA programs is opened to only those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three "gatekeepers" sharing this responsibility have traditionally been referred to as "the triad." While the concept of a triad of entities responsible for gatekeeping has had a long history, the triad has not always worked as effectively as it should to ensure educational quality, nor has it served as an effective deterrent to abuse by institutions participating in the Title IV, HEA programs. For several years, certain institutions participating in the Title IV, HEA programs have failed to provide students with education or training of an acceptable level of quality; they have also failed to treat students fairly. In addition, they have failed to meet acceptable standards of financial responsibility and administrative capability and to adequately protect Title IV, HEA program funds entrusted to them. The institutions that have engaged in these abusive practices are not restricted to a particular sector of higher education. Rather, the abuses have been found in all types of institutions participating in the Title IV, HEA programs, including those in the private non-profit and public sectors of higher education as well as those in the proprietary sector.

At the same time, gatekeeping functions have not been carried out effectively. For example, some accrediting agencies have not taken sufficient care to ensure the quality of the education or training provided by the institutions or programs they accredit or to protect student interests when they accredit particular institutions or programs. Moreover, some States have also not taken sufficient care to ensure the quality of the education or training provided by the institutions they authorize or license to operate in the State or to protect student interests. Finally, the Federal government's management of its responsibilities to determine eligibility and to certify institutions to participate in the Title IV, HEA programs has not always been adequate to prevent abusive practices at institutions that participate in those programs.

Consequently, in the Higher Education Amendments of 1992, Public Law 102–325, (the Amendments of 1992), Congress provided for a new part H of Title IV entitled "Program Integrity Triad." Under that part, States and accrediting agencies are required to assume major new oversight responsibilities, and States, accrediting associations, and the Secretary are linked to create a stronger and more coordinated evaluation of institutions that participate or wish to participate in the Title IV, HEA programs. The Secretary believes that the most appropriate approach to this coordinated evaluation of institutions by the three components of the triad is a complementary one with each component focusing its evaluation on its obligations within the context of the HEA. Thus, the focus for accrediting agencies is the quality of education or training provided by the institutions or programs they accredit. For States, which already had responsibility for determining that institutions have the legal authority to operate within the State, the HEA added a new focus: reviewing institutions that trigger certain statutory review criteria. The focus of the Secretary's evaluation of institutions is the administrative and financial capacity of those institutions to participate in the Title IV, HEA programs.

The statute allocates legal responsibility among the entities that compose the program integrity triad. While the specific statutory responsibilities for the three triad entities may overlap, when viewed as a whole the triad brings together in a coordinated fashion three different but very important aspects of institutional review. Within this statutory scheme, the Secretary has sought to assure that the gatekeeping system operates as efficiently as possible, with maximum integration among the three triad entities and without unnecessary burden on postsecondary institutions. In order to assist the Secretary in designing a final regulation that achieves these goals, the Secretary specifically requests comment on the following questions:

(1) In several areas, the statute specifically requires each triad entity to evaluate an institution under the same or similar standards. For example, a SPRE and an accrediting agency may establish different standards for evaluating the financial responsibility of an institution or for evaluating the success of an institution's educational program. Thus, a reviewed institution would need to satisfy the SPRE's and the accrediting agency's standards even though those standards address the same areas. How should final regulations be structured to both reduce the burden on institutions and enable the triad entities to carry out effectively their statutory functions?

(2) Should final regulations be more explicit in identifying levels, characteristics, or definitions for any of the assessment or review criteria that a triad entity is expected to consider in its evaluation of an institution?

Subpart 1 of part H creates a new program, the State Postsecondary Review Program, or SPRP, under which State oversight of institutions participating in the Title IV, HEA programs is strengthened. Subpart 2 of part H establishes procedures and criteria under which the Secretary recognizes an accrediting agency as a reliable authority as to the quality of the education or training offered by institutions that the agency accredits. Lastly, subpart 3 specifies the procedures the Secretary uses to determine whether an institution meets the eligibility requirements and has the administrative capacity and financial responsibility to administer the Title IV, HEA programs.

On January 24, 1994, the Secretary published in the **Federal Register** the NPRMs to implement the SPRP provisions in subpart 1 of part H of the HEA (59 FR 3604) and the accrediting agency provisions in subpart 2 of part H of the HEA (59 FR 3578). The Secretary's publication of this NPRM prior to the publication of final regulations implementing the SPRP and accreditation provisions provides the Department of Education an opportunity to coordinate all comments received on the triad.

The provisions of subpart 3 that pertain to the institutional eligibility requirements found in 34 CFR part 600 have been addressed in a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on February 10, 1994, that proposes changes to 34 CFR part 600. This NPRM addresses those provisions of subpart 3 that pertain to subparts A and B of 34 CFR part 668. Subpart A contains definitions applicable to the Title IV, HEA programs. Subpart B contains requirements for initial and continued participation in the programs. In particular, the following provisions in this NPRM address provisions of subpart 3: Proposed §§ 668.15 and 668.16 delineate the standards for the evaluation of an institution's financial responsibility and administrative capability, respectively, as required by section 498(a), (c), and (d) of the HEA. Proposed § 668.15 also codifies the definition of persons who exercise substantial control of an institution found in section 498(e) of the HEA. Proposed § 668.12 addresses the requirements of section 498(b) of the HEA that requires the Secretary to develop a single application form to be used by institutions that wish to apply to participate or to continue to participate in a Title IV, HEA program. Proposed § 668.13 includes the provisions governing the requirement of financial guarantees from owners found in section 498(e) of the HEA, addresses the provision that requires the Secretary to establish a schedule for the expiration of the approval of institutions to participate in the Title IV, HEA programs found in section 498(g) of the HEA, and codifies the provisions governing provisional certification of institutions found in section 498(h) of the HEA. Pursuant to sections 498(g) and (h) of the HEA, proposed § 668.26 delineates the date that an institution's period of participation would end, when the institution's period of participation expires, or the institution's provisional certification is revoked.

The Amendments of 1992 amended the HEA in several areas relating to the participation of institutions in the Title IV, HEA programs. The Student Assistance General Provisions regulations contain requirements that are common to educational institutions that participate in the Title IV, HEA programs. The following list summarizes the major issues in this NPRM.

- Each participating institution is subject to a new statutory definition of an academic year in which a full-time student (with respect to an undergraduate course of study), during a minimum 30-week period, must complete: At institutions that measure program length in credit hours, at least 24 semester or trimester hours or 36 quarter hours; or at institutions that measure program length in clock hours, at least 900 clock hours. Section 668.2 proposes to clarify the terms used in the statutory definition of academic year.
- The statute now mandates the definition of an eligible program for proprietary institutions of higher education and postsecondary vocational institutions, including "short-term" programs (at least 300 but less than 600 clock hours) that would be eligible for the FFEL programs only. The statute requires that these programs must have completion and placement rates of at least 70 percent, measured in accordance with regulations. Section 668.8 proposes methodologies for those measurements. The Secretary eventually may propose a single methodology (based on comments on this NPRM, regulations to implement the Student Right-to-Know Act, and other NPRMs) to be used wherever appropriate in regulations for the Title IV, HEA programs. In accordance with the statute, this NPRM contains further provisions to evaluate the quality of these programs, specifically a requirement proposed by the Secretary that a program may not exceed by more than 50 percent the minimum number of clock hours required by the State for training in the recognized occupation for which the program prepares students, and a requirement that a program be in existence for at least one year before applying for eligibility under these criteria.
- This NPRM proposes to add two new sections to codify procedures with regard to applications to participate initially or to continue to participate in a Title IV, HEA program (proposed § 668.12) and procedures by which the Secretary certifies that an institution meets the standards in subpart B of these regulations and accordingly may participate in a Title IV, HEA program (proposed § 668.13). Proposed § 668.13 also includes proposed procedures whereby the Secretary codifies new statutory provisions governing provisional certification procedures for participation in a Title IV, HEA program. Provisional certification permits the Secretary to allow an institution that otherwise would not qualify to participate in a Title IV, HEA program to participate on a limited basis. The institution is subject to shorter periods of participation than a fully certified institution and does not have the right to the extensive appeal proceedings under subpart G of the Student Assistance General Provisions if the Secretary revokes the institution's provisional certification. Instead, as proposed by the Secretary in this NPRM, the institution would be offered a modified appeal. Further, an institution that is provisionally certified may be monitored more closely to the extent that the Secretary believes the institution warrants a greater degree of oversight.
- Section 668.14 proposes to amend the regulations governing program participation agreements to include numerous new provisions added by the Amendments of 1992 and provisions previously prescribed by the HEA but not specifically spelled out in the regulations. This section also includes provisions proposed by the Secretary. This NPRM proposes to implement statutory requirements regarding disclosure of revenues and expenses for institutions that offer athletically related student aid. This NPRM would also address statutory requirements concerning incentive payments based directly or indirectly on success in securing enrollments or financial aid.

• This NPRM proposes significant changes to § 668.15 (currently § 668.13) the section governing the evaluation of an institution's financial responsibility. The NPRM proposes to strengthen the factors used to evaluate an institution's financial responsibility and to reflect statutory changes, including the provision that requires that any standards developed for the determination of an institution's financial responsibility take into account any differences in accounting principles between for-profit and nonprofit institutions. For example, this NPRM proposes to require a for-profit institution to have a ratio of current assets to current liabilities of 1.25:1 and a nonprofit institution to have a ratio of current assets to current liabilities of 1:1. As the statute requires the establishment of cash reserves sufficient to ensure repayment of any required refunds, the NPRM also proposes to require each institution to maintain a minimum cash reserve of at least 10 percent of the institution's total deferred tuition income at the end of the institution's most recent fiscal year.

• This NPRM proposes, in § 668.16 (currently §§ 668.14 and 668.15) to strengthen and expand the standards of administrative capability for participating institutions, addressing areas previously not regulated or for which there were only guidelines, such as: The maximum time frame allowed in the standards for satisfactory academic progress for completion of a student's educational program and the expansion of standards to include those general areas that will be reviewed by State postsecondary review entities (SPREs). The SPRE review areas are included because these areas may have a significant bearing on an institution's administrative capability and thus should be considered as the Secretary reviews the administrative capability of an institution.

However, the NPRM does solicit comments on whether these additional proposed standards should be implemented across the board or be made applicable only to institutions that meet specific criteria or thresholds, e.g., institutions with short-term programs and institutions with a history of administrative problems. For example, this section of the NPRM includes the proposed requirement that an institution that offers a vocational program of less than two years in length that prepares students to enter recognized occupations must demonstrate that the borrower's increased annual expected earnings, based on completion of the training, will exceed the annual amount of Title IV, HEA program assistance received for the programs.

• The provisions in proposed § 668.17 (currently § 668.15) governing default reduction measures reflect statutory changes made by the Amendments of 1992 and current departmental practices. The provisions in the Technical Amendments of 1993 that address institutional appeals of cohort default rates are not included in this NPRM and will be addressed separately.

• As mandated by statute, all participating institutions are required to implement a fair and equitable refund policy. This statutory provision is similar to the requirement for fair and equitable refunds prescribed by the FFEL program regulations for institutions that participate in the FFEL programs. Section 668.22 proposes to clarify the terms used in the statutory definition of a fair and equitable refund policy. The NPRM also proposes to mandate a refund policy (Appendix A) that an institution must use to calculate a student's refund if the student is not entitled to a *pro rata* refund and an institution's State and accrediting agency do not have specific refund standards. In addition, because of a new statutory provision that specifies the order of return of refunds to the Title IV, HEA programs and other sources of aid without regard to the amount of aid received from State or private sources, this NPRM proposes to remove the fraction that is currently used to determine the portion of the refund attributable to the Title IV, HEA programs and that attributable to other sources of aid.

• In accordance with the statute, institutions will now be required to have compliance audits every year rather than every two years, as required by current regulations. Section 668.23 proposes to allow institutions that do not pose a great financial risk to the Title IV, HEA programs (i.e., institutions that received less than $100,000 in total annual funding under the Title IV, HEA programs or have not had deficiencies identified in their most recently submitted audit reports) to submit audits biennially. Further, under this proposal, an institution would not be required to submit a compliance audit for any year in which the total Title IV, HEA program funds it received were less than $25,000. This section also proposes to extend audit requirements to foreign institutions.

This NPRM also contains a proposed change to the Federal Pell Grant Program regulations. This NPRM proposes to implement section 487(c)(7) of the HEA that provides that an institution may offset the amount of Title IV, HEA program disbursements against liabilities or may receive reimbursement from the Department for those amounts if, in the course of any audit conducted after December 31, 1988, the Department discovers or is informed of any Title IV, HEA program assistance (specifically, Federal Pell Grant Program funds) that an institution has provided to its students in accordance with program requirements, but the institution has not previously received credit or reimbursement for these disbursements. Although this provision relates directly to the Federal Pell Grant Program and is proposed to be included in the Federal Pell Grant Program regulations, it is contained in Part G of the HEA and is subject to the negotiated rulemaking process explained below. Therefore, it has been included in this NPRM instead of the Federal Pell Grant Program NPRM, which was not subject to the negotiated rulemaking process.

Under new section 492 of the HEA, these proposed changes are subject to the negotiated rulemaking process, which includes a requirement for the Secretary to convene regional meetings to obtain public involvement in the development of proposed regulations. Accordingly, issues related to these proposed changes were discussed in meetings held in September 1992 in New York City; San Francisco; Atlanta; and Kansas City, Missouri. At these meetings, the Secretary provided the attendees with a list of issues to be addressed in these proposed regulations. A summary of the responses of the attendees is contained in the Appendix to this preamble.

Groups that attended the regional meetings nominated individuals to participate in the regulation negotiations. The Secretary selected regulation negotiators from the names nominated and chose negotiators to reflect all the groups that participate in the Title IV, HEA programs, such as students, student financial aid administrators, and various types of eligible institutions.

These proposed regulations also address statutory changes required by the Higher Education Technical Amendments of 1993, Public Law 103–208 (the Technical Amendments of 1993). Those areas affected by the Technical Amendments of 1993 are identified in the discussion of regulatory changes. The Secretary notes that the statutory changes required by the Technical Amendments of 1993 are not subject to the negotiated rulemaking process of section 492 of the HEA.

Regulatory Changes

In accordance with section 492(b) of the HEA, the Secretary prepared draft proposed regulations and negotiated the provisions of that draft with negotiators. The great majority of the proposed changes do not reflect consensus reached at the negotiations (as consensus was rarely obtained). The Secretary has identified in the discussion of changes the areas where consensus was reached.

The following discussion reflects proposed significant changes to the existing Student Assistance General Provisions regulations and the Federal Pell Grant Program regulations. Proposed changes are discussed in the order in which they appear in the proposed regulatory text. If a provision applied to more than one section or is included in more than one section, it is discussed the first time it appears with an appropriate reference to its other appearances.

Subpart A—General

Section 668.1 Scope

The Secretary proposes to revise this section to remove vocational school from the list of what the term institution includes, because vocational schools are no longer eligible institutions under the HEA. The Secretary proposes to revise this section to reflect a listing of currently existing Title IV, HEA programs that would be subject to part 668. Programs added to the list would include the National Early Intervention Scholarship and Partnership, Presidential Access Scholarship, and Federal Direct Student Loan programs. The Income Contingent Loan Program, which no longer exists, would be removed from the list. These revisions reflect statutory changes made to the HEA by the Amendments of 1992.

Section 668.2 General Definitions

This section includes definitions proposed in NPRMs published on October 4, 1993 (58 FR 51716), and on February 17, 1994 (in part II) (59 FR 8044). Those definitions are: *designated department official, initiating official, output document, show-cause official,* and *third-party servicer.* The Secretary will not repeat the discussion of those definitions here.

The Secretary proposes to remove the definitions of *Award year, Regular student,* and *State,* because they would be included in 34 CFR part 600, governing institutional eligibility under the HEA. The Secretary proposed to move these definitions to 34 CFR Part 600 in the NPRM published on February 10, 1994 (59 FR 6446).

The Secretary is proposing technical changes to clarify the definitions of the current Title IV, HEA programs and to add definitions of the newly authorized Title IV, HEA programs to conform with statutory changes and for consistency with terminology used in the individual program regulations. The Secretary also proposes to make technical changes in the definitions of *Independent student,* to reflect statutory changes, and *Enrolled, Valid student aid report,* and *Valid institutional student information report* for consistency with other program regulations. The Secretary would move the definition of *Participating institution* from § 668.81 to this section.

The Secretary is proposing to add or amend the following definitions:

Academic Year

Section 481(d)(2) of the HEA provides a definition of *academic year* to be used for all the Title IV, HEA programs. The statute specifies that in an academic year, a full-time student is expected to complete at least twenty-four semester or trimester hours or thirty-six quarter hours at an institution that measures program length in credit hours, or at least nine hundred clock hours at an institution that measures program length in clock hours. The definition delineates not only the minimum amount of work that a full-time student enrolled in an undergraduate educational program is expected to complete during an academic year, but also the minimum period of time over which the work in any educational program must be completed.

The Technical Amendments of 1993 specify that this provision is only applicable with respect to an undergraduate course of study. The Secretary expects that institutions would continue to use their own academic standards, within the framework of current program regulations, to determine the amount of work full-time graduate and professional students are expected to complete over a minimum of thirty weeks of instruction.

The minimum time period specified is thirty weeks of instructional time. The Technical Amendments of 1993 further amended section 481 of the HEA definition of *academic year* to provide that the Secretary may reduce, for good cause on a case-by-case basis, the 30-week minimum to not less than 26 weeks of instructional time in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which it awards an associate or baccalaureate degree. The Secretary has been unable to determine a definition of "good cause" that would justify using this authority. In addition, the Secretary is concerned that regulatory standards for those reductions would encourage many institutions to seek that treatment routinely and this implementation would result in the inequitable treatment of Federal student aid recipients from institution to institution. Further, the Secretary is concerned that widespread implementation would result in increased costs to the Title IV, HEA programs. Therefore, the Secretary has not proposed specific criteria to implement this technical amendment at this time. The Secretary requests comments on a definition of "good cause" and ways of implementing this provision through regulations that address the Secretary's concerns.

The Secretary has determined that the terms used in the definition of *academic year* must be clarified if the definition is to be well-understood and applied consistently. In determining what constitutes the 30-week period, the Secretary would count the period that begins on the first day of classes and ends on the last day of classes or examinations. For example, if an institution's first day of classes begins on a Tuesday, the first week of the academic year would begin on that Tuesday and end the following Monday. The institution would not begin counting with the Sunday preceding the first day of classes.

The Secretary proposes that, for purposes of this definition, a *week* would be a consecutive seven-day period, as opposed to a five-day or six-day *school week* or seven individual days that are spread out over more than one calendar week. This approach would facilitate counting and readily accommodate institutions that start and end on different days of the week.

For purposes of this definition, a *week of instructional time* would be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examination occurs. The Secretary recognizes that there may be certain weeks during an academic year during which fewer than five days of instruction occur. An institution should not be prohibited from counting those weeks in its 30-week period, provided at least one day of regularly scheduled classes occurs in each of those weeks. Further, this proposal would accommodate innovative educational programs such as those offered only on weekends or condensed schedules. At the same time, the proposal does not open the door to abuse, because regardless of the number of days of study that occur in any week, an

institution must still provide enough instruction for a full-time student to be able to earn the minimum number of credit or clock hours needed to meet the definition. Finally, the Secretary would make clear that an institution cannot count, as instructional time, periods consisting purely of noninstructional activities, such as orientation, counseling, or vacations.

It should be noted that because the statute specifies both the amount of work expected to be completed and the minimum timeframe for an academic year for use in the Title IV, HEA programs, an institution might need to prorate or adjust Title IV, HEA program assistance for its students. For example, if the span of time from the first scheduled class at the beginning of the school year until the last examination at the end of the school year (excluding any weeks that consist exclusively of vacation time and all other activities not directly related to instruction, preparation for examinations or examinations) is twenty-five weeks, the institution would need to make adjustments in accordance with individual program regulations. Because summer sessions generally would not be long enough to constitute the equivalent of a complete semester or quarter, as they are under various current program regulations, Title IV, HEA program funds awarded for summer sessions would need to be adjusted to reflect the lengths of the sessions. A comprehensive discussion of the potential effect of this new definition of academic year on Federal Pell Grant calculations may be found in the NPRM on the Federal Pell Grant Program to be published shortly.

Full-Time Student

The Secretary believes it is necessary to have a definition of *full-time student* that is applicable to all Title IV, HEA programs. A definition of *full-time student* is needed because the definition of *academic year* is based, in part, on the workload of a full-time student, and because the term is used elsewhere for other purposes in part 668. The Secretary has proposed a definition of *full-time student* that would be based on a slightly modified definition found in the Federal Pell Grant and the campus-based program regulations. This definition also would incorporate parts of the definition of full-time student found in the FFEL program regulations.

Generally, the Secretary proposes to define a *full-time student* as an enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. In determining a student's workload, an institution would be permitted to include combinations of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. Under this proposal, for an undergraduate student, an institution's minimum standard must equal or exceed: (1) 12 semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system; (2) 24 semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system (or the prorated equivalent for a program of less than one academic year); or (3) 24 clock hours per week for an educational program using clock hours.

This definition also provides for a method for determining full-time status for students enrolled in an educational program using both credit and clock hours. In order to evaluate the combined workload of the student, an institution could determine full-time status based on the sum of the proportionate workload carried in terms of credit hours and the proportionate workload carried in terms of clock hours.

Further, an undergraduate student could be considered a full-time student if he or she undertakes a series of courses or seminars that equals at least 12 semester hours or 12 quarter hours in a maximum of 18 weeks. For cooperative education programs, an undergraduate student could be considered a full-time student if the work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

The Secretary is particularly interested in establishing a minimum standard for a full-time academic workload for students who receive funds under the FFEL programs. Currently, for the purpose of those programs, an institution determines what a full-time academic workload is for these students. The Secretary recognizes that, because no minimum requirement for an academic workload of a full-time student exists under the FFEL programs, there is the potential for abuse of FFEL program funds through the use of the definition of an academic year. For example, an institution might have educational programs that are measured in credit hours and do not use academic terms. The institution could claim that it offers a full academic year's worth of work over a thirty-week period by giving a full-time student a small amount of instruction, which the institution claims to be equivalent to 24 semester or 36 quarter hours. This situation would result in the receipt of an inordinately large amount of FFEL program funds for the amount of work actually accomplished. The Secretary requests comments on whether, to further address this potential abuse, he should also establish a weekly minimum full-time workload for educational programs that are measured in credit hours but do not use academic terms.

Undergraduate Student

The Secretary proposes to add a definition of *undergraduate student* to this section. Because the proposed definition of a *full-time student* makes reference to an *undergraduate student* and because the term *undergraduate student* is used in other places in part 668, the Secretary believes it is now necessary to define *undergraduate student* in this part. The proposed definition is the definition currently found in the Federal Pell Grant and campus-based program regulations. The Secretary proposes to define an *undergraduate student* as a student enrolled in an undergraduate educational program at an institution who has not earned a baccalaureate or first professional degree. The student would have to be enrolled in an undergraduate educational program that usually does not exceed 4 academic years, or a 4- to 5-academic-year program designed to lead to a first degree. A student enrolled in a program of any other length would be considered an undergraduate student for only the first four academic years of that program.

Section 668.8 Eligible Program

Admission Requirements

These proposed regulations would remove the current provisions in § 668.8(a)(1) (i) through (iv), which govern the educational qualifications of persons admitted into an eligible program. These qualifications are appropriately addressed in 34 CFR 600.4 through 600.6, which govern the types of institutions that may be eligible to apply to participate in HEA programs. The educational qualifications of eligible students under the Title IV, HEA programs are also addressed in § 668.7(a) (3) and (b). Therefore, these provisions are no longer needed for purposes of defining an eligible program. Note that other provisions governing the admission requirements needed for certain educational programs

to qualify as an eligible program are discussed further below.

Definitions

These regulations would clarify a number of the terms used to determine an eligible program. Proposed § 668.8(b)(1) would define the *equivalent of an associate degree* as either an associate degree, or the successful completion of at least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program. This definition is needed because educational programs offered by a proprietary institution of higher education or a postsecondary vocational institution may qualify as eligible programs depending, in part, on whether the programs admit students with the equivalent of an associate degree (see the discussion on minimum program lengths). The definition is based on the provision in section 1201(a)(3) of the HEA that qualifies institutions offering 2-year transfer programs for institutional eligibility.

For the same reason (that the terms are needed to establish the eligibility of programs offered by proprietary institutions of higher education and postsecondary vocational institutions—see the discussion on minimum program lengths) the Secretary proposes to define *week* and *week of instruction*. For consistency, these terms would be the same as those proposed to be used in § 668.2 for the definition of *academic year*. The terms are discussed in detail there.

It is important to note that short-term programs (those offering less than 600 clock hours) that are eligible under current regulations because they met the definition of *vocational school* that used to be in section 435 of the HEA, will cease to be eligible when the final regulations governing programs become effective, unless those short-term programs are able to satisfy these regulations. Short-term programs that were not offered or were not eligible before July 23, 1992 can only become eligible when final regulations become effective.

Minimum Program Length

The proposed regulations would also add requirements regarding the minimum length of an eligible program. Under section 481(b) of the HEA, a proprietary institution of higher education or a postsecondary vocational institution must, to be eligible, provide an eligible program, as defined in section 481(e) of the HEA. Proposed § 668.8(d) would implement that definition. The proposed definition would supplant the current regulatory definition of a *six-month training program* in 34 CFR 600.2.

Section 481(e) of the HEA provides for three types of eligible programs. The first type of eligible program is one that must provide at least 600 clock hours, 16 semester or trimester hours or 24 quarter hours of instruction offered during a minimum of 15 weeks. The program must provide undergraduate training that prepares a student for gainful employment in a recognized occupation. The program may admit as regular students persons who have not completed the equivalent of an associate degree.

The second type of eligible program is one that must provide at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction offered during a minimum of 10 weeks. The program must provide training that prepares a student for gainful employment in a recognized occupation and be a graduate or professional program or admit as regular students only persons who have completed the equivalent of an associate degree. For the first time, this type of program may qualify for purposes of all Title IV, HEA programs, not just the FFEL programs, as under current regulations.

The third type of eligible program would qualify for the FFEL programs only. It must provide at least 300 but less than 600 clock hours of instruction offered during a minimum of 10 weeks. The program must provide undergraduate training that prepares a student for gainful employment in a recognized occupation, and admit as regular students some persons who have not completed the equivalent of an associate degree. This type of program must also satisfy regulations of the Secretary governing placement rates, completion rates, and other criteria. These rates and criteria are discussed below.

Qualitative Factors

Section 481(e)(2) of the HEA requires the third type of eligible program to have a verified completion rate of at least 70 percent and a verified placement rate of at least 70 percent in accordance with the Secretary's regulations and to meet other criteria specified by the Secretary in regulations. Proposed § 668.8(e) would implement these provisions. Proposed § 668.8(e)(2) would require an institution to substantiate the calculation of its completion and placement rates by having its independent auditor who prepares its compliance audit report under § 668.23 verify the accuracy of the calculations. The Secretary believes that the auditor's assurance of these calculations would be a reliable independent substantiation. The Secretary also believes it is practical for an auditor to check this information, inasmuch as he or she is already on site to perform the institution's required compliance audit.

Section 668.8 would include formulas in paragraphs (f) and (g) for calculating the appropriate completion and placement rates. The Secretary believes a single methodology is desired, and invites comments in this area. The Secretary notes that an NPRM implementing the Student Right-to-Know provisions in section 485(a) of the HEA, which addressed the calculation of completion or graduation rates, was published in the **Federal Register** on July 10, 1992 (57 FR 30826). The Secretary will be publishing a second NPRM for implementation of the Student Right-to-Know provisions shortly after publication of this NPRM to further address this calculation. The Secretary would also like to know if any proposals relative to the Student Right-to-Know Act regarding graduation and completion rate calculations should be used instead of the methods proposed here. The proposed formulas would be based on the following:

Award Year

All calculations would be based on enrollments, completions, and placements during an award year. Thus, an applicable completion or placement rate would be the rate as it existed at the end of a particular award year.

Calculation of Completion Rate

(1) An institution would base its calculation on the number of regular students who were enrolled in the program during the award year. The rate calculation is based on regular students because those students by definition intend to complete a program. The Secretary believes that inclusion of other students would not provide an accurate picture of the institution's completion rate.

(2) The institution would subtract from the number of regular students the number of those students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received in a timely manner in accordance with § 668.22(i)(3) a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy. The Secretary believes that the inclusion of students who have received a 100 percent refund at an institution

would unduly penalize the institution because these students would not have participated in the academic component of an institution's program. These students are excluded from the calculation because there would not be a loss of Title IV, HEA program funds to the Department of Education if the institution has refunded all tuition and fees.

(3) The institution would subtract the number of students who were enrolled in the program at the end of that award year.

(4) The institution would determine the number of regular students who, during that award year, received the degree, certificate or other recognized education credential awarded for successfully completing the program.

(5) The institution would divide the number determined in item (4) by the total obtained under item (3) of this section.

This proposed methodology instructs institutions to subtract from the denominator all students who were enrolled in the program at the end of the award year without regard to any time frame established for the completion of the program. In view of the fact that the Secretary is addressing the effect of the expectation that a student complete a program in a reasonable period of time on the calculation of completion rates in the forthcoming NPRM concerning the Student Right-to-Know provisions in section 485(a) of the HEA, the Secretary particularly invites comment on whether that expectation should also be considered in the calculation under this section.

Calculation of Placement Rate

(1) An institution would determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program. The Secretary believes it would not be fair or accurate to include in the placement rate calculation those students who have not yet completed the program.

(2) The institution would subtract from the number of students described in item (1) the number of those students who were employed by the institution either before or after their receipt of the degree, certificate, or other recognized educational credential. The Secretary believes that excluding employees of the institution will help curb abuse by those schools who may hire their own students in order to increase placement rates. The Secretary specifically requests comment on whether there are methods of distinguishing legitimate hiring by an institution of its graduates or students from hiring simply to improve the results of a placement rate calculation.

(3) Of the total obtained under item (2), the institution would determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized education credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed or have been employed for at least 13 weeks following receipt of the credential from the institution.

The Secretary believes that only students who have been placed within 180 days should be counted in the calculation. The Secretary proposes 180 days because it is consistent with the maximum period of time that a payment on a student's loan under the FFEL loan program may be deferred. These FFEL deferments include provisions for deferments for periods of unemployment. The Secretary considers this time frame to be adequate and reasonable, and provides ample time for an institution to place a student.

The proposed regulation allows an institution to include in its placement rate a student who is placed in a recognized occupation which is comparable and related to the occupation for which the student has been trained. For instance, if a student were trained as an auto mechanic, he could be included in the placement rate calculation if he were placed as a boat mechanic. However, if a student completed a retail sales management program, he could not be included in the calculation if he were placed as a counterman at a fast food establishment.

To be included in the placement rate, a student must have been employed for at least 13 weeks following graduation from the institution. The Secretary believes that this requirement will help stem abuse by institutions that may arrange to have students hired for short term jobs in order to boost placement rates. The proposed 13-week period is consistent with the period of time a student must be employed to be counted in the calculation of an institution's placement rate under the procedures delineated in current § 668.15(g) for the appeal of an institution's loss of participation due to an unacceptable cohort default rate.

As stated above, for purposes of this calculation, a student has up to 180 days after he or she receives his or her degree, certificate, or other recognized education credential to obtain gainful employment and then must be employed for at least 13 weeks following receipt of the credential from the institution. The Secretary understands that, because of the total length of time allowed for obtaining and maintaining employment, an institution's calculations may not accurately reflect placement results for programs that are offered in the latter half of the award year. The Secretary specifically requests comments on ways to address this issue.

(4) The institution would divide the number of students determined in item (3) of this section by the total obtained under item (2).

The institution must maintain documentation that each student described in item (3) above, obtained gainful employment in an occupation for which he or she was trained or in a related occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to—

- A written statement from the student's employer;
- Signed copies of State or Federal income tax forms; and
- Written evidence of payments of Social Security taxes.

The Secretary believes that requiring institutions to collect this data will help curb abuse by institutions that may overstate their placement rates in order to achieve and maintain eligibility for short-term programs. Furthermore, to further avoid potential abuse, the Secretary proposes that in certifying the accuracy of an institution's placement rate, as required under § 668.8(e)(2), the institution's auditor should review the above types of documentation collected by the institution to verify each student's inclusion in the placement rate calculation.

The statute provides that the Secretary may prescribe other regulations to determine the quality of these programs. Under proposed § 668.8(e)(1)(iii), to be eligible, programs less than 600 clock hours in length may not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement. For example, if a State requires security guard students to complete only 300 clock hours of training, a security guard program in that state will not be eligible if it exceeds 450 clock hours. The Secretary believes this regulation will help curb abuse of the programs by preventing institutions from providing unnecessary

training to students in order to receive additional Title IV, HEA program funds.

Proposed § 668.8(e)(1)(iv) requires that to be eligible, programs less than 600 clock hours must have been in existence for at least one full year. The Secretary believes that this time frame is necessary so programs may demonstrate the appropriate completion and placement rates. Institutions will be required under 34 CFR 600 to apply for eligibility of these programs after the one-year requirement is satisfied.

English as a Second Language

In addition to the elements already in place in the current regulations regarding English as a Second Language (ESL) programs, § 668.8(j)(2) proposes that in order for an ESL program to be eligible, the institution must test each student at the end of the program to substantiate that the student has attained adequate proficiency in written and spoken English to use already existing knowledge, training or skills. The institution will also be required to identify the test it gives to the students and the basis for the judgment that the student has attained the adequate proficiency. This proposal, based on California law, was suggested during the negotiation process as a method to stem abuse by institutions which offer ESL programs. As established by the current regulations, ESL programs which qualify as eligible programs are eligible for purposes of the Federal Pell Grant program only. This provision remains unchanged.

Subpart B—Standards for Participation in the Title IV, HEA Programs

Section 668.12 Application Procedures

The Secretary proposes to add a new § 668.12 to codify the Secretary's current practices with regard to applications to participate or to continue to participate in a Title IV, HEA program. This section also would include proposed procedures whereby the Secretary codifies new statutory provisions governing applications to participate or to continue to participate in a Title IV, HEA program.

Section 498(b) of the HEA requires the Secretary to develop a single application form to be used by an institution that wishes to apply to participate or to continue to participate in a Title IV, HEA program. The statute requires that this form provide for the collection of various information and documentation. First, the form must require an institution to provide sufficient information and documentation to determine that the requirements of institutional eligibility, accreditation, and the capability of the institution are met.

Second, the form must require an institution to describe the relationship between a main campus of an institution and all of its branches. In particular, the form must require an institution to include a description of the student aid processing that is performed by the main campus and that which is performed at its branches. Third, the form must require an institution to describe all third-party servicers of the institution and supply a copy of any contract with a third-party servicer. Finally, the form must require an institution to provide any other information that the Secretary determines will ensure compliance with Title IV, HEA program requirements with respect to eligibility, accreditation, administrative capability and financial responsibility.

Currently, the Department of Education uses a single application form that addresses both institutional eligibility requirements (as found in 34 CFR part 600) and the standards for certification of administrative capability and financial responsibility. In recent years, although institutions filed a single application form, they received separate notifications of action from the Department: an institutional eligibility notice and a certification letter. This created confusion because some institutions misinterpreted the institutional eligibility notice also to be the notice informing the institution that it met the requirements for "certification" and that the institution was now able to participate in a Title IV, HEA program.

In order to reduce confusion, the Secretary is now combining these notices of "institutional eligibility" and "certification", issuing one "Institutional Approval Notice" to an institution that meets the institutional eligibility and certification requirements. The Institutional Approval Notice advises the institution that it is an eligible institution, and is approved to participate in the Title IV, HEA programs listed in the Notice and indicated in the institution's program participation agreement. The effective date of approval, which is specified in the Institutional Approval Notice, is the date that the Secretary signs the institution's program participation agreement.

Under current practice, an institution that wishes to participate in a Title IV, HEA program for the first time must first apply to the Secretary for a certification that the institution meets the standards for participation found in Subpart B of these regulations. A currently participating institution must apply to the Secretary for a certification that the institution continues to meet these standards under a number of conditions.

First, the institution must apply for certification if the Secretary requests the institution to apply. The Secretary reserves the right to require a participating institution to apply at any time if the Secretary is concerned about the institution's continued participation in a Title IV, HEA program. Currently, the Secretary exercises this authority only rarely, and generally when the Secretary receives reliable information that could affect the institution's eligibility under 34 CFR part 600 or the institution's financial responsibility or administrative capability under subpart B of these regulations. For example, if the Secretary receives information that an institution that does not grant degrees has received authorization from its State and accrediting agency to award degrees, the Secretary would require the institution to apply under 34 CFR part 600 to determine whether the institution satisfies the definition for a different type of institution and therefore might be eligible to apply to participate in HEA programs for which the institution earlier was not qualified. At the same time, the Secretary requires the institution to apply for recertification under this subpart. Similarly, if the Secretary receives reliable information that could affect whether an institution meets the factors of financial responsibility in this subpart, the Secretary requires the institution to apply for recertification. The Secretary does not intend to exercise this authority more frequently than under current practice.

Second, a participating institution must apply for certification if the institution wishes to include in its participation a branch campus (as that term would be defined in 34 CFR part 600) or another location that offers 100 percent of an educational program. Adding a branch campus or additional location that offers 100 percent of an educational program can have a great effect on the ability of an institution to continue to participate in the Title IV, HEA programs. The Secretary considers it is appropriate to scrutinize the effect of such an addition. In particular, the Secretary believes it is necessary to examine whether the institution has the financial resources and the administrative capability necessary to support such an addition.

A number of circumstances that could affect an institution's participation in a Title IV, HEA program do not, under the Secretary's current practice, require the institution automatically to apply for

recertification under subpart B of these regulations. Instead, these circumstances require the institution to notify the Secretary, and, if necessary, provide specified information about the circumstances. These circumstances parallel many of those described in 34 CFR part 600 requiring the institution to notify the Secretary of changes that could affect the institution's eligibility. Based on that notification and information, the Secretary determines whether the institution must apply for recertification. If the institution need not apply, the Secretary notifies the institution under the provisions of 34 CFR 600.30 that the institution continues to be eligible and participating. If the Secretary needs further information to make that determination, the Secretary requests additional information from the institution or requires the institution to apply for recertification. These procedures apply to the following circumstances: (1) A change in name, address, or location of the institution or one of the institution's locations; and (2) the inclusion in an institution's participation of a location that offers less than 100 percent but at least 50 percent of an educational program. In making the determination that the institution must apply for approval, the Secretary takes into account the institution's ability to provide adequately education or training at the location, including such factors as the percentage of an educational program offered at the location and the financial and administrative capability of the institution.

Under current practice and under these proposed regulations, a participating institution that wishes to include in its participation a location that offers less than 50 percent of an educational program need not provide any notification or application to the Secretary, unless the Secretary so requests.

Third, a participating institution must apply for certification if the institution wishes to continue to participate in a Title IV, HEA program following a change in ownership that results in a change in control. The regulations governing institutional eligibility (34 CFR part 600) contain the requirements governing institutions that change ownership resulting in a change of control.

New section 498(g) of the HEA requires the Secretary to establish a schedule for the expiration of the approval of institutions to participate in the Title IV, HEA programs. Once this schedule is in place, each program participation agreement will have a specific expiration date. To continue participating in the Title IV, HEA programs beyond the expiration date of its program participation agreement, an institution will need to apply for and be granted approval for continued participation. The Secretary will notify an institution well in advance of the expiration date of the institution's program participation agreement that the institution must apply for and be granted continued participation. If an institution does not apply for or is not granted approval for continued participation by the expiration date of the institution's program participation agreement, the institution's participation in the Title IV, HEA programs would expire on that expiration date. In this case, the Secretary may choose to provisionally certify the institution. Provisional certification will be addressed in more detail later in this discussion.

The proposed regulations would specify that an institution that applies for participation in any Title IV, HEA program must apply on the form prescribed by the Secretary and provide all information and documentation requested by the Secretary. The Secretary would like to clarify that an institution may be asked to supply additional information in support of its application after its initial submission. This does not represent a change from current procedures.

Section 668.13 Certification Procedures

Currently, the Secretary informally refers to the procedures by which the Secretary certifies that an institution meets the standards in subpart B of these regulations and accordingly may participate in a Title IV, HEA program as the "certification procedures." The Secretary proposes to add a new § 668.13 to codify these procedures. This section also would include proposed procedures whereby the Secretary codifies new statutory provisions governing certification and provisional certification procedures for participation in a Title IV, HEA program.

Clearly, an institution may not be certified unless the institution is eligible under the provisions of 34 CFR part 600. Further, this section would make clear that an institution could be certified only if the institution meets all the applicable standards for participation in subpart B of these regulations.

Finally, because the requirement that each time an institution seeks to begin to participate in a Title IV, HEA program the specified individuals must complete "precertification training" provided by or approved by the Secretary is a certification requirement, the Secretary proposes to move this requirement from the current § 668.12 (Institutional participation agreement) to this section. The Secretary proposes to amend this requirement to clarify that an institution subject to this training requirement may not begin participation until the individuals have completed the training. Under current regulations, the Secretary specifies that an institution may request an on-site review (instead of electing to use the precertification training procedures) before beginning its participation.

In accordance with section 498(g) of the HEA, the Secretary proposes to delineate the period for which an institution may participate in a Title IV, HEA program. Generally, this period is the maximum of four years permitted by the HEA; however, the Secretary may specify a shorter period as the Secretary deems necessary.

Section 498(h) of the HEA permits the Secretary to provisionally certify an institution to participate in a Title IV, HEA program in a number of circumstances. Provisional certification permits the Secretary to allow an institution that otherwise would not qualify to participate in a Title IV, HEA program to participate. However, because such an institution cannot meet all the requirements for "full" certification, the institution's participation would be limited. For example, an institution that is provisionally certified could be monitored more closely to the extent that the Secretary believes the institution warrants a greater degree of oversight. Further, in accordance with the statute, an institution that is provisionally certified is subject to shorter periods of participation than a fully certified institution. The Secretary notes that these limitations may vary, within the limits of the statute, to address the specific circumstances of the institution. Finally, under the terms of provisional certification, an institution will not have the right to a formal appeal under subpart G of this part if the Secretary revokes the institution's provisional certification; instead, the Secretary proposes to offer the institution a modified appeal. These limitations are addressed in more detail later in this discussion.

Under section 498(h) of the HEA, the Secretary may provisionally certify an institution that: (1) Applies for initial participation in any Title IV, HEA program; (2) has its administrative capability or financial responsibility determined by the Secretary for the first time; (3) undergoes a change of

ownership; (4) seeks to renew its certification and jeopardizes its ability to perform its financial responsibilities by not meeting the factors of financial responsibility or standards of administrative capability in proposed §§ 668.15 and 668.16 (and whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification); or (5) is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew recognition of that agency. In addition, the Secretary is proposing to add, to the list of institutions that may be provisionally certified, an institution that allowed its specified period of participation to expire without reapplying and qualifying for participation in time.

The Secretary intends to use provisional certification as a mechanism for monitoring an institution that has not previously participated or one that has changed ownership, until it has time to establish a track record. In keeping with current practice, the Secretary does not intend to certify any initial applicant until it has successfully completed a period of provisional certification. Because many of the requirements for certification cannot be met until an institution has participated in the Title IV, HEA programs for a period of time, an initially participating institution would still have the opportunity to participate while establishing a record that demonstrates compliance with all of the proposed current standards for participation. The Secretary notes that certain factors of financial responsibility and administrative capability, such as requirements governing the appropriate handling of Title IV, HEA program funds and timely submission of required audits and other reports, cannot be judged until an institution has Title IV, HEA program funds to administer. In these cases, instead of certifying that an institution meets all the standards of subpart B, the Secretary certifies that an institution has demonstrated that it meets all the standards it can currently and that it will be able to meet all the standards in subpart B to qualify it for full certification within a period of time specified by the Secretary. Such an institution will receive a modified program participation agreement. For the same reasons, the Secretary also intends to use provisional certification for all institutions that undergo a change of ownership. Provisional certification would permit them to participate in Title IV, HEA programs while demonstrating over time that they can meet the standards for participation under the new ownership.

In addition, the HEA provides that the Secretary may use provisional certification for institutions that are currently participating who will have their financial responsibility and administrative capability determined for the first time. Some institutions have been participating in the Title IV, HEA programs since before the establishment of the financial responsibility and administrative capability standards, and have never undergone a certification review. These institutions may be allowed the time necessary to establish that they can remedy any deficiencies found and meet the standards for participation.

Finally, under the provisions of the Technical Amendments of 1993, the Secretary may provisionally certify a participating institution that is undergoing a certification review if the Secretary believes that the institution is in a financial or administrative position that could jeopardize the institution's ability to perform its financial responsibilities under its program participation agreement. The Secretary may provisionally certify an institution under this provision if the institution's participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification. Thus, the Secretary proposes to use provisional certification as a probationary period for some participating institutions, if the Secretary determines that the institutions are capable of meeting the standards for full certification by the end of that period. For example, the Secretary might find that an institution applying for recertification on its own fails to meet one of the standards in proposed § 668.15. If the Secretary determines that the failure could jeopardize the institution's ability to meet its financial responsibilities, such as the payment of refunds, the Secretary would provisionally certify the institution.

Finally, the Secretary proposes to use provisional certification for institutions that seek a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program. The Secretary will examine the reasons for the lapse in participation to determine if additional safeguards are necessary for the institution to demonstrate that it is capable of resuming its participation in the Title IV, HEA programs.

The Secretary does not intend to certify an institution provisionally if the institution does not meet the financial responsibility standards, unless the institution provides the Secretary with certain additional financial guarantees of its ability to continue operating. The Secretary believes that additional financial guarantees are necessary in that situation to ensure that funds may be available to repay liabilities or to pay required refunds that could arise under the Title IV, HEA programs. The Secretary generally does not intend to certify an institution provisionally if the institution does not meet the general standards of financial responsibility or the exceptions to the general standards of financial responsibility under proposed § 668.15(d) unless the institution meets three additional conditions. First, the institution would have to demonstrate to the satisfaction of the Secretary that it has sufficient financial and administrative resources to participate in the Title IV, HEA programs under a funding arrangement other than the Department of Educations's standard advance funding arrangement. For example, the institution could be funded through an escrow arrangement where an approved third party controls the institution's access to Title IV, HEA program funds. The Secretary believes that it is necessary for the Department of Education to have the added control over Title IV, HEA program funds provided by an escrow arrangement. Second, the institution would have to submit to the Secretary a letter of credit payable to the Secretary equal to not less than 10 percent of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; the Secretary believes that 10 percent of an institution's Title IV, HEA program funds is the minimum necessary to ensure repayment of liabilities that may be identified during the institution's period of provisional certification. Further, the Secretary believes that the amount of Title IV, HEA program funds received by an institution during the last complete award year for which figures are available provides the most accurate indication of the amount of Title IV, HEA program funds the institution will use in the next award year. Third, the institution would have to demonstrate that it has met all of its financial obligations during the preceding two award years, including (but not limited to) the payment of required refunds and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary. The Secretary believes that an institution that could meet this

proposed standard has established a track record for meeting its financial obligations.

The Secretary notes that an institution that is applying for initial participation in the Title IV, HEA programs could not satisfy the proposed requirement that the institution submit to the Secretary a letter of credit payable to the Secretary equal to not less than 10 percent of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available because the institution would not have received any Title IV, HEA program funds during the last award year. The Secretary requests comments on a comparable way to determine the amount of a letter of credit for an institution that is applying for initial participation in the Title IV, HEA programs.

The Secretary also would impose additional conditions on any institution that has not been considered financially responsible under proposed § 668.15 at any time within the past five years, or if the institution is not considered financially responsible for one of the following reasons (as delineated in § 668.15(c)(2)): (1) The institution has been limited, suspended, terminated or entered into a settlement agreement to resolve such an action by the Secretary or a guaranty agency within the preceding five years; (2) the institution had an audit finding during its two most recent audits, or a program review finding during its two most recent program reviews, that resulted in the institution's being required to repay an amount greater than five percent of the Title IV, HEA funds that the institution received for any award year covered by the audit or the program review; or (3) the institution failed to address satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary.

An institution in these categories could only be provisionally certified if, in addition to meeting whatever conditions the Secretary might reasonably require of a provisionally certified institution, the institution satisfied one of the following conditions. First, the institution, or one or more persons or entities that the Secretary determines to exercise substantial control over the institution, or both, would have to submit to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the institution's potential liabilities arising from the institution's participation in the Title IV, HEA programs. Second, one or more persons or entities that the Secretary determines to exercise substantial control over the institution would have to agree to be jointly or severally liable for any liabilities arising from the institution's participation in the Title IV, HEA programs and any civil and criminal monetary penalties authorized under Title IV of the HEA. The law permits the Secretary to impose these conditions on these institutions; the Secretary is announcing that he would always impose them, because these circumstances are indicative that extra protection is needed for the institution and their students to be permitted to benefit from the use of Title IV, HEA program funds.

Generally, provisional certification may be granted for a period of no longer than three award years. In accordance with section 498(h) of the HEA, an institution that is applying for initial participation may be provisionally certified for a period of no longer than one award year. A participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency may be provisionally certified for no longer than 18 months after the date that the Secretary withdrew that recognition. The Secretary has the authority to specify a shorter period of provisional certification, as necessary.

In accordance with section 498(h) of the HEA, the Secretary may revoke an institution's participation in the Title IV, HEA programs, at any time before the end of a period of provisional certification, if the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement. If the Secretary makes that determination, the Secretary would notify the institution of the determination by mail, unless the Secretary chooses more expeditious means, and revocation would take effect on date that notice is mailed. The institution would have to adhere to the requirements of proposed § 668.26 which describes the consequences of revocation.

Under the terms of the provisional certification, the institution does not have the right to a formal appeal under subpart G of this part before the revocation takes effect. However, the Secretary proposes to allow the institution to submit a written request to reconsider the revocation within 20 days of the institution's receipt of the Secretary's notice, after the revocation takes effect. The institution's request for reconsideration would have to include written evidence that the revocation is unwarranted.

If the Secretary decides that the revocation is unwarranted, the institution's provisional certification would be reinstated in accordance with the time, terms, and conditions set out in the institution's original provisional certification. If, after consideration of the institution's submission, the Secretary denies the institution's request, the institution would not be permitted to reapply for participation in the Title IV, HEA programs before at least 18 months after the revocation or the expiration of any debarment or suspension of the institution, whichever is later. Generally, an institution whose participation has been terminated because the institution's provisional certification was revoked would be able to apply for reinstatement after 18 months. However, a debarment or suspension under E.O. 12549 or the FAR can last 3 or more years. This change would eliminate any doubt that a debarred or suspended institution may apply for reinstatement of the institution's participation during the period of a debarment or suspension. The Secretary will not accept any application by a debarred or suspended institution until the debarment or suspension has expired or been removed.

Section 668.14 Program Participation Agreement.

The Secretary proposes to redesignate § 668.12 as § 668.14. This section includes provisions dealing with third-party servicers that were proposed in the NPRM published on February 17, 1994 (in part II). The Secretary will not repeat the discussion of those provisions here.

Current regulations governing program participation agreements state only the basic terms of participation in the Title IV, HEA programs and the purpose and scope of the agreement between the Secretary and individual institutions. All of the specific provisions of the program participation agreement that are listed in section 487(a) of the HEA are not restated in the regulations. Instead, all the specific statutory provisions are included in the actual agreement signed between the Secretary and individual institutions. The Secretary proposes to revise this section of the regulations to include not only the new provisions of program participation agreements added by the Amendments of 1992, but also those provisions previously prescribed by the HEA but not specifically spelled out in this section. The Secretary will specify which proposed changes have been made to this section as a result of the Amendments of 1992 to distinguish

them from the provisions that the Secretary proposes to add that already existed under the HEA, but have not been codified in regulations.

The additional provisions of program participation agreements enumerated in the HEA, as well as other changes the Secretary is proposing in order to clarify what the agreements cover and to reflect new procedures and statutory language, are described below.

By providing a comprehensive list of the provisions of the basic program participation agreement in one section, thus making reference to all the provisions more convenient, the Secretary hopes to facilitate institutions' understanding of their responsibilities with respect to initial and continued participation in the Title IV, HEA programs.

The Secretary proposes to clarify the scope of the program participation agreement. By signing a program participation agreement, an institution indicates it understands that its initial or continued participation in the Title IV, HEA programs is contingent on compliance with the Student Assistance General Provisions regulations, the regulations of the specific Title IV, HEA programs in which the institution participates, and any additional requirements specific to that institution that the Secretary requires the institution to meet. Further, the Secretary proposes to make clear the long-standing practice that the program participation agreement applies to each branch or other additional location of the institution that meets the applicable requirements of the Student Assistance General Provisions, unless the Secretary specifies otherwise.

The Secretary proposes to specify that by entering into a program participation agreement the institution agrees to comply not only with statutory and regulatory requirements, but also with any special arrangement, agreement, or limitation. The proposed expansion of this provision is necessary to make it clear that if it is to participate in a Title IV, HEA program, an institution must adhere not only to those requirements listed in the statute and regulations, but to any conditions of provisional certification, any limitation imposed on the institution to which the institution has agreed, or any other special arrangement that the institution makes pursuant to statutory or regulatory authority under Title IV of the HEA. The Secretary also believes it is necessary to clarify the Secretary's longstanding interpretation that to begin or continue to participate in a Title IV, HEA program, an institution must comply with each requirement applicable to that program, not just selected provisions.

The Secretary proposes to add a clause specifically requiring that institutions that receive Title IV, HEA program funds under an advance payment method must time their requests for funds to meet immediate programs needs. The Secretary finds that this addition is necessary because, in the absence of this specifically stated requirement, too many institutions have drawn down funds in excess of immediate need, thereby adding unnecessarily to the Federal debt by causing the Treasury to incur interest costs on funds given to institutions that were not required to meet immediate needs.

The Amendments of 1992, as clarified by the Technical Amendments of 1993, has removed the requirement that an institution may not request from or charge any student a fee for processing or handling the Federal Student Assistance Report, to conform with other statutory provisions of the Amendments of 1992 that eliminated previous references to that report. The Secretary would remove the corresponding regulatory language from this section. No change has been made to the general requirement that an institution may not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance.

In accordance with the HEA, an institution must establish and maintain necessary administrative and fiscal procedures and records to ensure proper and efficient administration of Title IV, HEA program funds that the institution receives from the Secretary or from students. Further, the Amendments of 1992 require that the institution provide, upon request and in a timely manner, information relating to its administrative capability and financial responsibility of the institution to the Secretary, the appropriate State postsecondary review entity designated under Part H of Title IV of the HEA, any applicable guaranty agency under the FFEL programs, and the institution's accrediting agency or agencies. The Secretary proposes to add to this list of agencies the institution's State agency with legal jurisdiction over the institution and, where appropriate, the State agency recognized by the Secretary for the approval of public postsecondary education as an alternative to accreditation or preaccreditation. The Secretary believes that it is important that these agencies also have access to information regarding an institution's financial responsibility and administrative capability.

The HEA requires that an institution must agree to comply with the Secretary's regulations governing financial responsibility and administrative capability. Thus, the Secretary would specify that the institution must agree to comply with proposed-to-be-redesignated §§ 668.15 and 668.16.

The HEA requires that an institution must submit reports, as directed by the Secretary, to the Secretary, or, as appropriate, holders of student loans under the Title IV, HEA programs, containing information required to administer the Title IV, HEA programs. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The HEA requires that an institution may not provide any statement to a student or certification to a lender under the FFEL programs that qualifies a student for loans in excess of the annual and aggregate limits for which the student is eligible for in accordance with statutory requirements. The Secretary proposes to extend this requirement to include unsubsidized Federal Stafford loans.

The HEA requires that an institution must comply with the consumer information requirements in subpart D of these regulations. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The HEA requires that an institution that advertises job placement rates as a means of procuring enrollment must make available to prospective students data necessary to substantiate the truthfulness of the advertisement. In addition, the Amendments of 1992 require that an institution make available to prospective students the relevant State licensing requirements for any job for which an institution's educational program is designed to prepare prospective students. The HEA also requires that an institution must inform all eligible borrowers under the FFEL programs of their eligibility for and the availability of State grant assistance. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

In order to streamline these regulations, the Secretary proposes to list in one place in this section all the certifications that an institution must make to participate in a Title IV, HEA

program. The institution would have to agree in its program participation agreement to provide these certifications. These certifications include the following: (1) That the institution has in operation a drug abuse prevention program accessible to any of the institution's officers, employees, and students; and (2) establishment of a campus security policy and disclosure requirements as required by section 485(f) of the HEA. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The HEA requires that an institution make available to students who receive Title IV, HEA program aid based on their ability to benefit from the training offered a program proven successful in assisting those students to obtain the recognized equivalent of a high school diploma. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 require an institution to agree that it will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 require that as a condition for participation any institution seeking to participate for the first time in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs and any institution participating in those loan programs that changes ownership resulting in a change of control or changes its status as a main campus, branch campus, or an additional location, develop and implement for two years a default management plan. The Secretary proposes to allow institutions to develop and implement, or submit if required by the Secretary, a default management plan developed in accordance with the default reduction measures described in appendix D of current regulations to meet this requirement.

The Amendments of 1992 require that an institution must acknowledge the authority of the Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, and State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs, or any information on fraud and abuse. The Secretary proposes to add to this list of agencies the institution's State agency with legal jurisdiction over the institution and, where appropriate, the State agency recognized by the Secretary for the approval of public postsecondary education as an alternative to accreditation or preaccreditation.

The statutory provision that governs the effect of fraud and criminal conduct by individuals, agencies, or organizations affiliated with an institution was discussed in the NPRM published on February 17, 1994 (in part II) that deals with third-party servicers.

The Amendments of 1992 require that an institution must timely and satisfactorily complete any survey conducted as a part of the Integrated Postsecondary Education Data System (IPEDS), or other Federal data collection effort on postsecondary institutions. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 spell out the requirements imposed on participating institutions that offer athletically related student aid. In order to participate in a Title IV, HEA program, an institution that offers athletically related student aid must compile annually and have audited independently at least every 3 years, data on the revenues derived by the institution from and expenses made by the institution for the institution's intercollegiate athletics activities. This compilation must include data on total revenues and total expenses, revenues and expenses attributable to football, revenues and expenses attributable to men's basketball, revenues and expenses attributable to women's basketball, revenues and expenses attributable to all other men's sports combined, and revenues and expenses attributable to all other women's sports combined. The compilation must also include data on the total revenues and operating expenses of the institution. The institution is required to prepare the compilation within 6 months after the end of the institution's fiscal year. The institution must make the compilation and, where allowable by State law, the required audits, available for inspection by the Secretary and the public.

For purposes of this compilation, the Amendments of 1992 define revenues from intercollegiate athletics activities allocable to a sport to include without limitation gate receipts, broadcast revenues, appearance guarantees and options, concessions, and advertising. Revenues such as student activities fees or alumni contributions not allocable to a sport must be included in the calculation of total revenues only. The Amendments of 1992 define expenses for intercollegiate athletics activities allocable to a sport to include without limitation grants-in-aid, salaries, travel, equipment, and supplies. Expenses such as general and administrative overhead that are not allocable to a sport must be included in the calculation of total expenses only. Generally, the Secretary is proposing to restate the language of the statute in the regulations. However, the Secretary proposes changes to conform with the NCAA's 1989 Financial Audit Guidelines. In addition to the statutory definition of what is included in revenues from intercollegiate athletics activities allocable to a sport, the Secretary proposes to specify that other conference distributions in addition to broadcast revenues would also be included. The Secretary also proposes to specify that revenues such as investment interest income that are not allocable to a sport would be included in the calculation of total revenues only.

The Amendments of 1992 provide that an institution may not impose any penalty on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of a title IV, HEA program loan due to compliance with statutory and regulatory requirements for the Title IV, HEA programs, or delays attributable to the institution. The statute specifies that those prohibited penalties include the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds. The Secretary proposes to clarify that the restriction that institutions may not require a student to borrow additional funds would apply only to funds for which interest or other charges are assessed. Therefore, this provision would not apply to any interest-free loans that the institution might require the student to borrow until other sources of aid are available.

The Amendments of 1992 provide that an institution may not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or

admission activities. An institution also may not provide such an incentive payment to any persons or entities engaged in making decisions regarding the awarding of student financial assistance. The statute specifies that this requirement does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. The Secretary proposes to extend this provision to require that institutions also may not contract with entities that improperly provide, any commission, bonus, or other incentive payment as delineated in the statute. The Secretary believes that this provision is necessary to implement more rigid restrictions than were seen in the past on the practices of "commissioned salespersons." The Secretary proposes to repeat the language of the statute with the addition of this change. The Secretary believes it is clear that this statutory requirement places rigid restrictions on the practice of recruitment, admission activities, and the awarding of student financial assistance.

The Secretary is aware that some institutions pay incentives to recruiters or admissions office employees based on the success of those persons in enrolling students, provided that the enrolled students maintain satisfactory progress for and remain enrolled in the institution for a specified period of time. The Secretary considers this practice, which commonly is referred to as an incentive based on "retention," to be an example of an activity that is prohibited by the statute.

During the negotiated rulemaking sessions, the Secretary's negotiator requested further examples of prohibited activities. A non-Federal negotiator offered the following examples that the Secretary believes are not permitted by the statute. (1) An institution might offer payments or gifts to students for referring other prospective students for admission to the institution. (2) An institution might offer payments or gifts to students on the condition that persons whom the students referred to the institution were actually admitted and remained enrolled in the institution for a specified period of time. (3) An institution might present gifts to alumni, such as coffee mugs, sporting events tickets, or contributions in their name for referring students to the institution for admission. (4) An institution might pay bonuses to Directors of Admissions (or other management personnel) based on the number of enrollments received during a particular academic year or the number of students who, after enrolling, remained at the institution until all financial aid had been received. The Secretary specifically requests comments on these examples and others that might serve as useful guidelines in these regulations.

The Amendments of 1992 require that an institution comply with applicable requirements established by all members of the "triad"; i.e., the Secretary, State postsecondary review entities, and nationally recognized accrediting agencies pursuant to part H of title IV of the HEA. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

The Amendments of 1992 require that an institution comply with the institutional refund policy established in accordance with § 668.22. The Secretary considers this provision to be self-explanatory and proposes to add this statutory requirement to the regulations without substantive modifications.

Finally, in addition to the statutory requirements for program participation agreements, an institution would have to agree to be liable for all improperly spent or unspent funds received under the title IV, HEA programs, including funds administered by a third-party servicer, and refunds that the institution or its servicer may be required to make. This provision was proposed and discussed in the NPRM published on February 17, 1994 (in part II) that deals with third-party servicers.

The Amendments of 1992 and the Technical Amendments of 1993 amended the HEA to require that an institution that has a change in ownership resulting in a change in control reestablish institutional eligibility and undergo a certification review before it may participate in any title IV, HEA programs. Therefore, the Secretary is proposing to remove the provision in current regulations that permitted the new participation agreement of an institution that changed ownership to be effective on the date of the change of ownership. Instead, under the proposed regulations, the program participation agreement of an institution that changes ownership would be effective on the date that the Secretary signs the agreement, just as any other new program participation agreement would.

The Secretary proposes to specify that a program participation agreement expires if the institution's participation ends because: (1) The institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students; (2) the institution loses its institutional eligibility under 34 CFR part 600; (3) the institution's period of participation, as specified under § 668.13, expires (that is, the four-year limit on participation, the limits on participation established pursuant to provisional certification, or shorter periods established by the Secretary), or the institution's provisional certification is revoked under § 668.13; (4) the Secretary determines under § 668.13(c) that the institution that is applying for certification has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 or the standards of administrative capability under § 668.16 (in the case of an institution whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification); or (5) the Secretary receives a notice from the appropriate SPRE that the institution's participation should be withdrawn.

These provisions would conform to the provisions in proposed § 668.26 governing the end of an institution's participation in a title IV, HEA program. The first of these circumstances listed above is purely a clarification of existing practice. The last three describe circumstances mandated by the change made to the HEA by the Amendments of 1992.

Section 668.15 Factors of Financial Responsibility

The Secretary proposes to redesignate § 668.13 as § 668.15.

This section includes provisions dealing with third-party servicers that were proposed in the NPRM published on February 17, 1994 (in part II). The Secretary will not repeat the discussion of those provisions here. However, this third-party servicer NPRM proposed to apply the general standards of financial responsibility that are proposed in this NPRM to third-party servicers that contract with lenders or guaranty agencies to administer any aspect of the title IV, HEA programs.

General

Section 487 of the HEA requires the Secretary to develop regulations to determine the financial responsibility of an institution as a part of the Secretary's determination that an institution is able to participate in a title IV, HEA program. Section 498 of the HEA mandates some of the standards that the Secretary must use in making a determination of financial responsibility. In general, section 498 of the HEA adopted, with modifications, the standards used by the

Secretary in current § 668.13 of the Student Assistance General Provisions regulations. The Secretary proposes to require an institution to demonstrate that it is financially responsible under the proposed requirements in this section.

General Standards of Financial Responsibility

In paragraph (b) of proposed § 668.15, the Secretary would list general standards of financial responsibility. The first six standards are applicable to all institutions. Section 498(c)(1) of the HEA specifies that an institution's financial responsibility must be determined based on whether the institution is able to provide the services that the institution claims to provide, to provide administrative resources necessary to comply with Title IV, HEA program requirements, and to meet all of the institution's financial obligations, including refunds and liabilities and debts incurred in programs administered by the Secretary These standards were adopted from current regulations and the Secretary proposes to continue to use them unchanged.

The Secretary proposes to add to the list of proposed financial responsibility requirements for all institutions the requirement that an institution be current on any debt service payments. An institution normally has variable costs that fluctuate to meet the demand created by increasing or decreasing volume in those costs such as those for educational supplies and expenses and instructor salaries associated with educating an increasing or decreasing number of students. Debt service represents a fixed cost, such as mortgage or lease payments, to the institution that generally does not fluctuate with that volume. Thus, in a situation in which an institution is experiencing a decline in revenue due to a decrease in new enrollments, debt service would remain unchanged. The institution's flexibility to deal financially with the decline is reduced because management typically is unable to adjust the amount of payment for debt service without the consent of the creditor to whom the debt is owed. This situation places some degree of control outside the institution and beyond the scope of management's ability to deal with a deteriorating situation by reducing costs. Furthermore, a failure to meet debt service payments might precipitate collective action on the part of creditors to place the institution in an involuntary liquidation situation under Federal bankruptcy laws.

Alternatively, a growing institution usually must take on more debt to fund its operations. Should the growth fail to continue, the institution might be unable to service the increasing debt service associated with its expansion. Thus, the Secretary believes an institution's failure to remain current on its debt service payments would be a strong indicator of the institution's inability to meet its financial obligations.

Section 498(c)(5) of the HEA provides that the Secretary must establish requirements for an institution to maintain sufficient cash reserves to ensure repayment of any required refunds. Section 498(c)(5) of the HEA also provides for an exemption to this requirement which is discussed below under exceptions to the general standards of financial responsibility. The Secretary proposes to require an institution to maintain, at all times, a minimum cash reserve of at least 10 percent of the institution's total deferred tuition income at the end of the institution's most recent fiscal year for repayment of refunds. The cash reserve would have to be maintained in a cash reserve account and would have to consist of cash or cash equivalents, as those terms are defined in accordance with generally acceptable accounting principles.

The Secretary believes that it would be unreasonable and unduly burdensome to require an institution to calculate the percentage of its cash reserve on a continual basis. Accordingly, the Secretary would require an institution to determine its total deferred income at the end of the institution's fiscal year and calculate the percentage based on that total. Once that percentage is determined, the institution would have to maintain that amount of cash reserve at all times until a new calculation is performed at the end of the institution's subsequent fiscal year. The calculation would be based on the institution's total deferred tuition income because deferred tuition income is an indicator of the value of services that the institution will provide for the coming year The Secretary requests comment on a comparable way to determine the appropriate level for the cash reserve.

Ten percent of this amount represents roughly the equivalent of a month's worth of an institution's revenue. The Secretary considers this amount a reasonable amount for an institution to have available to pay refunds in the event of the institution's precipitous closure. Generally, under this proposal, an institution would demonstrate its compliance with this provision once a year with the submission of the institution's audited financial statements. However, because an institution would be expected to maintain this cash reserve at all times, the Secretary would reserve the right to evaluate an institution's compliance with the requirement at any time. Finally, the proposal to allow cash equivalents to be included in the cash reserve is consistent with generally accepted accounting principles.

Finally, the Secretary proposes that, in order to be financially responsible, an institution must not have as part of its audit report for its most recently completed fiscal year any of the following. First, the institution's audit would not contain a statement by the accountant acknowledging substantial doubt about the institution's ability to continue operating as a going concern. A "going concern" statement is a professional opinion rendered by an independent certified public accountant, commenting on the institution's unstable financial condition and informing the reader of the possibility that the institution may not survive the coming fiscal year. Although such a "going concern" statement is rarely issued, its presence attests to a concern held by the auditor that the institution's ability to continue operating is uncertain. The Secretary believes that if an auditor, after close examination of the institution's operations, concludes that such a statement is warranted, this is cause for the Department to protect its interest in the Title IV, HEA program funds administered by the institution by requiring the institution to be subject to the appropriate remedies for establishing financial responsibility, or to be subject to provisional certification or the proceedings in subpart G of these regulations.

Second, the institution's audit could not contain a finding of unauthorized use of donor restricted net assets to meet current operating expenses. Unauthorized use of donor restricted net assets is a violation of the restrictions placed on donations by the donor Any donor-restricted funds are placed in an endowment fund to be used for specific purposes, such as providing scholarships. Donor restricted net assets are most commonly found at nonprofit institutions. The Secretary believes that if this money is transferred to current funds or total net assets for current operating expenses, this is not only an indication of extremely impaired cash flow, but also a violation of an institution's responsibility as a fiduciary of Title IV, HEA program funds.

Third, the institution's audit could not contain a disclaimed or adverse opinion by the accountant. A disclaimed or adverse opinion is an indicator that the auditor is unable to perform a complete audit of the institution with the assurance that the audit presents a reliable presentation of the institution's financial condition. An audit submitted with such a disclaimer or limitation would cause the institution's financial report to be rejected by the Secretary. Such a statement in the auditor's report is an indication that the financial statement was not prepared in accordance with generally accepted accounting principles as required in current regulations.

The statute authorizes the Secretary to prescribe criteria for evaluating operating losses, net worth, asset to liabilities ratios and operating fund deficits. The Secretary's goal in developing these proposed regulations is to ensure that institutions are capable to operate as a fiduciary of Federal funds based on a sufficient financial base to properly provide education and meet the institution's financial obligations. The Secretary, therefore, proposes to amend the current factors of financial responsibility section to establish new financial responsibility standards as a means of further refining the above requirements.

The Secretary proposes that, as in the past, failure to meet any one of the factors may result in initiation of an administrative proceeding to limit, suspend, fine or terminate an institution. Because some of these proposed factors are more stringent than those currently found in the regulations, the Secretary recognizes that an institution may need a sufficient period of time to adjust its operations in order to come into compliance with these proposed factors, if they are adopted. Under this proposal, the Secretary may provisionally certify institutions that did not meet these proposed standards to provide them with this additional period of time to comply, provided that the institution shows that it would have met the current standards.

The Technical Amendments of 1993 require the Secretary to take into account an institution's total financial circumstances in making a determination of an institution's financial responsibility. The Secretary believes that these proposed factors evaluate, both directly and indirectly, the overall soundness of an institution's financial condition for the period covered by its audited financial statements and, therefore, take into account an institution's total financial condition as required by the Technical Amendments of 1993.

The Technical Amendments of 1993 require that criteria developed for the determination of an institution's financial responsibility take into account any differences in generally accepted accounting principles, including required financial statements, that are applicable to for-profit and nonprofit institutions. Therefore, in addition to general standards that all institutions would be required to meet, the Secretary has proposed standards applicable specifically to for-profit, nonprofit, and public institutions that the Secretary believes indicate an equal level of financial responsibility. At the suggestion of some of the negotiators, the proposed specific standards of financial responsibility have been organized by type of institution; i.e., for-profit, nonprofit, and public.

Due to differences in legal and reporting entity, mission, and accounting format for nonprofit entities and for profit-seeking entities, there are differing tests of financial responsibility to be applied. Evaluating a nonprofit entity's overall financial condition is more complicated because there is no commonly accepted standard of acceptable financial condition. Generally, a measure of an institution's financial condition is a measure of an institution's solvency, or the ability of an institution to adequately cover its expenditures with revenues. In determining an institution's financial condition, the Secretary believes it is necessary to look at the institution's short-term solvency and long-term solvency, which is the ability of an institution to support an adequate level of services over the long run, withstanding economic disruption and meeting changing demands for services.

With accounting for for-profit entities, analysis of financial statements provides an understanding of an institution's financial condition through comparisons of key financial ratios that measure the institution's ability to remain solvent while continuing to provide educational services at acceptable levels. Examination of financial information from nonprofit entities requires a review of other organizational factors that measure the ability of the institution to provide educational services using a larger and more complex source of funds. It is therefore necessary to differentiate the standards that are applicable to profit-seeking entities from the standards that are applicable to nonprofit entities.

The Secretary will first address the specific standards for for-profit institutions.

The Secretary proposes to require that a for-profit institution have, at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1.25:1. One commonly used means of determining whether or not the institution has sufficient short-term solvency is use of the ratio of current assets to current liabilities. For the past fourteen years the Department has used a current assets to current liabilities ratio of at least 1:1 as an indicator of financial responsibility. This means that the institution has current assets at least equal to their current liabilities. In theory, this would indicate that an institution has sufficient resources to handle not only debt service, but also other liabilities for at least the coming fiscal year. The higher the amount of assets, the better the liquidity position of the institution and, therefore, the better the institution will be able to handle unforeseen economic conditions. The Secretary believes that the current 1:1 benchmark offers little or no indication of adequate short-term solvency. A 1.25:1 benchmark has, therefore, been proposed for for-profit institutions. Cash is now required to be a component. The Secretary believes that the proposed increase in current assets will help to ensure that institutions have sufficient resources to provide worthwhile education and training.

The Secretary is proposing a higher ratio of current assets to current liabilities ratio for for-profit institutions than for nonprofit institutions. The Secretary believes that a higher current ratio is necessary for for-profit institutions because they will be less likely, in the event of hampered liquidity, to draw on fund-raising as a source of cash. This rationale is discussed later as part of the discussion of the proposed ratio of current assets to current liabilities for nonprofit institutions.

The Secretary proposes to exclude from the calculation of this ratio for for-profit institutions, uncollateralized loans receivable from owners and related parties. Uncollateralized related party loans are loans that have been made to affiliates, officers, or employees and have not been secured by tangible assets. In accordance with Accounting Research Bulletin 43 (ARB43), chapter 3A, paragraph 6, the concept of current assets contemplates the exclusion from that classification of such resources as "* * * (c) receivables arising from unusual transactions (such as the sale of capital assets, or loans or advances to affiliates, officers, or employees) that are not expected to be received within twelve (12) months". In the event that

certain financial statements present these types of loans on the balance sheet, they will be disregarded by the Secretary in computation of the current ratio.

Further, because the proposed cash reserve requirement may cause a portion of the institution's cash reserves to be classified as a restricted asset, which would, under generally accepted accounting principles, be excluded from classification as current assets, the Secretary's proposal specifies that, for for-profit institutions, the cash reserves may be included in the institution's current assets in calculating the institution's current assets to current liabilities ratio. The Secretary believes that it is appropriate to permit for-profit institutions to treat the cash reserves as current assets because the funds are held for the benefit of the students, and inclusion of those amounts toward demonstrating a 1.25:1 current ratio still leaves the institution with sufficient unrestricted assets to pay all current expenses.

The Secretary proposes that a for-profit institution is financially responsible if it has not had operating losses over both of its two latest fiscal years that cause an operating loss exceeding 10 percent of the institution's previous year's tangible net worth for its latest fiscal year. While it may not be unusual for an institution to record a loss in any fiscal year, this loss is not harmful so long as the loss is not excessive, is not indicative of a deteriorating trend in the institution's financial condition, and the institution otherwise meets the factors substantiating its financial strength. The Secretary proposes to define an operating loss, for purposes of these provisions, as total net income minus extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, and the cumulative effect of changes in accounting principle, estimate, or reporting entity. The Secretary proposes that the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles. The Secretary believes this standard will measure whether a profit-seeking entity is operating from current cash flow to the extent possible. The aggregate residual effect of these activities on the organization's individual net assets is represented, along with any interfund transfers that may have taken place during the period.

The Secretary proposes that a for-profit institution is financially responsible if it had, for its latest fiscal year, a positive tangible net worth. The Secretary proposes that, for purposes of this section, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities. Further, the Secretary proposes that the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles. In applying this proposed standard, the Secretary could consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and could take into consideration the cumulative effect of changes in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles. For the past fourteen years, the Department has had a standard for net worth that states that an institution is not financially responsible if it has a deficit net worth (i.e., the institution's liabilities exceed its assets.), a measure of long-term solvency. Therefore, an institution with a net worth of zero meets this current requirement. The proposed change from penalizing a deficit net worth to requiring a positive net worth is only a technical change in form that should affect few, if any institutions.

By excluding all assets classified as intangible, all assets such as goodwill, organization costs, and covenants-not-to-compete, which have little market value in the determination of an institution's overall solvency will be eliminated in the calculation of net worth. In purchasing a business, the new owner pays an amount and allocates the market value to individual tangible assets in order to prepare financial statements. After applying the proper market value to the various assets, any residual amount that appears on the institution's balance sheet as goodwill, organization costs, or covenant-not-to-compete, is classified as an intangible asset.

It is the Secretary's intent to identify those institutions that do not have sufficient capital assets. For example, businesses that operate on month-to-month leases with minimum capital actually invested in the business are a potential risk to students, and ultimately to the taxpayers in terms of possible collapse and bailout. In these cases loans to students are often automatically discharged in accordance with provisions in the HEA. Preventing institutions that have no real assets from participating in the programs should enhance the gatekeeping process.

In the case of nonprofit institutions, the Secretary has developed standards in accordance with Statement of Financial Accounting Standards No. 117 (FAS 117) that was issued in June 1993 by the Financial Accounting Standards Board (FASB). FAS 117 altered the reporting format for not-for-profit organizations after the negotiated rulemaking process was already well underway. FAS 117 is effective for annual financial statements issued for fiscal years beginning after December 15, 1994, except for organizations with less than $5 million in total assets and less than $1 million in annual expenses. For those organizations, the Statement is effective for fiscal years beginning after December 15, 1995 with earlier application encouraged.

The Secretary proposes to require a nonprofit institution to prepare a classified statement of financial position in accordance with generally accepted accounting principles to provide the Secretary with the financial information necessary to determine the institution's financial responsibility under these proposed regulations. The Secretary proposes that, alternatively, a nonprofit institution could provide this information as footnotes to the audit. Although FAS 117 does not require a nonprofit institution to submit a classified statement of financial position prior to published implementation dates, it does not prohibit the institution from doing so. The Secretary notes that a financial statement that is not classified is not structured to provide the financial information necessary for the Secretary to determine an institution's compliance with these proposed regulations; however, the information could be included as footnotes to the audit.

The Secretary proposes that a nonprofit institution is not financially responsible if it cannot demonstrate, at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1. The Secretary proposes to not permit a nonprofit institution to include the cash reserves in the institution's current assets. The Secretary believes that, because the proposed current assets to current liabilities ratio for a nonprofit institution is 1:1, if the institution used designated reserve funds to meet this ratio, there would be no assurance of solvency.

The importance of a higher current ratio for for-profit institutions lies in the fact that they are not as likely to be able to draw on fund raising as a source of cash in the event of hampered liquidity because donors are less likely to contribute funds to a for-profit institution where those contributions would not be tax deductible. Many

nonprofit institutions have sufficient support in the community and from friends and alumni who are willing to donate to the institution. The cash intake of for-profit institutions is therefore limited to cash generated through profitability, whereas nonprofit institutions have an additional source of cash. Endowments, even when restricted to functions such as providing scholarships, are awarded and may be taken into cash from operations. Consistent profitable operations result in a better liquidity position for for-profit institutions, whereas consistent profitable operations are not necessary for a nonprofit to remain viable. In addition, it is inherent in a nonprofit institution that its final cash position not reflect a profit. In the nonprofit industry, the financial manager has limited authority. The financial manager may make recommendations, but the ultimate authority lies with the governing board. There is, therefore, less control in the hands of financial managers and a corresponding decrease in their ability to control a liquidity situation.

Lack of liquidity means that the institution is unable to service its current debt. This can lead to the forced sale of long-term investments and assets. To the owners of an institution, a lack of liquidity will mean reduced profitability or it may mean loss of control or loss of the entire capital investment. To creditors of the enterprise, it means slow collection of principal and interest due or even loss of the amounts due them. Students of these institutions can also be affected by a short-term poor financial condition. These effects may take the form of inability of the institution to perform their contract, inability to make refunds due to students or lenders, or the loss of supplier relationships. Suppliers are interested in an institution's liquidity position, and if it is found to be inadequate, it may cease to do business with the institution.

The Secretary proposes that a nonprofit institution is not financially responsible if it has had a decrease in total net assets at the end of its latest fiscal year of such significance that, if continued, would result in a ratio current assets to current liabilities of less than 1:1. Under this proposal, the Secretary could consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and could take into consideration the cumulative effect of a change in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles. For purposes of this proposed analysis, the Secretary could exclude unrealized gains and losses on investments that have been reported as changes in unrestricted net assets. The standard was revised to reflect the changes brought about with the issuance of FASB 117 and in order to provide parity with the for-profit institutions. The concept of net worth, as it applies to profit-seeking entities, does not exist for a not-for-profit entity. Upon implementation of FASB 117, fund accounting will no longer be used for colleges and universities, but these entities will adopt a format that is more similar to the format for-profit entities have been using. The term "fund balance" will no longer apply, but will be replaced by total net assets, divided into unrestricted, temporarily restricted and permanently restricted assets. For institutions not required to implement FAS 117 prior to the effective date of these regulations, the regulations applying to nonprofits currently found in 34 CFR 668.13(c), "the institution shall not have a deficit current unrestricted fund balance", will remain in effect until the institution adopts FAS 117.

The Secretary requests comments on whether the Secretary should determine a nonprofit institution to be financially responsible even if it does not meet these requirements if the institution has an acceptable "bond rating". The Secretary suggests that a type of acceptable bond rating may be a current general obligation or general obligation equivalent debt rating (because such a rating is backed by the full resources of the institution) by a nationally recognized debt rating organization, approved by the Secretary, that is at least investment grade.

The Secretary proposes that a public institution is financially responsible only if the institution has its liabilities backed by the full faith and credit of the State, or by an equivalent government. The Secretary is aware that accounting principles for public institutions differ from those for for-profit and nonprofit institutions. The Secretary solicits comments on other acceptable measures of a public institution's financial responsibility that take the applicable accounting principles into account.

Past Performance of an Institution or Persons Affiliated With An Institution

The Secretary proposes to remove from the factors of financial responsibility the provisions in current § 668.13 (c)(4) and (d)(2) governing the effect on an institution's financial responsibility of criminal conduct and fraud involving Federal funds. Those provisions have been superseded by a similar statutory provision that is addressed in the discussion on proposed § 668.14 governing program participation agreements.

Under proposed § 668.15(c)(2), an institution would not be considered financially responsible, despite meeting all other requirements of this proposed section, if: (1) The institution has been limited, suspended, terminated, or entered into a settlement agreement, to resolve such an action by the Secretary or a guaranty agency within the preceding five years; (2) the institution had an audit finding during its two most recent audits, or a program review finding during its two most recent program reviews, that resulted in the institution's being required to repay an amount greater than five percent of the Title IV, HEA funds that the institution received for any award year covered by the audit or the program review; or (3) the institution failed to address satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary.

The consequences of this proposed provision are described more fully earlier in this preamble in the discussion on provisional certification. Essentially, institutions that fall into one of these categories not only would not be considered financially responsible, but could not be provisionally certified without the submission of certain financial guarantees or personal assumptions of liability arising from participation in the Title IV, HEA programs.

Exceptions to the General Standards of Financial Responsibility

The Amendments of 1992, as amended by the Technical Amendments of 1993, provide that the Secretary shall determine an institution to be financially responsible even though it does not meet certain general standards of financial responsibility, under various conditions.

Section 498(c)(5)(B) of the HEA provides that the Secretary shall establish a process whereby an institution is exempt from the cash reserve requirement if the institution is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that ensures that the institution is able to pay all required refunds and the institution contributes to that tuition recovery fund. The Secretary proposes that an institution is exempt from the proposed cash reserve requirement if it meets these conditions;

however, the Secretary proposes to stipulate that a State's tuition recovery fund must be acceptable to the Secretary. The Secretary would like to ensure that a State's tuition recovery fund truly has the resources to ensure payment of all required refunds if necessary. To this end, the Secretary would expect States to provide as much information as possible to demonstrate that their tuition recovery fund can pay all required refunds on behalf of an institution that closed precipitously. The Secretary invites comment on what specific standards should be used to measure the acceptability of a State's tuition recovery fund.

Section 498(c)(3) of the HEA provides that an institution is financially responsible even though it does not meet the other general standards of financial responsibility, under the following circumstances. First, an institution that is not financially responsible under the general standards of financial responsibility (except the cash reserve requirement) is financially responsible if the institution submits to the Secretary third-party financial guarantees, such as performance bonds or letters of credit payable to the Secretary, that equal not less than one-half of the annual potential Title IV, HEA program liabilities of the institution. The Secretary proposes that a letter of credit that is payable to the Secretary and effective for a period of time as determined by the Secretary would be the only acceptable type of third-party guarantee for this requirement. The determination by the Secretary that payment from a third-party guarantee requires that funds become immediately available to make refunds or to reimburse the Secretary for debts incurred in the programs. It has been the Secretary's experience that letters of credit are the only method by which funds do become immediately available; however, the Secretary requests comments on other standard forms of publicly guaranteed security that would provide the same level of security to the Secretary. The Secretary notes that an institution is liable for all mishandled Title IV, HEA program funds that it receives. Further, the Secretary believes that the total Title IV, HEA program funds received by an institution during the last complete award year is the best indicator of the amount of Title IV, HEA program assistance that the institution will receive for the next award year. Therefore, the Secretary proposes to require an institution to submit a letter of credit equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available in order to meet this requirement.

Second, the Technical Amendments of 1993 provide that an institution that is not financially responsible under the general standards of financial responsibility (except the cash reserve requirement) is financially responsible if it establishes to the satisfaction of the Secretary, with the support of a financial statement audited by an independent certified accountant with generally accepted accounting standards, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations, including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary. The Secretary proposes to restate the statute, modifying it only to propose to require that the financial statement be submitted in accordance with the proposed requirements for documentation of financial responsibility that will be discussed later.

The Technical Amendments of 1993 further provide that an institution is not required to meet the general standards of financial responsibility (except for the cash reserve requirement) if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that there is not reasonable doubt as to its continued solvency and ability to deliver quality educational services, it is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes, and it has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the current operating ratio requirement. The Secretary proposes to restate the statute without modification.

Documentation of Financial Responsibility

Section 498(c)(4) of the HEA provides that the determination of an institution's financial responsibility be based on an audited and certified financial statement of the institution or, where appropriate, its parent corporation, conducted by a qualified independent organization or person in accordance with standards established by the American Institute of Certified Public Accountants. The statement must be submitted to the Secretary when the institution is applying to begin or continue participation in the Title IV, HEA programs. The statute further provides that the Secretary may require the submission of additional audits if the first submission does not establish compliance with the general standards of financial responsibility. Although audited financial statements should be rendered in a uniform manner, there is some leeway with regards to contents of the statements. The Secretary proposes to require institutions to submit financial statements on an annual basis within four months after the end of the institution's fiscal year. The Secretary believes that four months from the end of an institution's fiscal year is a sufficient period of time for an institution to submit a financial statement. The Secretary also clarifies that, upon request, the institution must provide or otherwise make available the accountant's work papers in order to ensure that all information relevant to preparing an audited financial statement is readily available. Institutions are already required to provide access to such information pursuant to current § 668.23, and the Secretary proposes to reference that access to records in this proposed section. The Secretary proposes that an institution may be granted a filing extension to an institution upon a showing of good cause. The Secretary intends that this extension would be granted on an infrequent basis, as the Secretary believes it is imperative to have the financial information from the institution that most accurately reflects the current financial situation of the institution.

Section 668.16 Standards of Administrative Capability

The Secretary proposes to redesignate § 668.14 as § 668.16.

In matters not governed by specific provisions, section 487(c)(1)(B) of the HEA provides for the establishment of standards of administrative capability for participating institutions that include any matter the Secretary deems necessary for the sound administration of the Title IV, HEA programs. Section 498(d) of the HEA, which was added by the Amendments of 1992, authorizes the Secretary to establish procedures and requirements relating to administrative capability, including the consideration of past performance of institutions or individuals in control of those institutions and maintenance of records. In addition, section 498(d) authorizes the Secretary to establish other reasonable procedures that will

contribute to ensuring that institutions will be administratively capable.

Given this framework, the Secretary proposes to strengthen and modify the administrative capability standards in the current regulations by making significant, substantive changes to the administrative standards as well as some technical changes; the significant proposed changes to the current regulations are described below.

The Secretary proposes to clarify the Secretary's current principle that an institution must demonstrate that it is capable of meeting each of the administrative standards in this section to be considered administratively capable. During negotiated rulemaking, alternatives to requiring that institutions meet each administrative standard were discussed. Among the options considered were that the various factors be "weighted," i.e., the Secretary would identify which factors he considered to be the most critical and would incur the greatest penalty if they were not met. Some of the negotiators suggested that the various factors be used only as indicators of capability; that is, the Secretary would be required to review each institution that did not comply with one or more standard to determine the seriousness of noncompliance. However, the negotiators did not reach consensus on an approach. Therefore, the Secretary is proposing that to be fully certified as meeting the standards in this section (as well as the other standards in Subpart B of these regulations) an institution must demonstrate that it is administratively capable by meeting all the administrative standards. An institution that fails to demonstrate compliance with one or two administrative standards could be certified provisionally (see the earlier discussion on provisional certification) if the Secretary were to determine the institution capable of meeting all the standards within a specific time period and that the noncompliance did not necessitate taking a stronger sanction such as a fine, limitation, suspension, or termination proceeding against the institution.

For example, an initial applicant would not be able to demonstrate compliance with all standards prior to participation. However, the Secretary expects such an institution to demonstrate that it is capable of complying with all the standards. Therefore, the Secretary currently provisionally certifies an initial applicant if the Secretary determines that the applicant is capable of meeting the current standards within a specified period of time. The Secretary will continue this practice, using any additional standards proposed in this section if they are adopted in final.

The Secretary proposes to make explicit the requirement that, to be considered administratively capable, an institution must administer all the Title IV, HEA programs in which it participates in accordance with all applicable statutory and regulatory provisions and special arrangements, agreements, and limitations. This expectation has been implicit. However, the Secretary believes it is important to lay out this standard together with all the other administrative standards.

The Secretary proposes to clarify what is meant by a capable individual who is responsible for administering the Title IV, HEA programs. It is important for each institution that is currently participating or seeking to participate in the Title IV, HEA programs to demonstrate that it has staff who are capable of administering the programs properly. While obviously a number of factors should be considered in determining what constitutes "capable," the Secretary believes that one factor that should be addressed in regulations is whether a financial aid administrator has been certified by his or her State to have that capability. This factor would apply in a State that requires financial aid administrators to be certified. The Secretary also proposes to consider whether an individual has successfully completed Title IV, HEA program training that the Secretary has provided or approved. The Secretary is aware that some professional organizations provide high caliber training in various aspects of the administration of the Title IV, HEA programs and wishes to allow for acceptance of that outside training to meet this requirement in the future. The Secretary welcomes comments on what elements and safeguards should be present in an acceptable training program for financial aid administrators. While adequate experience and training are major considerations in evaluating compliance with this standard, the Secretary welcomes suggestions regarding any other appropriate factors that the Department of Education should take into account in determining an individual's capability.

The Secretary proposes to clarify the factors that are considered in determining whether a financial aid office is adequately staffed. The Secretary proposes to specify that in looking at the amount of funds administered by the institution, the Secretary would also consider the number of students who receive any student financial assistance at the institution as it has a direct bearing on whether an office is adequately staffed. The Secretary also proposes to add consideration of the degree of office automation in the financial aid office. While the Secretary has always considered the extent to which financial aid processing is automated in assessing the adequacy of financial aid offices, the Secretary believes it is helpful to acknowledge specifically in the regulations the bearing the degree of office automation has on the staffing levels of financial aid offices.

During the negotiated rulemaking sessions, discussions were held regarding the possible development of specific staffing levels, such as ratios of financial aid staff to the number of financial aid recipients at an institution, for determining the adequacy of the financial aid office of an institution participating in the Title IV, HEA programs for the first time, an institution that undergoes a change of ownership resulting in a change of control, and an institution that has exhibited administrative difficulty with other standards in this section. The Secretary believes that it is not necessary to prescribe specific staffing levels for participating institutions that have not experienced administrative problems. However, the Secretary agreed to solicit comments on the need for an additional method to assess staffing levels of other institutions.

An institution participating in the Title IV, HEA programs for the first time has neither the experience in dealing with large numbers of financial aid recipients nor a record of administering those programs that can be evaluated. During discussions at the negotiated rulemaking session, it was suggested that it might be necessary to prescribe a specific number of staff for the institution's financial aid office that could serve as a guide for determining whether the institution can handle the volume of financial aid applications and funds it expects to receive. This standard would be required until the Secretary is able to judge the institution's actual administration of the programs. Similarly, there is no assurance that an institution that changes ownership will operate with the same staff and procedures and at the same level of funding as was the case under the previous ownership. Thus, that institution's former track record could not be relied upon to predict its continued administrative capability and there might be a need to be able to evaluate the adequacy of current or anticipated staffing levels using specific numbers or ratios, just as the Department would evaluate those of a new participating institution. Finally, if

an institution has documented problems or indicators of trouble in administering the Title IV, HEA programs, these problems could well be caused by inadequate staffing levels in the institution's financial aid office. Requirements for financial aid staff to be maintained at specific levels might need to be imposed upon the institution. To address the problems and administer the Title IV, HEA programs correctly, it is logical to expect an institution to meet minimum staffing levels that might be adopted.

The Secretary solicits comments on other ways of measuring staff adequacy at newly participating institutions, institutions that change ownership resulting in a change of control and participating institutions with documented administrative problems as well as any other categories of institutions that should be subject to requirements for specific staffing levels. The Secretary further invites comment on how such considerations as the size of the institution, and the volume of Title IV, HEA program funds administered by the institution should determine the number or ratio of financial aid staff that the Secretary should prescribe. For example, the Secretary wishes to know whether a reasonable ratio of staff to applicants or recipients can be established, and, if so, what that ratio might be. The Secretary understands the difficulty inherent in strict application of a quantitative formula; nevertheless, concern was expressed at the negotiated rulemaking sessions about having an adequate basis on which to make fair, worthwhile, and consistent judgments of administrative capability. The Secretary recognizes that appropriate staffing levels must include staff not only in the financial aid office but also in the business office or other offices within an institution, and that the use of third-party servicers and office automation have a bearing on those levels. The Secretary asks commenters to address these factors in their recommendations.

The Secretary proposes to require that to be considered administratively capable, an institution have written procedures, or other written information covering, at a minimum, the nature and frequency of communication of information among all the offices that have an impact on the administration of the Title IV, HEA programs and the responsibilities of various offices with respect to the awarding and delivery of Title IV, HEA program funds and reports to the Secretary. The Secretary encourages institutions to have specific written procedures where possible, preferably in procedural manuals, for this purpose. However, the Secretary recognizes that some of the information might be found in catalogs, student or administrative handbooks, or other sources. The Secretary is proposing to add these provisions because audits and program reviews of Title IV, HEA programs administered by institutions have shown that lack of written procedures in these key areas is frequently a contributing factor to a lack of proper controls, resulting in overawards and inadequate accounting of expenditures. To ensure that only eligible students receive funds and in the correct amount, and that borrowers are tracked accurately and timely, it is essential that each institution be clear about how and when pertinent information is transmitted from one office to another. The proposed addition to the regulations includes examples of the types of information to be transmitted. Similarly, it is critical that each office that is responsible for the approval and disbursement or delivery of Title IV, HEA funds have in writing that office's responsibilities and reporting requirements.

The Secretary proposes to clarify what constitutes division of the authorizing and disbursing or delivering functions by adding an example. In the past, there has been virtually no real separation of these duties in some institutions; this situation has presented an opportunity for significant abuse. It is important that two different individuals authorize and disburse or deliver payment, and that an individual performing one of these functions not have control over the work activities of the person or persons performing the other. To guard against collusion, it is also critical that the individuals not be members of the same family or exercise substantial control over the institution through a combined ownership interest in the institution. The terms *substantial control* and *ownership interest* are currently defined in § 668.13. The Secretary considers two individuals to exercise substantial control through a "combined" ownership interest if the individuals hold *together* at least a 25 percent ownership interest in the institution. Thus, an institution would be precluded from having one individual with a 10 percent ownership interest who awards Title IV, HEA program assistance and another individual with a 15 percent ownership interest who disburses the funds. This concept is designed to allow for those employees who participate to a moderate degree in a profit-sharing plan to be employed in one of the capacities described in this provision without having a detrimental impact on the institution's administrative capability. Finally, the Secretary wishes to clarify that, under both current regulations and the proposed regulations, it is acceptable for a check that is to be disbursed or delivered to a student by another office to pass through the office that authorizes payment, as long as the office that authorizes payment does no more than deliver the check to the office responsible for disbursement or delivery to the student.

The Secretary proposes to make explicit that record-keeping is a basic standard of administrative capability. Those new institutions that do not have adequate record-keeping capability would not be approved to participate in the Title IV, HEA programs. The record-keeping capability of participating institutions would be evaluated when the institutions seek renewal of their program participation.

The Secretary proposes to revise the satisfactory progress standards to require that the maximum time frame for completion of an undergraduate program be no longer than 150 percent of the published length of the educational program and that increments of the maximum time frame not exceed the lesser of one academic year or one-half the published length of the educational program. The establishment of the maximum time frame must, as usual, take into account a student's enrollment status. Thus, an institution that offers a four-year degree program (as listed in the institution's catalog) would have to establish a maximum time frame of no more than six years for completion of the program by a full-time student. The time frame could be proportionally longer for a half-time student. The Secretary emphasizes that this requirement would set an upper limit on the period of time for which a student may receive Title IV, HEA program aid. An institution would not be required to expel or otherwise remove a student from the educational program after the expiration of this maximum time frame (unless, of course, the institution has a similar requirement for students who do not receive Title IV, HEA program assistance). The Secretary has a longstanding policy under which 150 percent of the length of an educational program is considered to be a reasonable period in which a serious student should be able to complete the program. The Secretary notes that this proposed time frame is also consistent with proposals made by the NPRM implementing the Student Right-to-Know provisions in section 485(a) of the HEA (57 FR 30826) The Secretary does

not believe that Title IV, HEA program aid should be provided beyond the point at which a student can reasonably be expected to complete his or her educational objective.

The Secretary proposes to expand and clarify the requirements for reporting information about possible fraud or illegal misconduct related to the Title IV, HEA programs. The proposed regulations would eliminate the current provision for an institution to refer suspected instances of fraud or other criminal misconduct involving Title IV, HEA program assistance to a State or local law enforcement agency rather than the Office of Inspector General (OIG), if more appropriate. Instead, the proposed regulations would require the institution to notify only the OIG. The proposed regulations would also remove a related requirement—that the institution report to the OIG, for each calendar year, all relevant referrals to State or local law enforcement agencies, as this would no longer be necessary if all referrals were made directly to the OIG. Upon receipt of the information, the OIG will notify and work with the appropriate officials to resolve the issue. The Secretary is proposing to amend this section to streamline the referral process and reduce the burden of reporting information.

Currently, under this provision governing the reporting of instances of suspected fraud and criminal misconduct, institutions are required to report only information regarding applicants for Title IV, HEA program assistance. Another proposed change would expand the reporting requirement with respect to both the types of misconduct to be reported and the individuals and entities involved in the misconduct. In addition to the information currently required, an institution would be required to report information regarding illegal conduct involving the eligibility and funding of the institution and its students through Title IV, HEA programs believed by the institution to have been committed by any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs. This provision would specify that illegal conduct would include possible fraud, misrepresentation, conversion or breach of fiduciary responsibility, or any other illegal conduct. The Secretary believes it is important to investigate any possible illegal misconduct (i.e., misconduct where formal criminal charges have not been brought) in addition to possible criminal misconduct. The intent of this expansion is to specify that institutions should report not only acts that constitute fraud or criminal conduct, but any and all other illegal conduct involving Title IV, HEA programs in which an employee or third-party servicer might have engaged.

In addition to modifying and expanding some of the existing administrative capability standards, and making others explicit, the Secretary proposes to expand the administrative capability standards to include the general areas that SPREs will review when they become operational. The Secretary realizes that the SPRE review standards must be developed in consultation with institutions located in the State and will apply only to those institutions that trigger reviews; therefore, those standards may differ greatly from those proposed here for purposes of evaluating an institution's administrative capability. However, the Secretary believes that these areas of review have a significant bearing on an institution's administrative capability and therefore should be incorporated in the Federal administrative capability standards.

The Secretary's overriding concern is that the Secretary have sufficient information on which to make a determination that a new or currently participating institution is administering or is capable of administering the Title IV, HEA programs efficiently, effectively, and correctly. With this in mind, the Secretary solicits comments on specific ways to quantify these provisions (for example, what a "significant number of students with special needs" is) and whether each of these added requirements should be made applicable to all institutions or whether these provisions should be made applicable only to institutions that meet specific criteria or thresholds, e.g., institutions with short-term programs, a history of high withdrawal rates, high default rates, student complaints, etc.

Specifically, the Secretary is proposing to require institutions that enroll significant numbers of students with special needs to have and implement a plan that provides access to adequate support services for those students. The Secretary believes that an institution that cannot provide adequate peripheral support should not enroll those special-needs students in significant numbers. In evaluating administrative capability, the Secretary has looked historically at withdrawal rates. High withdrawal rates often result in refund and default problems in the FFEL programs. Some institutions have high withdrawal rates because they have recruited students who were not able to complete the program. Student withdrawal for academic reasons has been addressed by changes to the ability-to-benefit provisions: students who do not have a high school diploma or the recognized equivalent now need to pass an independently administered, approved examination. However, other students who have been admitted have had the academic capability to succeed, but have been unable to complete the program because of other factors, such as lack of child care, or changes in child care arrangements, or lack of adequate transportation. Some of the negotiators provided the Secretary with examples of students who could not complete a course of study because of a lack of information about how to access adequate support services, who otherwise may not have enrolled in those programs if accurate information about the restricted availability of those services had been disclosed. For example, if a school enrolls a significant number of students who have small children and, therefore, need someone to look after their children while they are in classes and studying, or students who have no transportation of their own, it is incumbent upon the institution to work with these students to ensure they have access to the ancillary services required in order for them to complete their education or training. The institution may, but need not, actually provide the specific services, such as child care, but must, at a minimum, provide adequate guidance and access to enable their students to overcome barriers to attendance.

The Secretary is proposing that affected institutions have a plan, which they may be asked to submit, to demonstrate that they meet this provision. However, the Secretary is interested in receiving suggestions about other ways to address the problem of institutions that recruit and enroll significant numbers of students who need support services without informing those students about access to the support services. The Secretary solicits comments regarding how to determine what constitutes a "significant number" of students with special needs and what special needs should be included. Further, the Secretary would like to receive proposals for alternate means of addressing this issue.

The Secretary proposes to require each institution to have procedures for receiving, investigating, and resolving student complaints.

The Secretary proposes to require that if the stated objectives of an educational program are to prepare students for gainful employment, the institution

must be able to show that there is a reasonable relationship between the length of the program and entry level requirements for employment. In addition to supporting the length of a program, the institution should be able to substantiate the need for the number of hours of training. The Secretary proposes to consider the relationship between the quantity of training provided in the program and entry-level requirements to be reasonable if the number of clock hours in the program does not exceed by more than 50 percent any State requirement for the minimum number of clock hours necessary to train the student in the occupation for which the program prepares the student. For example, the Secretary is aware of an institution that sought approval of a 600-hour program when the state in which the institution is located requires only 40 hours of training for entry level positions for which the program provided training. The Secretary believes that in situations such as this, the onus is on the institution to demonstrate the value of the longer program. The Secretary believes that the excessive length of programs requires a student to incur additional unnecessary debt.

A corollary requirement is that the need for the training provided is established. Over the past several years, the Secretary has been made aware of many schools that have provided three to six months of training for entry-level jobs, some of which required no external training before employment, as the employers have internal training programs or provide on-the-job training. As a basic tenet of student financial assistance is to enable students who would not otherwise be able to afford needed training or education to enroll in an appropriate program, the Secretary believes that if an institution is administering the Title IV, HEA programs adequately, it can demonstrate that the training it provides is needed. The Secretary solicits suggestions on the most appropriate documentation to show the need for the training.

The Secretary proposes to add to the administrative capability standards the requirement that the institution make information on job availability and state licensing requirements available to students in occupational, professional and vocational educational programs. The Secretary believes that, in order for a prospective occupational, professional or vocational education student and financial aid applicant to make an informed decision about enrollment and use of student financial assistance in a particular program, the applicant must have access to accurate, up-to-date information on the job market for that field, and the availability of specific jobs for which he or she would be adequately prepared after completion of the program. Similarly, the applicant should have access to information on the extent to which the educational or training program addresses state licensing standards, so the informed student can determine, with reasonable assurance, that necessary topics are covered in the program and the extent to which additional information, not necessary for state licensure, is covered. The Secretary notes that this information may be obtained by the institution from other Federal and State sources, such as Employment Service or State occupational coordinating committees. An institution would not be required to produce this information on its own.

The Secretary proposes to include within the administrative capability standards a requirement that the institution have advertising, promotion, and student recruitment practices that accurately reflect the content and objectives of the educational programs offered by the institution. The Secretary believes that to administer the Title IV, HEA programs in a responsible manner, the institution must advertise its programs and the financial assistance available in an accurate manner.

The Secretary proposes to specify that an institution provide all required program and fiscal reports and financial statements in a timely manner. The Secretary believes strongly that adequate, timely submission of accurate reports is an essential element in the proper administration of the Title IV, HEA programs. The failure to meet requirements for submission of reports is an indication that an institution's administrative capability is impaired.

The Secretary proposes to include as a specific administrative standard the requirement that an institution have no outstanding liabilities owed to the Secretary unless the institution has made satisfactory arrangements to repay those liabilities and is honoring those arrangements. The Secretary believes that unless a participating institution demonstrates it has met all its programmatic, contractual, and fiscal obligations in the past, and has taken positive steps to rectify problems and liabilities in the past, there is no reason to presume that the institution has the capability and willingness to administer the Title IV, HEA programs responsibly in the future.

The Secretary proposes to take into account whether significant problems have been identified in final reports and determinations issued by the Secretary, the OIG, accrediting agencies, SPREs, guaranty agencies, and State authorizing agencies and findings in criminal, civil, or administrative proceedings, in addition to financial and compliance audit reports and program review reports, in assessing an institution's administrative capability. The Secretary believes that pertinent information from any of the agencies or proceedings identified is relevant to determining whether an institution is administratively capable. An institution should be considered administratively capable only if there is no evidence of significant problems in those reviews or proceedings.

The Secretary proposes to add to the administrative capability standards, the prohibition against debarments, suspensions, and causes of debarment or suspension under E.O. 12549 and the FAR, 48 CFR subpart 9.4. The Secretary proposes to amend this section to provide that an institution would not be considered administratively capable if (1) cause exists for debarring the institution under 34 CFR 85.305, or for suspending the institution under 34 CFR 85.405, (2) any principal (as that term is used in 34 CFR part 85) of the institution is debarred or suspended, or (3) the institution is an affiliate (as that term is used in 34 CFR part 85) of any person so debarred or suspended. Under these changes, the Secretary would not certify the administrative capability of an institution that fits into any of these categories. The Secretary would not permit such an institution to begin participation in a Title IV, HEA program, and the Secretary would require a participating institution to rectify the problem that adversely affects the institution's administrative capability. A participating institution's inability or unwillingness to rectify the problem would warrant initiation of an emergency action, limitation, suspension, or termination proceeding against the institution under subpart G. The Secretary expects that such a proceeding would be combined with a debarment or suspension proceeding under 34 CFR part 85.

These changes are needed to establish appropriate safeguards to protect the Title IV, HEA programs when serious questions are raised about the honesty and lawfulness of the conduct of an institution's owners, officers, directors, management, employees, or affiliates whose duties involve the administration of or influence over those programs.

The Secretary proposes to require that an institution comply with any standards regarding completion and placement rates and pass rates on State licensing examinations established by

the State in which an institution is located as a standard of administrative capability. The Secretary supports the development of appropriate standards by each State, as individual States will be able to address local concerns and conditions in the development of standards. In the absence of such a State standard, the Secretary believes an institution must comply with appropriate standards regarding completion rates, placement rates and pass rates on required State examinations, as established by the Secretary, in consultation with institutions located in the State.

The Secretary proposes to require as a standard for full participation in the Title IV, HEA programs that institutions have default rates that do not exceed 20 percent for the Federal Stafford Loan and Federal SLS programs, and default rates that do not exceed 15 percent for the Federal Perkins Loan program. For the Federal Stafford Loan and Federal SLS programs, a 20 percent trigger is currently used as an indicator of impaired administrative capability. For the Federal Perkins Loan program, the Secretary has used a 20 percent trigger as an indicator of impaired administrative capability. The Secretary is proposing to change this figure to 15 percent for consistency with the statutory requirement of section 461(g) of the HEA that requires an institution with a cohort default rate of 15 percent in the Federal Perkins Loan program to establish a default management plan pursuant to regulations. Under this proposal, institutions applying for participation under a change of ownership or for a renewal of their participation with default rates exceeding these proposed amounts would be provisionally certified for a lack of administrative capability if no other serious administrative capability problems were identified that warranted denying the application. The Secretary notes that, under this proposal, an institution applying for a renewal of participation that has a default rate under the Federal Stafford Loan programs that exceeds 20 percent could submit information demonstrating mitigating circumstances as provided in § 668.15 of current regulations to demonstrate that the institution's default rate is not a basis for denial of full participation. If no other serious administrative capability problems were identified that warrant denying the application for full participation, an institution with default rates over these triggers could receive full participation if it successfully showed that those mitigating circumstances existed.

In addition, the Secretary is proposing that an institution would not be considered administratively capable if it has a withdrawal rate of more than 33 percent. This change from the current regulations, under which the Secretary considers withdrawal rates of more than 33 percent as an indicator of problems in administrative capability, would become, like the other standards in this section, absolute requirements rather than mere indicators. The calculation of this withdrawal rate is currently made using the formula on the application for participation in the Title IV, HEA programs.

The Secretary is proposing these changes to the current default rate and withdrawal rate requirements because the Secretary believes that these rates are appropriate measures of an institution's past administrative performance; an institution that administers the Title IV, HEA programs correctly will, absent mitigating circumstances for its Federal Stafford Loan and Federal SLS programs default rate, have default rates and withdrawal rates below these percentages.

The Secretary understands that some currently participating institutions have rates in excess of these levels. Therefore, the Secretary anticipates that when these institutions next undergo a reevaluation of their institutional eligibility, administrative capability, and financial responsibility, some of them would be determined not to be administratively capable purely for failure to meet these standards, even if they meet all the other financial responsibility and administrative capability standards in these proposed regulations. In those cases, if there are no other significant problems, these institutions could be granted provisional certification so they could continue to participate in the Title IV, HEA programs for a limited time on a limited basis to allow them to bring their default or withdrawal rates or both down to an acceptable level. However, an institution with a high withdrawal rate applying for participation in the Title IV, HEA programs for the first time would not be approved to participate in the Title IV, HEA programs. In addition to these default rates the Secretary plans to establish an appropriate default rate applicable to the FDSL Program and solicits comments on what that should be. For example, comments are requested on whether FDSL Program default rate thresholds should be developed to take into consideration students who are using income contingent repayment.

Section 668.17 Default Reduction Measures

Default Rates

Because of the changes described above in proposed § 668.16 concerning the effect of default and withdrawal rates on an institution's administrative capability, the remaining provisions in current § 668.15 would address default reduction measures for institutions with high Federal Stafford loan and Federal SLS default rates. Therefore, the Secretary proposes to redesignate current § 668.15 as § 668.17 and rename it "Default reduction measures."

The Secretary proposes to clarify that the Secretary notifies an institution of its Federal Stafford loan and Federal SLS cohort default rate if that rate exceeds 20 percent for any fiscal year before the Secretary takes an action against the institution. This change merely reflects the Secretary's current practice.

The Secretary proposes to remove the option to require an institution with a Federal Stafford loan and Federal SLS cohort default rate that exceeds 20 percent for any fiscal year to submit to the Secretary and guaranty agencies the specific information described in current § 668.15(b)(2)(ii) concerning pass rates, job placement rates, and completion rates. These changes are consistent with earlier statutory and regulatory revisions to current § 668.15 and because the Secretary rarely asks institutions to submit this information. The Secretary would reserve the right to request any information the Secretary deems necessary to make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution.

Default Management Plan

The Secretary proposes to clarify requirements for implementation of default management plans for institutions with Federal Stafford loan and Federal SLS cohort default rates greater than 20 percent for any fiscal year. The Secretary has required implementation of a default management plan for institutions with cohort default rates greater than 20 percent since the implementation of the default reduction initiative in final regulations published June 5, 1989 (54 FR 24114). In the preamble to the June 5, 1989, final regulations, the Secretary stated that, in accordance with current § 668.15(e), an institution with a default rate over 20 percent could be required to implement a default management plan. The proposed provision specifies that, for an institution with a Federal Stafford loan and Federal SLS cohort

default rates greater than 20 percent or less than or equal to 40 percent for any fiscal year, the institution would have to submit a default management plan that implements the measures described in appendix D to this part. An institution could only implement a default management plan that deviates from the measures in appendix D if the institution submits a justification for the deviation that is approved by the Secretary. An institution with a Federal Stafford loan and Federal SLS cohort default rate that exceeds 40 percent for any fiscal year, and, therefore, is subject to a limitation, suspension, or termination action under subpart G, would have to implement all of the default reduction measures described in appendix D to this part no later than 60 days after the institution receives the Secretary's notification of the institutions cohort default rate. The institution would not be required to submit any written plans to the Secretary or a guaranty agency unless specifically requested to do so by the Secretary or guaranty agency.

End of Participation

Section 435(a)(2) of the HEA provides that an institution's participation in the FFEL programs ends if the Secretary determines that the institution's cohort default rate for each of the three most recent fiscal years for which the Secretary has determined the institution's rate is equal to or greater than the applicable threshold rates. Section 435(a)(2)(B) of the HEA sets the threshold rate for fiscal year 1994 and all subsequent fiscal years at 25 percent. Consistent with current regulations, institutions may appeal such loss of participation by demonstrating that mitigating circumstances as found in current § 668.15 are present.

Currently, an institution may not participate in the FFEL programs beginning eight calendar days after the date the Secretary notifies the institution that its cohort default rate exceeds the specified thresholds. The Secretary proposes to change this provision to require that an institution may not participate in the FFEL program beginning with the date that the institution receives notification from the Secretary that its cohort default rate exceeds the specified thresholds. The Secretary does not believe it is appropriate to continue to allow an institution that has lost its participation due to a high default rate to have the benefit of further Title IV, HEA program funds unless it successfully appeals. The Secretary proposes to make corresponding changes throughout this section.

Appeal Procedures

The Technical Amendments of 1993 amended section 435(a) and (m) of the HEA as those sections relate to institutional appeals of cohort default rates. These amendments are not reflected in this NPRM but will be addressed separately. However, the Secretary proposes to remove the provision that provides that an institution may appeal its loss of participation in the FFEL programs under the provisions of this section on the grounds that the institution has reduced its cohort default rate for each of the two most recent fiscal years for which the Secretary has calculated a cohort default rate for that institution by 50 percent of the amount by which its cohort default rate for the previous year exceeds the applicable threshold percentage specified in this section. This provision is no longer applicable because it was limited to notices of loss of eligibility that were received by an institution in the fiscal year that ended September 30, 1991.

Current regulations allow an institution to appeal its loss of participation in the FFEL programs under the provisions of this section on the grounds that, for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, two-thirds or more of the institution's students who are enrolled on at least a half-time basis are individuals from disadvantaged economic backgrounds as established by documentary evidence submitted by the institution such as a Pell Grant Index of zero, or an AGI of less than the poverty level, as determined by criteria developed by the Department of Health and Human Services. The Secretary proposes that the term "such as" be eliminated to reflect the current practice; i.e., the institution must establish the grounds for its appeal based only on the information specified in the regulations. The Department would only accept the specific evidence listed in the regulations although the current regulations suggest that other evidence is acceptable. This change reflects the current practice of the Secretary. The Secretary solicits comment on other acceptable forms of acceptable documentation.

Definitions

The Student Loan Reform Act (Pub. L. 103–66) amended the definition of *cohort default rate* to include Federal Consolidation Loans which are used to repay Federal Stafford and Federal SLS loans. The Secretary proposes to amend this section to reflect this change.

Definitions applicable to this section would be revised to reflect changes to the definition of *cohort default rate* in section 435(m) of the HEA. In accordance with the statute, as in the past, for any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford or Federal SLS program loans received for attendance at the institution, the cohort default rate is the percentage of those current and former students who enter repayment in that fiscal year on Federal Stafford or Federal SLS program loans received for attendance at that institution who default before the end of the following fiscal year. Formerly, for any fiscal year in which fewer than 30 of the institution's current and former students entered repayment on a Federal Stafford or Federal SLS loans received for attendance at the institution, the cohort default rate was the average over the three most recent fiscal years of the rates calculated in the manner described for any fiscal year in which 30 or more current and former students enter repayment on a Federal Stafford or Federal SLS program loan. The HEA now requires that, for any fiscal year in which fewer than 30 of the institution's current and former students enter repayment, the cohort default rate is the percentage of those current and former students who entered repayment on Federal Stafford loans or Federal SLS loans in any of the three most recent fiscal years who default before the end of the fiscal year in which they entered repayment.

The Technical Amendments of 1993 changed section 435(m)(1)(B) of the HEA to make clear that the issue of improper loan servicing is only part of the appeal process and does not relate to the Secretary's initial release of cohort default rates. Thus, in issuing the rates initially, the Secretary is not obligated to consider allegations of improper loan servicing. The Secretary proposes to amend the regulations to reflect this change by removing the requirement that the Secretary must exclude any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

Section 435(m) of the HEA requires the addition of the requirement that a Federal SLS loan not be considered to enter repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree or certificate at the eligible institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance based on that enrollment. Section

435(m) further requires that each eligible lender of a Federal SLS loan to provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this definition and requires the guaranty agency to provide that information to the Secretary.

Section 668.22 Institutional Refunds and Repayments

General

The Amendments of 1992 added section 484B to the HEA to require an institution to have in place, as of July 23, 1992, a fair and equitable institutional refund policy as promulgated in that section. The fair and equitable refund requirements prescribed by law are similar to the fair and equitable refund requirements prescribed by § 682.606 of the FFEL program regulations for institutions that participate in the FFEL programs. The HEA extends this requirement to institutions participating in any Title IV, HEA program and makes various modifications.

Under this fair and equitable refund policy, an institution must make a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV, HEA program assistance (including PLUS loans received on behalf of the student) if the student does not register for the period of enrollment for which the student was charged or if the student withdraws, drops out, or is expelled from the institution before completing the period of enrollment for which he or she was charged.

The interpretation of the applicability of a fair and equitable refund policy was the subject of extensive discussions among the negotiators. The HEA specifically mandates a refund to any student who received Title IV HEA program assistance. However, at issue during the negotiations was the fairness and equity in having a refund policy for students who receive Title IV, HEA program assistance that is different from the refund policy for those students enrolled in the same educational program who do not receive Title IV, HEA program assistance. Several negotiators felt that requiring institutions to apply the refund requirements found in this proposed section to all students who attend an institution would be an unauthorized intrusion by the Secretary into the administrative decisions of an institution. Many negotiators felt that compliance with a refund requirement that is applicable to all students would be too costly for an institution.

Therefore, the Secretary proposes to define a fair and equitable refund policy only with respect to students who receive Title IV, HEA program assistance. Although the Secretary proposes to limit the scope of this provision to those recipients, under this proposed provision an institution would not be prohibited from adopting these refund requirements for all students.

The Secretary proposes to require that an institution provide a written statement containing its refund policy to prospective students and make its policy known to currently enrolled students. This proposal is based upon requirements currently prescribed by § 682.606 of the FFEL program regulations. The Secretary proposes to expand this FFEL provision to require that the written statement must be clear and conspicuous and must include information on the allocation of refunds and repayments to sources of aid. In keeping with current FFEL program regulations, the Secretary proposes that the written statement include examples of the application of the refund policy. This requirement would be met if the institution informs students in the written statement that examples are available and the institution makes the examples readily available to the student upon request.

As in the current FFEL program regulations, the Secretary proposes to require an institution to provide the written statement to prospective students. Section 668.41(b) of current regulations defines a "prospective student" as an individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning admission to the institution. The Secretary believes that a student is a "prospective student" if he or she is not enrolled in an institution and has not entered into any contractual agreement or incurred a financial obligation to attend an institution. Therefore, the Secretary proposes to require an institution to provide this written statement to a student prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement. If the institution's refund policy changes, the institution would have to ensure that all students are made aware of the new policy and advise the currently enrolled students of any changes that the institution intended to apply to those students for their current enrollment period.

The Secretary believes that some institutions have assessed excessive equipment charges that have increased the total aid received. For example, some students have been charged as much as ten or fifteen times an institution's documented equipment costs for kits students were required to purchase. If the calculation of a refund includes equipment charges with such an extreme price mark-up, the amount of money an institution would be permitted to keep is greatly inflated. To help curb this abuse, the Secretary is proposing to require an institution to publish in its school catalog or other information provided to its students, the cost to the student of required supplies and equipment. Further, the Secretary proposes to require an institution to substantiate to Department officials, upon the request of the Secretary, that the costs are reasonably related to the costs of providing the supplies and equipment to students. This provision would not require the institution to provide this cost substantiation to students, but would permit the Secretary to obtain information regarding the cost of required supplies and equipment to determine whether an abuse in this area is occurring or has occurred. For example, this information may be routinely reviewed during a program review. If the charges for equipment and supplies appear to be unreasonable, the institution would be required to show that its charges were reasonably related to the cost of providing those items. Under this proposal, an institution would not be expected to provide this information to the Secretary as a regularly scheduled submission, but only upon request from the Department of Education.

Fair and Equitable Refund Policy

Section 484B of the HEA defines a fair and equitable refund policy to be one that provides for at least the largest of the amounts provided under:

(1) The requirements of applicable State law;

(2) The specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary; or

(3) The *pro rata* refund calculation described in the statute for students attending the institution for the first time, except that this *pro rata* refund calculation does not apply for any student whose withdrawal date is after the 60 percent point in time in the period of enrollment for which the student has been charged.

The Secretary intends to clarify that an accrediting agency's refund policy must contain specific standards. Refund "guidelines" developed by an accrediting agency (for example, an accrediting agency refund policy that

only requires an institution to develop its own fair and equitable refund policy) would not be considered to have standards. Obviously, an institution would not be considered to be in compliance with a State's or an approved accrediting agency's refund policy if the institution adopts a refund policy that is merely similar to the State's or accrediting agency's but does not incorporate all the required standards. This policy is consistent with the current provisions of the FFEL program regulations.

The Secretary recognizes that there may be situations where an institution's State and accrediting agency do not have specific refund policies. If a student is not entitled to a *pro rata* refund, no specific standard would then exist under the law to ensure that the student received a fair and equitable refund. Because the Secretary believes that all recipients of Title IV, HEA program assistance should be treated fairly, the Secretary is proposing to require an institution to provide a refund to a student that is the larger of the institution's refund policy or the specific refund standards contained in appendix A to this part if an institution's State and accrediting agency do not have refund standards and the student is not entitled to a *pro rata* refund. The NPRM published on January 24, 1994 to implement the accrediting agency provisions in subpart 2 of part H of the HEA proposes that the Secretary will not recognize an accrediting agency unless the agency has a refund policy that provides for a fair and equitable refund to a student. The Secretary notes that if this provision of the accreditation agency NPRM is adopted in final regulations, there would not be a need for the proposed appendix A requirement once all accrediting agencies have been reviewed and recognized by the Secretary.

The refund policy proposed to be adopted as appendix A is derived from the guidelines developed by the National Association of College and University Business Officers (NACUBO). Currently, under the FFEL program regulations, an institution must follow the guidelines developed by NACUBO and restated in appendix A to the FFEL program regulations (or refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary) if neither an institution's State nor its accrediting agency have refund standards. While the NACUBO standards identify policy standards that institutions should have for the refund of student charges, the Secretary's proposed appendix A establishes policy standards that institutions must have for the refund of student charges. The Secretary has always considered these standards as mandatory for purposes of the FFEL program regulations and is, therefore, making that interpretation clear in these proposed regulations. Further, the Secretary's proposed appendix A to this part would mandate the percentage of tuition charges that must be returned to a student who withdraws from an institution at various intervals during the refund period. In the development of the actual refund calculation for this policy, the Secretary adapted a proportionate calculation that is similar to refund policies used by proprietary institutions. The Secretary believes that this refund schedule provides a fairer allocation of resources between the institution and the Title IV, HEA programs than exists under the shorter refund periods often found at traditional colleges and universities. This proposed refund policy is not normally as generous to the student as the *pro rata* refund policy prescribed by the statute, because the affected students would not be first time students and, therefore, would not be entitled to the full protection of the *pro rata* refund policy. Under the standards in appendix A, a student who submits written notice of withdrawal up to one week before the first day of class would receive a refund of 100 percent of tuition charges. The refund would be reduced to at least 90 percent if the student submits written notice of withdrawal between the end of the 100 percent period and the first 10 percent of the period for which the student was charged. A student would receive at least a 50 percent refund if he or she withdraws between the first 10 percent and the first 25 percent of the period for which the student was charged. Finally, a student would receive at least a 25 percent refund if he or she withdraws between the first 25 percent and the first 50 percent of the period for which the student was charged.

As a part of the refund policy in proposed appendix A, the Secretary would allow an institution to subtract from the refund to a student any charges for equipment (including books and supplies) if there is a separate charge for the equipment and the student actually obtains the equipment but the student fails to return the equipment within 20 days after his or her withdrawal. This provision is discussed further in the explanation on *pro rata* refunds.

An institution must determine whether a student withdrew prior to the 60 percent point in time in the period of enrollment for which the student has been charged when determining whether the *pro rata* refund calculation is applicable to a student. The Secretary proposes to define "the 60 percent point in time in the period of enrollment for which the student has been charged" based upon whether the educational program in which the student is enrolled is measured in credit hours or clock hours. In the case of an educational program that is measured in credit hours, this point would be the point in calendar time when 60 percent of the period of enrollment for which the student has been charged has elapsed. In the case of an educational program that is measured in clock hours, this point would be the point in time when the student completes 60 percent of the clock hours scheduled for the period of enrollment for which the student is charged.

For instance, if the student's period of enrollment in an educational program that is measured in credit hours is scheduled to last 5 months (20 weeks), the 60 percent point of the period is at 12 weeks. However, in the case of a program measured in clock hours, the Secretary believes that it is more accurate to use the number of completed clock hours to determine the percentage of enrollment. For instance, if the student is scheduled to complete 900 clock hours, the 60 percent point of the period of enrollment occurs when the student has completed 540 clock hours. The Secretary wishes to emphasize that the definition of the determination of the 60 percent point in time in the period of enrollment for which the student has been charged is different from the determination of "the portion of the period of period of enrollment for which the student has been charged that remains" that is used to calculate the refund after the institution has determined that the *pro rata* refund calculation is to be used. The proposed definition of the latter term will be discussed later.

In determining the largest refund to a student, the Secretary proposes to require an institution to determine the largest refund for each student. An institution would not be permitted to determine which refund is generally the most generous and use that refund calculation for all students. The Secretary believes that current computer technology enables an institution to automate this determination through the use of computer software.

Pro Rata Refund

The Secretary notes that although the statutory requirements for *pro rata* refunds supersede the *pro rata*

regulations found in the FFEL program regulations, institutions have been advised to follow guidance given for implementation of the FFEL program regulations as "safe-harbor" guidance for implementation of the statutory requirements for *pro rata* refunds. The Secretary intends that final regulations for *pro rata* refunds developed as a result of this NPRM and any guidance given for implementation of these regulations will replace the required *pro rata* refund policy for an institution that is required to use a *pro rata* refund policy because the institution has a cohort default rate that exceeds 30 percent under the FFEL programs.

A "*pro rata* refund," as defined in statute, is required for a student attending an institution for the first time, unless another applicable refund is greater. The *pro rata* refund may not be less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the withdrawal date. The *pro rata* refund is then rounded downward to the nearest 10 percent of that period. The *pro rata* refund is then reduced for any unpaid charges and a reasonable administrative fee. The administrative fee may not exceed the lesser of one hundred dollars or five percent of the tuition, fees, room and board, and other charges assessed the student.

The Secretary proposes to permit institutions to subtract certain amounts of institutional charges from the refund to the student. The Secretary wishes to clarify that these proposed regulations would permit an institution to subtract charges or portion of charges from a *pro rata* refund only if the charges are included in the calculation of the *pro rata* refund.

Under the statute, an institution may subtract any unpaid charges owed to the institution by the student. The Secretary is proposing to define unpaid charges by using the definition for an "unpaid amount of a scheduled cash payment" published in the **Federal Register** on June 8, 1993 (58 FR 32188). Although those final regulations discussed the unpaid amount of a scheduled cash payment as being excluded from the amount the institution may retain for institutional charges, rather than for the purpose of excluding any unpaid balance from the refund to the student, the Secretary believes it is appropriate to adopt the same definition to define these unpaid charges. In accordance with the current regulations, a student's scheduled cash payment would be defined as the amount of institutional charges that is not paid for by financial aid. An institution could count any late disbursements of Title IV aid as financial aid for this purpose (i.e., the amount of the late disbursement would not be included as part of the student's scheduled cash payment.) Any amount of the scheduled cash payment that has not been paid would be the amount of unpaid charges owed by the student. The treatment of unpaid charges for refunds other than *pro rata* refunds is addressed later in this discussion.

The statute also permits an institution to subtract a reasonable administrative fee from the refund owed to a student. This administrative fee must be a real charge and documented as such. An institution may not automatically subtract the lesser of five percent of the tuition, fees, room and board, and other charges assessed the student or one hundred dollars if no such administrative fee actually exists.

The Secretary proposes to add to the list of permitted subtractions from the refund to a student any application fee charged by the institution. The Secretary believes that an application fee is a fee incurred separately from a student's charges for an enrollment period, and therefore, should not be included in the refund to the student.

In addition, for institutions whose students are issued meal credits that can be spent irregularly throughout the enrollment period (e.g., coupons or meal tokens) the Secretary proposes to allow an institution to deduct from the refund owed under this paragraph the portion of "board" charges (i.e., meal tickets) that has been expended by the student that exceeds the portion attributable to the period for which the student attended at the time of withdrawal. For example, if a student withdrew at the 50 percent point in time in the period of enrollment for which the student has been charged but had used 60 percent of the meal tickets, the institution could subtract from the refund to the student the value of the meal tickets attributable to that 10 percent of the period of enrollment that the student did not attend. If a student used less than the attributable value of the meal tickets at the time of his or her withdrawal, an institution would not be permitted to subtract any amount from the refund to the student. An institution would not be permitted to subtract any amount from the refund to the student in cases where students have unlimited use of meal tickets.

The Secretary intends to continue the current policy regarding the inclusion of books, supplies, and other equipment in the *pro rata* refund calculation consistent with guidance given to institutions that were required to use a *pro rata* refund policy because the institution had a default rate that exceeds 30 percent and was required to calculate a *pro rata* refund for a student who received a loan under the FFEL programs. As is currently the case, an institution is required to include the full amount of charges for equipment in the calculation of *pro rata* refund if a separate charge exists for the equipment by the institution or if the institution requires the student to purchase the equipment from a certain vendor. The Secretary believes that by charging students a separate equipment charge or by requiring students to purchase the equipment from a single vendor (for example, a school book store) the equipment charges are being mandated by the institution and should be treated as institutional costs. In effect, the institution is the sole source of the equipment. If an institution does not have a separate charge for equipment and the student has the option of purchasing the equipment from more than one source, the institution would not have to include the equipment charge in the *pro rata* refund calculation. An institution would have to be able to demonstrate that its students have the option of purchasing the equipment from other sources that are easily accessible to the student and that the students are advised that an option is available.

The Secretary proposes to allow an institution to subtract from the refund to a student any charges for equipment (including books and supplies) that a student could have returned for credit but did not do so. Under this provision, there would have to be a separate charge for the equipment, and the student must actually have obtained the equipment but failed to return the equipment within 20 days after his or her withdrawal. This provision was suggested by one of the negotiators and is based upon California law. By consensus of the negotiators, this provision would be extended to situations where the equipment and supplies are sold by an affiliate or related entity of the institution. If the student does not return the equipment, the institution could subtract from the *pro rata* refund owed to the student the documented cost to the institution of equipment issued to the student. The student would be liable for the amount, if any, by which the documented cost for equipment exceeds the amount of the student's *pro rata* refund.

Under this proposal, if some or all of the equipment is not actually received by the student, the institution would have to include in the *pro rata* refund

calculation 100 percent of the amount paid for that portion of the equipment. Further, if an institution gives a student the option to return the equipment, the institution would not be permitted to subtract the cost of the equipment from the refund to the student if the student chooses to return the equipment and does so within 20 days of his or her withdrawal. The Secretary believes that 20 days provides the student with a sufficient period of time to return equipment without delaying the refund to the student.

The Secretary proposes that any equipment returned by a student must be in good condition allowing for reasonable wear and tear. The Secretary notes that there may be restrictions under State laws that prevent an institution from accepting returned equipment due to health and sanitary reasons. Other conditions might also limit the return of equipment. For example, a workbook that has been written in or a damaged text book might not be reusable. The Secretary solicits comments on whether this provision should be expanded to identify other conditions that could affect the institution's ability to reissue equipment.

The Secretary notes that, because an institution must include the charges listed above in the calculation of a *pro rata* refund and is then permitted to subtract the charges or a portion of the charges from this refund, in many cases it appears that an institution could retain more than the actual charge to the student. For example, if an institution that charges a $100 administrative fee calculates a *pro rata* refund to a student, a portion of the $100 charge would be refunded to the student in accordance with the *pro rata* refund formula, and a portion of the charge would be retained by the institution. Yet, in addition, the institution could then be permitted to subtract the full $100 from the refund to the student. The Secretary requests comments on whether it may be more appropriate to require institutions to exclude these charges from the refund calculation entirely rather than subtracting the charge after performing the calculation. The Secretary also requests comment on whether some other means should be adopted to eliminate this potential "double counting" of charges.

For purposes of determining a *pro rata* refund, the Secretary proposes to exclude from the "room charges" that are to be included in the refund calculation, any room charges for off-campus housing that are passed through the institution in their entirety to an entity that is not under the control of, related to, or affiliated with the institution. The Secretary recognizes that an institution may enter into an agreement with an outside agency to provide lodging for students. Under such an arrangement, the institution is merely a conduit that passes the room charges along to the other entity, yet those charges appear as institutional charges on student accounts. In these cases, the independence of the entities and the students' continuing right to occupy the housing after the students withdraw warrant the exclusion of the room charges from the refund calculation.

The Secretary also proposes to exclude from the *pro rata* refund calculation charges for group health insurance that are mandatory for all students in the calculation of a *pro rata* refund so long as the coverage remains in effect for the students throughout the period for which the student was charged. The Secretary notes that the inclusion of these group health insurance charges in the refund calculation could cancel insurance coverage that might otherwise be extended to the student beyond the student's withdrawal date.

The Secretary proposes to define a student attending an institution for the first time as a student who has not previously attended at least one class at the institution. A student who received a refund of 100 percent of his or her tuition and fees (less any permitted administrative fee) under the institution's refund policy for previous attendance at the institution would also be considered a first-time student.

The Secretary believes that a first-time student at an institution is a student who is attending that institution, as opposed to any institution, for the first time. Therefore, if the student has not previously attended at least one class at a specific institution, the Secretary would consider the student to be attending that institution for the first time. If a student transfers to another institution, he or she would count as a first-time student at the new institution, if he or she has not previously attended at least one class at the new institution. If a student attends an institution, withdraws from the institution (and receives less than a 100 percent refund), and then returns to the same institution, the student would not be treated as a first-time student for his or her second period of attendance. The Secretary believes that if a student has previously received a 100 percent refund at an institution, for purposes of this definition, the student should be treated as if he or she had not previously attended the institution.

The Secretary proposes that a student should remain a first-time student until the student withdraws from the institution after attending at least one class, or completes the period of enrollment for which he or she has been charged, whichever occurs first. Therefore, the shortest amount of time a student could remain a first-time student is the period until he or she withdraws after attending one class. The longest amount of time a student could remain a first-time student is the period until his or her completion of the period of enrollment for which he or she has been charged.

The Secretary proposes to adopt for all the Title IV, HEA programs the requirement currently found in the FFEL program regulations that an institution's payment to a lender of the portion of a refund allocable to a Title IV, HEA program cannot be delayed because of a delay in the return of equipment. The provision would apply to the portion of the refund due to any Title IV, HEA program.

In the actual calculation of a refund under the *pro rata* refund provisions of section 484B of the HEA, the amount of the refund is based on "the portion of the period of enrollment for which the student has been charged that remains [after the student stopped attending]." Under the law, "the portion of the period of enrollment for which the student has been charged that remains" in an educational program measured in credit hours is determined by dividing the number of weeks that the student did not complete by the total number of weeks in the program. For a clock-hour program, the determination is made by dividing the number of clock hours not completed by the total number of clock hours. For a correspondence program, the determination is made by dividing the number of lessons not completed by the total number of lessons. The Secretary has merely repeated that language here. The Secretary would like to note that "the portion of the period of enrollment for which the student has been charged that remains" is used to calculate the *pro rata* refund to a student and is distinct from the determination of the 60 percent point in time in the period of enrollment for which the student has been charged that is used to determine whether the *pro rata* refund calculation is applicable. The definition of "the 60 percent point in time in the period of enrollment for which the student has been charged" was discussed earlier in the summary.

Period of Enrollment for Which the Student Has Been Charged

Generally, the Secretary proposes to define "the period of enrollment for which the student has been charged," as the actual period for which an institution charges a student. However, the Secretary proposes to establish a minimum period of enrollment for which the student has been charged to prevent institutions from establishing very short periods to minimize the program charges that would be subject to *pro rata* refunds for first-time students. In the case of an educational program that is measured in credit hours and uses semesters, trimesters, quarters, or other academic terms, the minimum period would be the semester, trimester, quarter, or other academic term. In the case of an educational program that is measured in credit hours and does not use semesters, trimesters, quarters, or other academic terms, or an educational program that is measured in clock hours, the minimum period would be the lesser of the length of the educational program or an academic year. This proposed definition is based on the current policy for the FFEL programs that sets minimum certification periods for loans. This policy was designed partly to prevent institutions from circumventing the refund provisions currently found in § 668.22. The Secretary invites comments on whether other safeguards are needed to prevent institutions from circumventing the *pro rata* refund requirements.

The Secretary notes that there may be institutions that use different periods for categories of charges. For example, an institution may charge by the academic year for tuition, but by the academic term for books and supplies. The Secretary, therefore, proposes that, for purposes of determining refunds under this section, "the period of enrollment for which the student has been charged" is the longest period for which the student is charged. The institution must include any charges assessed the student for that period of enrollment or any portion of that period of enrollment in calculating the refund. In the example above, since the institution charged for the entire academic year for tuition, the institution would have to determine the actual total charge for books and supplies for the academic year in order to determine the refund to the student. If, in the example above, the institution did not charge for books and supplies after the first academic term, the institution would only include the charges for the first academic term when calculating the refund for the academic year.

The Secretary also proposes to use the period of enrollment for which the student has been charged, instead of the payment period concept currently used, to determine the return of refunds and repayments to the Title IV, HEA programs. In doing away with the concept of a payment period for purposes of the calculation of refunds, the Secretary also proposes to do away with the practice of attributing Title IV, HEA program assistance when determining the return of refunds and repayments to the Title IV, HEA programs. The Secretary believes that the premise for the calculation of a *pro rata* refund, (i.e., the refund is to be determined for the percentage of a period of enrollment for which the student has been charged that remains) dictates that the institution should look at the amount of Title IV, HEA program assistance received for that same percentage of the period. The Secretary believes that adopting the use of the period of enrollment for which the student has been charged to determine the return of all refunds and repayments to the Title IV, HEA programs greatly simplifies these determinations.

Overpayments

The Secretary proposes to restructure and revise the current provisions relating to overpayments and the repayments to Title IV, HEA programs of institutional refunds and overpayments. This preamble addresses those areas of these current provisions that have been significantly revised.

No changes are proposed to the procedures by which an institution determines if a student has received an overpayment for noninstitutional costs.

Repayments to Title IV, HEA Programs of Institutional Refunds and Overpayments

The Secretary proposes to remove the fraction that is currently used to determine the portion of the refund that an institution must return to the Title IV, HEA programs. Section 485 of the HEA now specifies the order of return of refunds to the Title IV, HEA programs. Further, the Technical Amendments of 1993 changed section 485 of the HEA to specify that an institution is to return a refund to other sources of student assistance only after the refund has been returned to the Title IV, HEA programs (see the discussion below concerning allocations.) The Secretary proposes to make a conforming change by removing the fraction currently used to determine the portion of an overpayment that an institution must return to the Title IV, HEA programs.

The June 8, 1993, final regulations modified the definition of institutional refund to require an institution to exclude any unpaid charges owed to the institution by a student in determining the amount the institution may retain for institutional charges. These proposed regulations would retain this provision. However, because the HEA now specifies that an institution is permitted to subtract any unpaid charges owed by a student from the calculated refund to the student in calculating a *pro rata* refund, the requirements of the June 8, 1993, final regulations regarding the treatment of unpaid charges have been superseded and are inapplicable only in this case. That is, the institution is not required to exclude any unpaid balance owed to the institution by the student when the institution determines the amount the institution may retain for institutional charges when calculating a *pro rata* refund under section 484B of the HEA. The Secretary notes that the requirements of § 668.22 of the June 8, 1993, final regulations continue to be in effect for all other refunds calculated in accordance with section 484B of the HEA.

The Secretary proposes that if the amount of a refund owed to a student is $25 or less, the institution would not be required to pay the refund. The Secretary believes that the administrative cost to institutions to make refunds of such a small amount may be greater than the refunds themselves. This consideration is of particular concern at institutions that have low tuition charges resulting in small refunds that are administratively burdensome and costly to the institution.

Allocation of Refunds and Overpayments

Section 485 of the HEA specifies the order of return of refunds to the various sources of aid and to the student. A refund owed to a student who received funds under any Title IV, HEA program is to be returned to the Title IV, HEA programs from which the student received aid in the following order until the amounts received by the student from those programs are eliminated. (1) The FFEL programs; (2) The FDSL Program; (3) The Federal Perkins Loan Program; (4) The Federal Pell Grant Program; (5) The FSEOG Program; (6) All other sources of aid; (7) The student. The Secretary proposes to make clear the longstanding policy that, after balances resulting from the FSEOG Program are eliminated, balances on aid

received from all other Title IV, HEA programs must be eliminated before the State and private sources of aid are refunded. For consistency and to reduce administrative burden, the Secretary proposes to apply this order of return to repayment of overpayments also except that, in accordance with current regulations, no amount of a repayment may be allocated to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs.

The Secretary also would make clear that refunds would be returned to eliminate outstanding balances of Title IV, HEA program aid received for the period of enrollment for which the refunds are made. The Secretary does not believe that refunds should be used to eliminate, for example, outstanding balances on loans made for prior years.

Section 485 of the HEA does not specify an order of return for refunds under the FFEL programs. The Secretary proposes a specified order of return for FFEL program funds. Refunds would be returned to eliminate outstanding balances on: (1) Federal SLS loans; (2) unsubsidized Federal Stafford loans; (3) subsidized Federal Stafford loans; and (4) Federal PLUS loans, in that order. The Secretary believes that this order is beneficial to the student and that by mandating the order of return of FFEL program funds, the interest of the student would be protected. The Secretary wishes to clarify that when returning any FFEL program funds, an institution may return the gross amount of a loan (including the guaranty and origination fee) if the institution so chooses, to serve as a deterrent to default on the small remaining amount. This "extra" amount would be used to reduce the next source of aid on the list.

The Secretary wishes to clarify that this order must be used if Title IV, HEA program funds are received, whether they are applied toward institutional charges or disbursed to the student for living expenses. Even if all Title IV, HEA program funds are disbursed to the student for living expenses, if a refund is owed when the student withdraws from the institution, the refund must first be returned to the Title IV, HEA programs from which the student received aid in the order specified.

Financial Aid

No proposed changes are being made to the definition of financial aid.

Refund Dates

The Secretary proposes to apply to all the Title IV, HEA programs the definition (with some revisions) of "withdrawal date" that currently applies to the FFEL programs. Only significant revisions are discussed. The definition of "drop out date" found in the current § 668.22 would be incorporated into this definition. Currently, the FFEL program regulations define the withdrawal date for a student who has not returned to an institution after the expiration of an approved leave of absence as the first day of the leave of absence. The Secretary proposes to use, instead, the last recorded date of class attendance by a student, as documented by the institution. The negotiators reached consensus that it is fair to define the withdrawal date for a student who failed to return from an approved leave of absence in the same way as the withdrawal date is defined for a student who drops out, because the student's period of attendance was only extended on the understanding that he or she would be returning by a specified date. Further, the Secretary proposes to clarify that a student who returns to an institution after the expiration of a leave of absence during an award year or, for the FFEL programs, during a period of enrollment in which the student was granted the leave of absence, the student may not receive additional Title IV, HEA program assistance for coursework that he or she has not completed.

Currently, the FFEL program regulations define the withdrawal date for a student who is enrolled in an educational program that consists predominantly of correspondence courses as 60 days after the due date of a required lesson that the student failed to submit in accordance with the established schedule for lessons. The Secretary believes it is more reasonable to define the withdrawal date in this case as the date of the last submission of a lesson by the student if the student failed to submit the subsequent lesson in accordance with the established schedule for lessons.

The Secretary proposes to add the requirement that a leave of absence may not exceed the length of time between the beginning of the leave of absence and the institution's next period of enrollment, if the institution's next period of enrollment after the start of the leave of absence begins more than thirty days after the beginning of the leave of absence due to a period of nonenrollment (i.e., summer break) that prevents a student from enrolling in any coursework. The Secretary proposes to add this provision to address graduate programs that do not have summer school sessions, thereby preventing students from re-enrolling during this time. As the determination of a student's withdrawal date is necessary to determine when a refund must be paid to a student, the Secretary believes it would be unfair to penalize an institution for failure to pay timely refunds to a student who is deemed to have "withdrawn" only because he or she cannot return to the institution from a leave of absence because classes are not in session. This provision would not additionally limit the length of a student's leave of absence which could be up to sixty days or six months under the specified conditions.

The Secretary notes that this proposed definition of a leave of absence is a departure from current Federal Pell Grant Program policy. Currently, for purposes of the Federal Pell Grant Program, a student who is granted a leave of absence is considered to be no longer enrolled in the institution. The Secretary specifically request comments on the effects of this proposed change on institutional procedures in relation to the Federal Pell Grant Program.

The Secretary proposes to require an institution to pay a refund to a student within a specified period of time. The Secretary believes that 30 days is a sufficient period of time for an institution to complete the administrative procedures necessary for payment of a refund to a student. This requirement would be in addition to other requirements, which would not change, for timely payment of refunds to a lender under the FFEL programs.

Section 668.23 Audits, Records, and Examinations

This section includes provisions dealing with third-party servicers that were proposed in the NPRM published on February 17, 1994 (in part II). The Secretary will not repeat the discussion of those provisions here.

The Secretary proposes to extend the requirements of this section to foreign institutions as that term would be defined in 34 CFR 600.52 of the regulations governing institutional eligibility under the HEA, published in the **Federal Register** on February 10, 1994 (59 FR 6446). Participating institutions, like institutions in the United States, would accordingly be required to have compliance audits performed, be subject to program reviews and other investigations, and maintain records under the provisions of this section. The Secretary believes these steps provide the best means for evaluating a foreign institution's compliance with the requirements for participation in the Title IV, HEA programs.

Section 487(c) of the HEA requires the Secretary to prescribe regulations as may be necessary to provide for a compliance audit of an institution with regard to any funds received under the

Title IV, HEA programs on at least an annual basis.

The Secretary notes that, currently, the Department of Education could not properly and effectively review the volume of audits that the Department would receive if every institution submitted an audit report on at least an annual basis. The Secretary is concerned that an effort that extensive could diminish the resources needed to concentrate on timely review of those institutions that pose the greatest financial risk to the government and the taxpayer. The Secretary proposes to exempt from some or all of the audit requirements of this section certain categories of institutions that pose no serious threat to the integrity of the Title IV, HEA programs. The Secretary proposes that an institution, other than an institution that is participating in the Title IV, HEA programs for the first time, have the audit performed at least once every two years if it meets the following conditions: (1) The institution received less than $100,000 in total annual funding under the Title IV, HEA programs for the period covered by the audit; or (2) the institution had no deficiencies identified in the audit report most recently submitted to the Department if that audit report was submitted in a timely fashion. The Secretary bases this amount on the amount that would exempt entities from the audit requirements of the Single Audit Act. The Secretary also believes that an institution that had no deficiencies identified in its most recently submitted audit report will continue to perform at a level that does not warrant as great a degree of oversight. In addition, an institution would not be required to have a compliance audit for any year in which the institution receives less than $25,000 in total annual funding under the Title IV, HEA programs. This proposal would establish in regulations the Secretary's current practice. Institutions that do not handle large amounts of Title IV, HEA program funds do not put a large amount of Title IV, HEA program funds at risk.

The Secretary notes that in spite of these exemptions the Secretary would reserve the right to require an institution to have a compliance audit performed annually from any institution as the Secretary deems necessary. Further, the Secretary proposes to require an institution participating in the Title IV, HEA programs for the first time to have an audit performed at least once a year for the first five years of its participation. The Secretary believes it is important to monitor an institution more closely if the institution has not previously participated in the programs and has not had an opportunity to establish a record of consistent compliance with Title IV, HEA program requirements.

Section 487(c) of the HEA requires that an audit performed in accordance with this section must cover the period since the most recent audit. The Secretary proposes to specify, for clarification, that an institution's first audit for a Title IV, HEA program must cover the institution's activities from the beginning of the institution's participation in that program.

Rather than continuing to specify deadlines in regulations for the submission of audit reports, the Secretary proposes to require an institution to submit its audit to the Department's Inspector General by the deadlines established in the audit guides developed by the Department's Office of Inspector General. Beyond establishing deadlines for the submission of audit reports, these guides will provide for certain extensions beyond establishing deadlines for valid reasons. These guides are developed in consultation with the academic community.

Section 487(c) of the HEA requires the Secretary to make the results of compliance audits available to cognizant guaranty agencies and eligible lenders under the FFEL programs, State agencies, and designated SPREs. The Secretary proposes to add nationally recognized accrediting agencies to this list, because of the role of accrediting agencies in assisting the Secretary with regard to institutional participation in the Title IV, HEA programs. The Secretary proposes to require institutions to provide copies of their audit reports to these entities upon request.

The Secretary proposes to add a requirement that specifies that an institution must establish and maintain, on a current basis, financial and other institutional records necessary to determine the institutional eligibility, financial responsibility, and administrative capability of the institution. The Secretary believes it is essential for the Department to have access to this information when evaluating an institution's compliance with the requirements of the provisions governing the institutional eligibility, financial responsibility, and administrative capability of the institution. Further, an institution needs to maintain this information because, under its program participation agreement, the institution must agree to make the information available to appropriate authorities specified there (see the discussion on proposed § 668.14).

The Secretary proposes to require that all records required under the applicable Title IV, HEA program regulations be retained by the institution for at least five years from the time the record is established unless specific program regulations require that a record be kept for a period of time longer than five years. Five years is the standard period of time that institutions are required to keep most records under the Title IV, HEA programs. The Secretary believes that this is a reasonable period of time to require institutions to maintain most records so that the Department is able to evaluate the past performance of an institution.

Section 668.26 End of an Institution's Participation in the Title IV, HEA Programs

The Secretary proposes to clarify the purpose of the section currently titled "Loss of institutional eligibility to participate in the Title IV, HEA programs" by changing the title to "End of an institution's participation in the Title IV, HEA programs." The Secretary proposes to specify the date on which an institution's participation ends under a variety of circumstances to reflect statutory changes and to make clear existing practice. The Secretary has clarified in these proposed regulations the end of participation date currently used by the Department to be the date that: The institution closes or stops providing educational programs (the Secretary proposes, consistent with provisions proposed to be included in the regulations governing institutional eligibility under the HEA, to specify that this closure must be for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students); the institution loses its institutional eligibility under 34 CFR part 600; the institution's participation is terminated under the proceedings in subpart G of this part; or the institution's program participation agreement is terminated or expires.

The Secretary proposes to specify that an institution's participation ends on the date that an institution's period of participation, as specified under proposed § 668.13 governing certification procedures, expires, or the institution's provisional certification is revoked in accordance with the procedures outlined in that proposed section. This change would be made pursuant to provisions of section 498(g) and (h) of the HEA.

The Secretary proposes to specify that an institution's participation in the

FFEL programs ends on the date that the Secretary has determined that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the threshold rates listed under proposed § 668.17(c)(2). This change simply makes the provisions of proposed § 668.26 consistent with those of proposed § 668.17.

Finally, the Secretary proposes to specify that an institution's participation ends on the date that the Secretary receives a notice from the appropriate SPRE that the institution's participation should be withdrawn. This change is mandated by section 494C(h) of the HEA.

The Secretary proposes to add to the requirements for an institution when the institution's participation in a Title IV, HEA program ends, that the institution shall, if the institution's participation in the NEISP or SSIG Program ended, inform immediately the State in which the institution is located of that fact. Further, notwithstanding the requirements for the treatment of Title IV, HEA program funds found in this section, the institution must follow the instructions of that State concerning the end of that participation. The Secretary also proposes to add that if the institution's participation in all the Title IV, HEA programs end has ended, the institution must inform the Secretary of how the institution will arrange for the collection of any outstanding loans made under the National Defense/Direct Student Loan and ICL programs. These changes are necessary to make the Student Assistance General Provisions regulations consistent with specific program regulations.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Section 668.81 Scope and Special Definitions

The Secretary proposes to make technical changes to this section consistent with changes proposed throughout these proposed regulations. The Secretary proposes to clarify in this section that the procedures under this section do not apply in the case of an institution that fails to qualify for provisional certification because the institution does not meet the factors of financial responsibility. In addition, the procedures under this section would not apply in the case of an institution where the institution's period of provisional certification has expired, nor would they apply in the case of an institution that has its provisional certification revoked. These changes are necessary to make the scope of Subpart G of these regulations consistent with provisions in section 498(g) and (h) of the HEA.

Section 690.83 Submission of Reports

Section 487(c)(7) of the HEA provides that, if, in the course of any audit conducted after December 31, 1988 pursuant to the audit requirements of section 487(c) of the HEA and Department regulations implementing those requirements, the Department discovers or is informed of any Title IV, HEA program assistance (specifically, Federal Pell Grant Program funds) that an institution has provided to its students in accordance with program requirements, but the institution has not previously received credit or reimbursement for these disbursements, the institution may offset the amount of those disbursements against liabilities owed under the audit, or if no liabilities arise from the audit, may receive reimbursement from the Department for those amounts.

The HEA requires that the development of NPRMs for implementation of changes made by the Amendments to Parts B (Federal Family Education Loan programs), G (general provisions relating to the student assistance programs) or H (Program Integrity Triad) of Title IV of the HEA, is subject to the negotiated rulemaking process. Although this provision relates directly to the Federal Pell Grant Program, it is contained in Part G of the HEA. Therefore, it has been included in this NPRM instead of the Federal Pell Grant Program NPRM, which was not subject to the negotiated rulemaking process.

The Secretary proposes that, notwithstanding the regulatory requirements for submission of reports, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with the Federal Pell Grant Program regulations, but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants. The institution would have to demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988. The audit would have to have been timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit. The Secretary specifies that, in determining whether the institution qualifies for a payment or reduction in accountability, the Secretary would take into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental function.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. These regulations make modifications that reduce potential abuse in the Title IV, HEA programs. These changes will not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.26, 690.83 and Appendix A contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

This NPRM contains provisions that would affect postsecondary institutions who wish to participate in the Title IV student financial assistance programs. Annual public reporting and recordkeeping burden contained in the collection of information proposed in these regulations is estimated to be 10,488 hours, including the time for searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and submitting materials.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington D.C. 20503; Attention Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4318, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.226 Income Contingent Loan Program)

Dated: February 16, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.1 is amended by revising paragraph (b) (2) and (3); removing paragraph (b)(4); and revising paragraph (c) to read as follows:

§ 668.1 Scope.

* * * * *

(b) * * *

(2) A proprietary institution of higher education as defined in 34 CFR 600.5; and

(3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include—

(1) The Federal Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR part 690);

(2) The National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21 *et seq.*; 34 CFR part 693);

(3) The Presidential Access Scholarship (PAS) Program (20 U.S.C. 1070a–31 *et seq.*; 34 CFR part 691);

(4) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR part 676);

(5) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c *et seq.*; 34 CFR part 692);

(6) The Federal Stafford Loan Program (20 U.S.C. 1071 *et seq.*; 34 CFR part 682);

(7) The Federal Supplemental Loans for Students (Federal SLS) Program (20 U.S.C. 1078–1; 34 CFR part 682);

(8) The Federal PLUS Program (20 U.S.C. 1078–2; 34 CFR part 682);

(9) The Federal Consolidation Loan Program (20 U.S.C. 1078–3; 34 CFR part 682);

(10) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR part 675);

(11) The Federal Direct Student Loan (FDSL) Program (20 U.S.C. 1087a *et seq.*; 34 CFR part 685); and

(12) The Federal Perkins Loan Program (20 U.S.C. 1087aa *et seq.*; 34 CFR part 674).

(Authority: 20 U.S.C. 1070 *et seq.*)

3. Section 668.2 is revised to read as follows:

§ 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, 34 CFR part 600:

Accredited
Award year
Branch campus
Clock hour
Correspondence course
Educational program
Eligible institution
Federal Family Education Loan (FFEL) programs
Incarcerated student
Institution of higher education
Legally authorized
Nationally recognized accrediting agency
Nonprofit institution
One-year training program
Postsecondary vocational institution
Preaccredited
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Recognized occupation
Regular student
Secretary
State
Telecommunications Course

(b) The following definitions apply to all Title IV, HEA programs:

Academic year: (1) A period that begins on the first day of classes and ends on the last day of classes or examinations and that is a minimum of 30 weeks of instructional time during which a full-time student is expected to complete at least—

(i) Twenty-four semester or trimester hours or 36 quarter hours in an educational program whose length is measured in credit hours; or

(ii) Nine hundred clock hours in an educational program whose length is measured in clock hours.

(2) For purposes of this definition—

(i) A week is a consecutive seven-day period; and

(ii) The Secretary considers a week of instructional time to be any week in which at least one day of regularly

scheduled instruction, examinations, or preparation for examinations occurs. Instructional time does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(Authority: 20 U.S.C. 1088)

Campus-based programs: (1) The Federal Perkins Loan Program (34 CFR part 674);

(2) The Federal Work-Study (FWS) Program (34 CFR part 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR part 676).

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student (see *Independent student*).

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

Direct loan: A loan made under Title IV–E of the HEA after June 30, 1972, that does not satisfy the definition of "Federal Perkins loan."

(Authority: 20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution he or she is attending; or

(2) Has been admitted into an educational program offered predominantly by correspondence has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

Federal Consolidation Loan Program: The loan program authorized by Title IV–B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect before October 17, 1986), Federal SLS, ALAS (as in effect before October 17, 1986), Federal Direct Student Loan, and Federal Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act, for parent Federal PLUS borrowers whose loans were made after October 17, 1986, and for Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Public Health Services Act.

(Authority: 20 U.S.C. 1078–3)

Federal Direct PLUS loan: A Federal PLUS loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1078–2 and 1087a *et seq.*)

Federal Direct Stafford loan: A Federal Stafford loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.* and 1087a *et seq.*)

Federal Direct Student loan: A loan made under Title IV–D of the HEA after July 23, 1992.

(Authority: 20 U.S.C. 1087a *et seq.*)

Federal Direct Student Loan (FDSL) Program: The student loan program authorized on July 23, 1992, by Title IV–D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

Federal Pell Grant Program: The grant program authorized by Title IV–A–1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Federal Perkins loan: A loan made under Title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV–E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Federal Perkins Loan Program: The student loan program authorized by Title IV–E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

Federal PLUS loan: A loan made under the Federal PLUS Program.

(Authority: 20 U.S.C. 1078–2)

Federal PLUS Program: The loan program authorized by Title IV–B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(Authority: 20 U.S.C. 1078–2)

Federal SLS loan: A loan made under the Federal SLS Program.

(Authority: 20 U.S.C. 1078–1)

Federal Stafford loan: A loan made under the Federal Stafford Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Stafford Loan Program: The loan program authorized by Title IV–B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Supplemental Educational Opportunity Grant (FSEOG) Program: The grant program authorized by Title IV–A–2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

Federal Supplemental Loans for Students (Federal SLS) Program: The loan program (formerly called the ALAS Program) authorized by Title IV–B, section 428A, of the HEA that encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078–1)

Federal Work Study (FWS) Program: The part-time employment program for students authorized by Title IV–C of the HEA.

(Authority: 42 U.S.C. 2751–2756b)

FFELP loan: A loan made under the FFEL Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

Full-time student: An enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research or special studies that the institution considers sufficient to classify the student as a full-time student. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system.

(2) 24 semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an educational program using clock hours.

(4) In an educational program using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

(i) For a program using a semester, trimester, or quarter system—

Number of credit hours per term (12) + *Number of clock hours per week* (24).

(ii) For a program not using a semester, trimester, or quarter system—

Number of semester or trimester hours per academic year (24) + *Number of quarter hours per academic year* (36) + *Number of clock hours per week* (24).

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 *et seq.*)

Income Contingent Loan (ICL) Program: The student loan program authorized by Title IV–D of the HEA prior to July 23, 1992.

(Authority: 20 U.S.C. 1087a *et seq.*)

Independent student: A student who qualifies as an independent student under section 480(d) of the HEA.

(Authority: 20 U.S.C. 1087vv)

Initiating official: The designated department official authorized to begin an emergency action under § 668.83.

National Defense Student Loan Program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title IV–E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

National Early Intervention Scholarship and Partnership (NEISP) Program: The scholarship program authorized by chapter 2 of subpart 1 of Title IV–A of the HEA.

(Authority: 20 U.S.C. 1070a–21 *et seq.*)

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education's central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Participating institution: An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary.

Payment period: (1) With respect to the Federal Pell Grant and PAS programs, a payment period as defined in 34 CFR 690.2 and 691.2;

(2) With respect to the campus-based programs, a payment period as defined in 34 CFR 674.2, 675.2, and 676.2.

Presidential Access Scholarship (PAS) Program: The scholarship program authorized by chapter 3 of subpart 1 of Title IV–A of the HEA.

(Authority: 20 U.S.C. 1070a–31 *et seq.*)

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under § 668.83.

State Student Incentive Grant (SSIG) Program: The grant program authorized by Title IV–A–3 of the HEA.

(Authority: 20 U.S.C. 1070c *et seq.*)

Third-party servicer: An individual or a State or private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(1) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation, such as, but not restricted to—

(i) Processing student financial aid applications;

(ii) Performing need analysis;

(iii) Determining student eligibility and related activities;

(iv) Certifying loan applications;

(v) Processing output documents for payment to students;

(vi) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(vii) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;

(viii) Preparing and certifying requests for advance or reimbursement funding;

(ix) Loan servicing and collection;

(x) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(xi) Preparing a Fiscal Operations Report and Application to Participate—FISAP;

(2) Exclude the following functions—

(i) Publishing ability-to-benefit tests;

(ii) Performing functions as a Multiple Data Entry Processor (MDE);

(iii) Financial and compliance auditing;

(iv) Mailing of documents prepared by the institution; and

(v) Warehousing of records; and

(3) Notwithstanding the exclusions referred to in paragraph (2) of this definition, include any activity comprised of any function described in paragraph (1) of this definition.

(Authority: 20 U.S.C. 1088)

Undergraduate student: A student enrolled in an undergraduate educational program at an institution who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate educational program that usually does not exceed 4 academic years, or is enrolled in a 4- to 5-academic-year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

Valid institutional student information report (valid ISIR): A valid institutional student information report as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS Program.

Valid student aid report (valid SAR): A valid student aid report (valid SAR) as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS program.

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

4. Section 668.8 is revised to read as follows:

§ 668.8 Eligible program.

(a) *General.* An eligible program is an educational program that—

(1) Is provided by a participating institution; and

(2) Satisfies the other relevant requirements contained in this section.

(b) *Definitions.* For purposes of this section—

(1) The Secretary considers the "equivalent of an associate degree" to be—

(i) An associate degree; or

(ii) The successful completion of at least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program;

(2) A "week" is a consecutive seven-day period; and

(3) The Secretary considers a "week of instruction" to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs. Instruction does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(c) *Institution of higher education.* An eligible program provided by an institution of higher education must—

(1) Lead to an associate, bachelor's, professional, or graduate degree;

(2) Be at least a two-academic-year program that is acceptable for full credit toward a bachelor's degree; or

(3) Be at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and that prepares a student for gainful employment in a recognized occupation.

(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation; and

(iv) (A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree; or

(3) For purposes of the Federal Stafford Loan, Federal PLUS, and Federal SLS programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section.

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraph (d)(3) (i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under § 668.23 certify the accuracy of the institution's calculations. That certification must be included with the institution's audit report and in the documentation submitted to the Secretary in support of the institution's application for eligibility of the program.

(f) *Calculation of completion rate.* An institution shall calculate its completion rate for an educational program for any award year as follows:

(1) Determine the number of regular students who were enrolled in the program during the award year.

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner in accordance with § 668.22(i)(3), a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy.

(3) Subtract from the total obtained under paragraph (f)(2) of this section the number of students who were enrolled in the program at the end of that award year.

(4) Determine the number of regular students who, during that award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(5) Divide the number determined under paragraph (f)(4) of this section by the total obtained under paragraph (f)(3) of this section.

(g) *Calculation of placement rate.* (1) An institution shall calculate its placement rate for an educational program for any award year as follows:

(i) Determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(ii) Subtract from the number determined under paragraph (g)(1)(i) of this section the number of students described in paragraph (g)(1)(i) of this section who were employed by the institution either before or after their receipt of the degree, certificate, or other recognized educational credential.

(iii) Of the total obtained under paragraph (g)(1)(ii) of this section, determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized educational credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed or have been employed for at least 13 weeks following receipt of the credential from the institution.

(iv) Divide the number of students determined under paragraph (g)(1)(iii) of this section by the total obtained under paragraph (g)(1)(ii) of this section.

(2) An institution shall document that each student described in paragraph (g)(1)(iii) of this section obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to—

(i) A written statement from the student's employer;

(ii) Signed copies of State or Federal income tax forms; and

(iii) Written evidence of payments of Social Security taxes.

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section, an educational program qualifies as an eligible program for purposes of the Federal Pell Grant or FSEOG Program only if the educational program is an undergraduate program.

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

(j) *English as a second language (ESL).* (1) In addition to satisfying the relevant provisions of this section, an educational program that consists solely of instruction in ESL qualifies as an eligible program if—

(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and

(ii) The program leads to a degree, certificate, or other recognized educational credential.

(2) An institution shall test each student at the end of the educational program to substantiate that the student has attained adequate proficiency in written and spoken English to use already existing knowledge, training, or skills. The institution shall identify the test or tests given to the students and the basis for the judgment that the student has attained the adequate proficiency.

(3) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

(4) An ESL program that qualifies as an eligible program under this paragraph is eligible for purposes of the Federal Pell Grant Program only.

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the Title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

(l) *Formula.* For purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program with regard to the Title IV, HEA programs—

(1) A semester hour must include at least 30 clock hours of instruction;

(2) A trimester hour must include at least 30 clock hours of instruction; and

(3) A quarter hour must include at least 20 hours of instruction.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c–1070c–2, 1085, 1087aa–1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

§§ 668.12–668.16 [Redesignated as §§ 668.14–668.18]

5. Sections 668.12 through 668.16 are redesignated as §§ 668.14 through 668.18, respectively.

6. A new § 668.12 is added to read as follows:

§ 668.12 Application procedures.

(a) *Applications for initial participation.* An institution that wishes to participate in a Title IV, HEA program must first apply to the Secretary for a certification that the institution meets the standards in this subpart.

(b) *Applications for continued participation.* A participating institution must apply to the Secretary for a certification that the institution continues to meet the standards in this subpart upon the request of the Secretary or if the institution wishes to—

(1) Continue to participate in a Title IV, HEA program beyond the scheduled expiration of the institution's current period of participation in the program;

(2) Include in the institution's participation in a Title IV, HEA program—

(i) A branch campus that is not currently included in the institution's participation in the program; or

(ii) Another location that is not currently included in the institution's participation in the program, if—

(A) That location offers 100 percent of an educational program; or

(B) The Secretary requires the institution to apply for certification under paragraph (c) of this section;

(3) Reestablish participation in a Title IV, HEA program following a change in ownership that results in a change in control according to the provisions of 34 CFR part 600.

(c) *Notification and application requirements for additional locations.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to—

(i) Include in its participation in a Title IV, HEA program a location that is not currently included in the institution's participation in the program and that offers at least 50 percent, but less than 100 percent, of an educational program; or

(ii) Continue to include in its participation in a Title IV, HEA program a location that—

(A) Offers at least 50 percent, but less than 100 percent, of an educational program; and

(B) Has changed its name, location, or address.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(3) The Secretary may require the institution to apply for a certification that the institution continues to meet the requirements of this subpart.

(d) *Notification and application requirements for changes in name, location, or address.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to continue to participate in a Title IV, HEA program following a change in name, location or address of the institution or continue to include in the institution's participation—

(i) A branch campus that has changed its name, location, or address; or

(ii) Another location that has changed its name, location, or address if that location offers 100 percent of an educational program.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(e) *Required forms and information.* An institution that applies for participation under paragraph (a) or (b) of this section must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to certify that the institution meets the standards of this subpart.

(Authority: 20 U.S.C. 1099c)

7. A new § 668.13 is added to read as follows:

§ 668.13 Certification procedures.

(a) *Requirements for certification.* The Secretary certifies that an institution meets the standards of this subpart only if—

(1) The institution is an eligible institution;

(2) The institution meets the standards of this subpart;

(3) Each branch campus to be included in the institution's participation meets the applicable standards of this subpart; and

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, in the case of an institution seeking to participate for the first time in the Federal Pell Grant Program, the campus-based programs, the FDSL Program, or the Federal Stafford Loan, Federal SLS, or Federal PLUS Program, the institution requires the following individuals to complete Title IV, HEA program training provided or approved by the Secretary:

(A) The individual designated by the institution under § 668.16(b)(1).

(B)(*1*) In the case of a for-profit institution, the chief administrator of the institution; or

(*2*) In the case of an institution other than a for-profit institution, the chief administrator of the institution, or another administrative official of the institution designated by the chief administrator.

(ii) If either one of the two individuals who is otherwise required to complete training under paragraph (a)(4)(i) of this section has previously completed Title IV, HEA program training provided or approved by the Secretary, the institution may elect to request an on-site Title IV, HEA program certification review by the Secretary instead of requiring that individual to complete again the Title IV, HEA program training provided or approved by the Secretary.

(iii) An institution may not begin participation in the applicable Title IV, HEA program or programs—

(A) In the case of an institution that requires individuals to complete training in accordance with paragraph (a)(4)(i) of this section, until the individuals complete the required training; or

(B) In the case of an institution that requests an on-site review in accordance with paragraph (a)(4)(ii) of this section, until the Secretary conducts the review and notifies the institution that it is in compliance with Title IV, HEA program requirements.

(b) *Period of participation.* If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. An institution's period of participation expires four years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that the Secretary may specify a shorter period.

(c) *Provisional certification.* (1) The Secretary may provisionally certify an institution if—

(i) The institution seeks initial participation in a Title IV, HEA program;

(ii) The Secretary is determining for the first time whether the institution meets the factors of financial responsibility under § 668.15 and the standards of administrative capability under § 668.16;

(iii) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(iv) The institution is a participating institution—

(A) That is applying for a certification that the institution meets the standards of this subpart;

(B) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 or the standards of administrative capability under § 668.16; and

(C) Whose participation has been limited or suspended under Subpart G of this part, or voluntarily enters into provisional certification;

(v) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; or

(vi) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraphs (c)(3) and (4) of this section, a provisionally certified institution's period of participation expires—

(i) Not later than 12 months from the date on which the Secretary provisionally certified an institution under paragraph (c)(1)(i) of this section;

(ii) Not later than 36 months from the date on which the Secretary provisionally certified an institution under paragraphs (c)(1) (ii), (iii), (iv), or (v) of this section; and

(iii) If the Secretary provisionally certified an institution under paragraph (c)(1)(vi) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

(3) Notwithstanding the maximum periods of participation provided for in paragraph (c)(2) of this section, if the Secretary provisionally certifies an institution, the Secretary may specify a shorter period of participation for that institution.

(4) For the purposes of this section, "provisional certification" means that the Secretary certifies that an institution has demonstrated to the Secretary's satisfaction that the institution—

(i) Is capable of meeting the standards of this subpart within a specified period; and

(ii) Is able to meet the institution's responsibilities under its program participation agreement, including compliance with any additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification.

(d) *Requirements for provisional certification to participate on a limited*

basis for institutions that are not financially responsible.

Notwithstanding paragraph (c)(1) of this section, the Secretary does not provisionally certify an institution that—

(1) Fails to meet the general standards of financial responsibility in § 668.15(b), unless the institution—

(i) Demonstrates to the satisfaction of the Secretary that it has sufficient financial and administrative resources to participate in the Title IV, HEA programs under a funding arrangement other than the Department of Education's standard advance funding arrangement;

(ii) Submits to the Secretary a letter of credit payable to the Secretary equal to not less than 10 percent of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; and

(iii) Demonstrates that it has met all of its financial obligations during the preceding two award years, including (but not limited to) the payment of required refunds and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary; or

(2) Is not financially responsible under § 668.15(c)(2), or has been determined not to be financially responsible under § 668.15 at any time during the five-year period preceding the Secretary's decision to certify the institution provisionally unless—

(i) The institution, or one or more persons or entities that the Secretary determines under the provisions of § 668.15 exercise substantial control over the institution, or both, submit to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the institution's potential liabilities arising from the institution's participation in the Title IV, HEA programs; or

(ii) One or more persons or entities that the Secretary determines under the provisions of § 668.15 exercise substantial control over the institution agree to be jointly or severally liable for any liabilities arising from the institution's participation in the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (e)(1) of this section, the Secretary sends the institution a notice by registered mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in § 668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or facsimile transmission.

(ii) The filing date of the request is the date on which the request is—

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by facsimile transmission.

(iii) Documents filed by facsimile transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.

(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) The Secretary promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by registered mail, return receipt requested, of the Secretary's final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order 12549 or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5)(i) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(ii) The date on which a request for reconsideration of a revocation is submitted is—

(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and

(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.

(Authority: 20 U.S.C. 1099c and E.O. 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 comp., p.235)

8. Newly designated § 668.14 is revised to read as follows:

§ 668.14 Program participation agreement.

(a)(1) An institution may participate in any Title IV, HEA program, other than the SSIG and NEISP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that—

(1) It will comply with any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation, including the requirement that the institution will use funds it receives under any Title IV, HEA program and

any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to—

(i) The Secretary;

(ii) The State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA for the State or States in which the institution or any of the institution's branch campuses or other locations are located;

(iii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs for attendance at the institution or any of the institution's branch campuses or other locations;

(iv) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution's branch campuses, other locations, or educational programs;

(v) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(vi) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of § 668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of § 668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, Federal SLS, or the Federal Perkins Loan Program, to holders of loans made to the institution's students under that program at such times and containing such information as the Secretary may reasonably require to carry out the purpose of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender under the Federal Stafford Loan, Federal PLUS, or Federal SLS Program that qualifies the student for a loan or loans in excess of the amount that the student is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1) (A) and (B), and 428H of the HEA;

(9) It will comply with the requirements of subpart D of this part concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment—

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program, the institution will inform all eligible borrowers, as defined in 34 CFR Part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source for further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;

(15) In the case of an institution seeking to participate for the first time in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, the institution has included a default management plan as part of its application under § 668.12 for participation in those programs and will use the plan for at least two years from the date of that application. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D of this part;

(16) In the case of an institution that changes ownership that results in a change of control, or that changes its status as a main campus, branch campus, or an additional location, the institution will, to participate in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, develop a default management plan for approval by the Secretary and implement the plan for at least two years after the change in control or status. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D of this part;

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any information on fraud and abuse;

(18) It will not knowingly—(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially

determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that offers athletically related student aid, it will comply with the provisions of paragraph (d) of this section;

(21) It will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution;

(22) It will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance, except that this requirement shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance;

(23) It will meet the requirements established pursuant to Part H of Title IV of the HEA by the Secretary, State postsecondary review entities designated under subpart 1 of Part H of Title IV of the HEA, and nationally recognized accrediting agencies;

(24) It will comply with the institutional refund policy established in § 668.22; and

(25) It is liable for all—(i) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

(ii) Refunds that the institution or its servicer may be required to make.

(c) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), the institution must certify that it—

(1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and

(2)(i) Has established a campus security policy in accordance with section 485(f) of the HEA; and

(ii) Has complied with the disclosure requirements of § 668.48 as required by section 485(f) of the HEA.

(d) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), an institution that offers athletically related student aid must—

(1) Cause an annual compilation, independently audited not less often than every 3 years, to be prepared within 6 months after the end of the institution's fiscal year, of—

(i) The revenues derived by the institution from the institution's intercollegiate athletics activities, according to the following categories:

(A) Total revenues.

(B) Revenues from football.

(C) Revenues from men's basketball.

(D) Revenues from women's basketball.

(E) Revenues from all other men's sports combined.

(F) Revenues from all other women's sports combined;

(ii) Expenses made by the institution for the institution's intercollegiate athletics activities, according to the following categories:

(A) Total expenses.

(B) Expenses attributable to football.

(C) Expenses attributable to men's basketball.

(D) Expenses attributable to women's basketball.

(E) Expenses attributable to all other men's sports combined.

(F) Expenses attributable to all other women's sports combined; and

(iii) The total revenues and operating expenses of the institution; and

(2) Make the compilation and, where allowable by State law, the audits, required by paragraph (d)(1) of this section available for inspection by the Secretary and the public.

(e) For the purposes of paragraph (d) of this section—

(1) Revenues from intercollegiate athletics activities allocable to a sport shall include without limitation gate receipts, broadcast revenues and other conference distributions, appearance guarantees and options, concessions, and advertising;

(2) Revenues such as student activities fees, alumni contributions, and investment interest income that are not allocable to a sport shall be included in the calculation of total revenues only

(3) Expenses for intercollegiate athletics activities allocable to a sport shall include without limitation grants-in-aid, salaries, travel, equipment, and supplies; and

(4) Expenses such as general and administrative overhead that are not allocable to a sport shall be included in the calculation of total expenses only

(f)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(g)(1) Except as provided in paragraphs (h) and (i) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (g) of this section, the Secretary establishes the termination date.

(h) An institution's program participation agreement automatically expires on the date that—

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of § 668.26(a)(1), (2), (4), or (7).

(i) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141)

9. Newly redesignated § 668.15, is revised to read as follows:

§ 668.15 Factors of financial responsibility.

(a) *General.* To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section.

(b) *General standards of financial responsibility.* In general, the Secretary considers an institution to be financially responsible only if it—

(1) Is able to provide the services described in its official publications and statements;

(2) Is able to provide the administrative resources necessary to comply with the requirements of this subpart;

(3) Is able to meet all of its financial obligations, including but not limited to—

(i) Refunds that it is required to make; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary;

(4) Is current on any debt service payments;

(5) Maintains, at all times, a minimum cash reserve equal to at least 10 percent of the institution's total deferred tuition income at the end of the institution's most recent fiscal year for repayment of refunds. The cash reserve must be maintained in a cash reserve account, consisting of cash or cash equivalents as defined in accordance with generally accepted accounting principles;

(6) Has not had, as part of the audit report for the institution's most recently completed fiscal year—

(i) A statement by the accountant acknowledging substantial doubt about the institution's ability to continue operation as a going concern;

(ii) A finding of unauthorized use of donor restricted net assets to meet current operating expenses; and

(iii) A disclaimed or adverse opinion by the accountant;

(7) For a for-profit institution—(i) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1.25:1. For purposes of this section, the calculation of this ratio must exclude uncollateralized loans receivable from owners and related parties. Should application of paragraph (b)(5) of this section cause a portion of the institution's cash reserves to be classified as a restricted asset, those cash reserves may be included in current assets in calculating the institution's current ratio;

(ii) Has not had operating losses over both of its two latest fiscal years that causes an operating loss exceeding 10 percent of the institution's previous year's tangible net worth for its latest fiscal year. For purposes of this subsection, an operating loss will be calculated by subtracting from total net income: extraordinary gains or losses; income or losses from discontinued operations; prior period adjustments; and, the cumulative effect of changes in accounting principle, estimate or reporting entity. The calculation of tangible net worth must exclude all assets defined as intangible in accordance with generally accepted accounting principles; and

(iii) Had, for its latest fiscal year, a positive tangible net worth. For purposes of this section, a positive tangible net worth occurs if the institution's tangible assets exceed its liabilities. The calculation of tangible net worth must exclude all assets defined as intangible in accordance with generally accepted accounting principles. In applying this standard, the Secretary may consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and may take into consideration the cumulative effect of changes in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles;

(8) For a nonprofit institution—(i) Prepares a classified statement of financial position in accordance with generally accepted accounting principles or provides the required information as footnotes to the audit;

(ii) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1;

(iii) Has not had, at the end of its latest fiscal year, a decrease in total net assets of such significance that, if continued, would result in a ratio of current assets to current liabilities of less than 1:1. The Secretary may consider the effect of extraordinary gains or losses resulting from unusual and infrequent events, and may take into consideration the cumulative effect of a change in accounting principle, estimate or reporting entity to the extent that such a change results in a more accurate representation of the institution's financial position in accordance with generally accepted accounting principles. For purposes of this analysis, the Secretary may exclude unrealized gains and losses on investments that have been reported as changes in unrestricted net assets; and

(9) For a public institution, has its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity.

(c) *Past performance of an institution or persons affiliated with an institution.* An institution is not financially responsible if—

(1) A person who exercises substantial control over the institution or any member or members of the person's family alone or together—

(i)(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or

(B) Owes a liability for a violation of a Title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer is not making payments in accordance with an agreement to repay that liability; or

(2) The institution has—

(i) Been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency (as defined in 34 CFR part 682) within the preceding five years;

(ii) Had—

(A) An audit finding, during its two most recent audits of its conduct of the Title IV, HEA programs, that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the audit; or

(B) A program review finding, during its two most recent program reviews, of its conduct of the Title IV, HEA programs that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the program review;

(iii) Been cited during the preceding five years for failure to submit acceptable audit reports required under this part or individual Title IV, HEA program regulations in a timely fashion; or

(iv) Failed to address satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary issued pursuant to subpart G or subpart H of this part.

(d) *Exceptions to the general standards of financial responsibility.* (1) An institution is not required to meet

the standard in paragraph (b)(5) of this section if the Secretary determines that the institution—

(i) Is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that is acceptable to the Secretary and ensures that the institution is able to pay all required refunds; and

(ii) Contributes to that tuition recovery fund.

(2) The Secretary considers an institution to be financially responsible, even if the institution is not otherwise financially responsible under paragraphs (b) (1) through (4) and (b) (6) through (9) of this section, if the institution—

(i) Submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; or

(ii) Establishes to the satisfaction of the Secretary, with the support of a financial statement submitted in accordance with paragraph (e) of this section, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations, including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(3) An institution is not required to meet the standard in paragraphs (b)(7)(i) and (b)(8)(ii) of this section if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that—

(i) There is not reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(ii) It is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(iii) It has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the current operating ratio requirement.

(4) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(1) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(1) of this section exercises substantial control over the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(*1*) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(*2*) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(*3*) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability;

(B) The applicable liability described in paragraph (c)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(*1*) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(*2*) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(e) *Documentation of financial responsibility.* (1) The Secretary determines whether an institution is financially responsible under this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, the institution shall submit to the Secretary for its two latest complete fiscal years, a set of financial statements of the institution, prepared in accordance with generally accepted accounting principles appropriate to that institution as established by the American Institute of Certified Public Accountants, audited by an independent certified public accountant in accordance with generally accepted auditing standards, and accordingly including such tests of the institution's accounting records and such other auditing procedures that the independent auditor considered necessary in the circumstances. The Secretary may also require the institution to submit or otherwise make available the accountant's work papers. If an institution submits audited consolidated financial statements of its parent corporation for the Secretary to use in determining the institution's level of financial responsibility, the consolidated financial statements must be supplemented with consolidating schedules showing the consolidation of each of the parent corporation's subsidiaries (each separate institution participating in the Title IV, HEA programs must be shown separately), intercompany eliminating entries, and derived consolidated totals. The Secretary may also require the institution to submit additional substantive information.

(2) An institution shall submit the documents required in paragraph (e)(1) of this section annually within four months after the end of the institution's fiscal year, unless the Secretary requests a more frequent submission. Upon a showing of good cause, the Secretary may grant a filing extension to an institution.

(f) *Definitions and terms.* For the purposes of this section—

(1)(i) An *ownership interest* is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation;

(ii) The term *ownership interest* includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust;

(iii) The term *ownership interest* does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan;

(2) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer, if the person—

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer; and

(3) The Secretary considers a member of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.

(Authority: 20 U.S.C. 1094 and 1099c and Section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

10. Newly designated § 668.16 is revised to read as follows:

§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

(a) Administers the Title IV, HEA programs in accordance with any statutory provisions of or applicable to Title IV of the HEA, any regulatory provisions prescribed under that statutory authority, or any applicable special arrangement, agreement or limitation;

(b)(1) Designates a capable individual to be responsible for administering all the Title IV, HEA programs in which it participates and for coordinating those programs with the institution's other Federal and non-Federal programs of student financial assistance. The Secretary considers an individual to be "capable" under this paragraph if the individual is certified by the State in which the institution is located, if the State requires certification of financial aid administrators. The Secretary may consider other factors in determining whether an individual is capable, including, but not limited to, the individual's successful completion of Title IV, HEA program training provided or approved by the Secretary;

(2) Uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates. The Secretary considers the following factors to determine whether an institution uses an adequate number of qualified persons—

(i) The number and types of programs in which the institution participates;

(ii) The number of applications evaluated;

(iii) The number of students who receive any student financial assistance at the institution and the amount of funds administered;

(iv) The financial aid delivery system used by the institution; and

(v) The degree of office automation used by the institution in the administration of the Title IV, HEA programs;

(3) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance; and

(4) Has written procedures for or written information indicating—

(i) The nature and frequency of communication of pertinent information among all the offices that have an impact on the administration of the Title IV, HEA programs. Examples of this information may include information on a student's admissions status, enrollment status, attendance (if applicable), prior or concurrent attendance at another postsecondary institution, satisfactory academic progress, and payment or disbursement status; and

(ii) The responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary;

(c)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. For example, the functions of authorizing payments and disbursing or delivering funds must be divided so that for any particular student aided under the programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, as defined in § 668.15, or who do not together exercise substantial control, as defined in § 668.15, over the institution;

(d) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations;

(e) Establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits or preaccredits the institution, if the institution is accredited or preaccredited, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which a student must complete his or her educational program. The time frame must be—

(A) Based on the student's enrollment status;

(B) For an undergraduate program, no longer than 150 percent of the published length of the educational program; and

(C) Divided into increments, not to exceed the lesser of one academic year or one-half the published length of the educational program.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment to complete his or her educational program within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of § 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, or other factors relating to the student's eligibility for funds under the Title IV, HEA programs;

(g) Refers to the Office of Inspector General of the Department of Education for investigation—

(1) After conducting the review of an application provided for under paragraph (f) of this section, any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are—

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income; and

(2) Any information indicating that any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

(i) Has and implements a plan, designed by the institution for the student population served by the institution, that demonstrates that for an institution that enrolls a significant number of students with special support service needs (including, but not limited to, child care and transportation), the institution has provided these students with information about how to access to appropriate support services that will foster the students' opportunity to complete the educational program;

(j) Has procedures for receiving, investigating, and resolving student complaints;

(k) If the stated objectives of an educational program of the institution are to prepare a student for gainful employment in a recognized occupation—

(1) Demonstrates a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the program is offered, if the State has established such a requirement; and

(2) Establishes the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student;

(l) Makes readily available to students information on—

(1) Market and job availability for occupational, professional, and vocational educational programs offered by the institution; and

(2) The relationship of mandatory and elective course components of occupational, professional, and vocational educational programs to specific licensure standards of the State in which the institution is located in specific occupations;

(m) Has advertising, promotion, and student recruitment practices that accurately reflect the content and objectives of the educational programs offered by the institution;

(n) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(o) Has no outstanding liabilities owed to the Secretary, unless the institution has made satisfactory arrangements to repay those liabilities and is honoring those arrangements;

(p) Shows no evidence of significant problems identified in—

(1) Reviews of the institution conducted by the Secretary, the Department of Education's Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(q) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 34 CFR part 85) that is—

(1) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4;

(r) Complies with any standards established by the State in which the institution is located or, if no standards exist in the State in which the institution is located, by the Secretary regarding completion rates, placement rates, and pass rates on required State examinations;

(s) Has a cohort default rate—

(1) As defined in § 668.17, on loans made under the Federal Stafford Loan and Federal SLS programs to students for attendance at that institution that does not exceed 20 percent; and

(2) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent;

(t)(1) For an institution that has a common academic year for a majority of its students, does not have more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(2) For an institution that does not have a common academic year for a majority of its students, does not have more than 33 percent of the regular students who are enrolled on the first day of classes of any eight-month period withdraw during that period; and

(u) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c; Section 4 of Pub. L. 95–452, 92 Stat. 1101–1109; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235)

11. Newly designated § 668.17 is revised to read as follows:

§ 668.17 Default reduction measures.

(a) *Default rates.* If the Federal Stafford loan and Federal SLS cohort default rate for an institution exceeds 20 percent for any fiscal year, the Secretary notifies the institution of that rate and may, after consultation as the Secretary deems appropriate with cognizant guaranty agencies take one or more of the following actions:

(1) Initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the participation of the institution in the Title IV, HEA programs, if—

(i) The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (e.g., a 50-percent rate was not reduced to 45 percent or below); or

(ii) The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds—

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) To help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution, require the institution to submit to the Secretary and one or more guaranty agencies, as defined in 34 CFR 682, any information relating to that determination, as reasonably required by the Secretary, within a time frame specified by the Secretary.

(b) *Default management plan.* If the Federal Stafford loan and Federal SLS cohort default rate for an institution—

(1) Is greater than 20 percent but less than or equal to 40 percent, the institution must submit a default management plan that implements the measures described in appendix D of this part. An institution that wishes to submit a default management plan that deviates from the measures described in appendix D of this part must submit a justification for the deviation that includes a rationale explaining why the measures from which the plan deviates are not appropriate for the institution's specific situation. The institution must implement the default management plan upon notification from the Secretary that the plan has been approved; or

(2) Exceeds 40 percent for any fiscal year, the institution must implement all of the default management reduction measures described in appendix D of this part no later than 60 days after the institution receives the Secretary's notification of the institution's cohort default rate. An institution is not required to submit any written plans to the Secretary or a guaranty agency unless the Secretary or guaranty agency specifically requests the institution to do so.

(c) *End of participation.* (1) Except as provided in paragraph (c)(6) of this section, an institution's participation in the FFEL programs ends if the Secretary determines that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the applicable threshold rates.

(2) For purposes of the determinations made under paragraph (c)(1) of this section, the threshold rates are—

(i) 35 percent for each of fiscal years 1991 and 1992;

(ii) 30 percent for fiscal year 1993; and

(iii) 25 percent for fiscal year 1994 and all subsequent fiscal years.

(3) Except as provided in paragraph (c)(7) of this section, an institution whose participation ends under paragraph (c)(1) of this section may not participate in the FFEL programs beginning with the date that the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution's participation has ended under paragraph (c)(1) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution whose participation in the FFEL programs ends under paragraph (c)(1) of this section may not participate in the FFEL programs until the institution—

(i) Receives notification from the Secretary that the notice ending the institution's participation is withdrawn pursuant to paragraph (d)(6) of this section; or

(ii) Following the period described in paragraph (c)(3) of this section, satisfies the Secretary that the institution meets all requirements for participation in the FFEL programs and executes a new agreement with the Secretary for participation in the FFEL programs.

(5) If the Secretary withdraws the notification of an institution's loss of participation pursuant to paragraph (d)(6) of this section, the participation of the institution is restored effective as of the date that the institution received notification from the Secretary of the loss of participation.

(6) Until July 1, 1994, the provisions of paragraph (c)(1) of this section do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)), or a Navajo community college under the Navajo Community College Act (25 U.S.C. 640a–640c).

(7)(i) If the Secretary's designated department official receives written notice from an institution whose participation ends under paragraph (c)(1) of this section, within seven calendar days from the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (d)(2) of this section, that the

institution intends to appeal the end of participation under paragraph (d) of this section, the institution may, notwithstanding § 668.26(d) continue to participate in the FFEL programs until no later than the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, except as provided in paragraph (c)(7)(ii) of this section.

(ii) If an institution satisfies the conditions in paragraph (c)(7)(i) of this section for participating in the FFEL programs until the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, the institution may, notwithstanding § 668.26(d), continue to participate in the FFEL programs after that date, until the Secretary issues a decision on the institution's appeal, if the institution, by the 30th calendar day following the date on which the institution receives notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, files an appeal that is complete in all respects in accordance with paragraph (d) of this section. However, the appeal of an institution relying on paragraph (d)(1)(i) of this section is not considered incomplete by virtue of a guaranty agency's not having yet complied with—or having failed to comply with—34 CFR 682.401(b)(14), which requires the agency to respond to an institution's request for verification of data within 15 working days, if the institution submitted that request within 10 working days from the date on which the institution received notification from the Secretary that its cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section, and the institution simultaneously submitted a copy of that request to the Secretary's designated Department official. When the institution receives the guaranty agency's response, to complete its appeal, the institution must submit the verified data to the Secretary's designated Department official within five working days in order to continue participating in the FFEL programs until the Secretary issues a decision on the institution's appeal.

(d) *Appeal procedures.* (1) An institution may appeal the loss of participation in the FFEL programs under paragraph (c)(1) of this section by submitting an appeal in writing to the Secretary's designated Department official that is postmarked no later than 30 days after it receives notification of its loss of participation. The institution may appeal on the grounds that—

(i)(A) The calculation of the institution's cohort default rate for any of the three fiscal years relevant to the end of participation is not accurate; and

(B) A recalculation with corrected data verified by the cognizant guaranty agency or agencies would produce a cohort default rate for any of those fiscal years that is below the threshold percentage specified in paragraph (c)(2) of this section;

(ii) The institution meets the following criteria:

(A)(*1*) Fifteen percent or fewer of the institution's students who are enrolled on at least a half-time basis receive Federal Stafford or Federal SLS loans for any twenty-four month period ending not more than six months prior to the date the institution submits its appeal; or

(*2*) For any twenty-four month period ending not more than six months prior to the date the institution submits its appeal, two-thirds or more of the institution's students who are enrolled on at least a half-time basis are individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution. Such evidence must relate to qualification by those students for an Expected Family Contribution (EFC) (formerly institutions were required to use the Pell Grant index), as defined in 34 CFR 690.2, of zero for the applicable award year or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for the applicable award year of less than the poverty level, as determined under criteria established by the Department of Health and Human Services; and

(B)(*1*) Two-thirds or more of the institution's students who were enrolled on a full-time basis in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal completed the educational programs in which they were enrolled. This rate is calculated by comparing the number of students who were classified as full-time at their initial enrollment in the institution, and were originally scheduled, at the time of enrollment, to complete their programs within the relevant twenty-four month period, with the number of these students who received a degree, certificate, or other recognized educational credential from the institution; transferred from the institution to a higher level educational program at another institution for which the prior program provided substantial preparation; or, at the end of the twenty-four month period, remained enrolled and were making satisfactory academic progress toward completion of their educational programs. The calculation does not include students who did not complete their programs because they left the institution to serve in the armed forces; and

(*2*) The institution had a placement rate of two-thirds or more with respect to its former students who received a degree, certificate, or other recognized educational credential from the institution in any twenty-four month period ending not more than six months prior to the date the institution submits its appeal. This rate is calculated by determining the percentage of all those students who, based on evidence submitted by the institution, are on that date employed, or had been employed for at least 13 weeks following receipt of the credential from the institution, in the occupation for which the institution provided training, or are enrolled or had been enrolled for at least 13 weeks following receipt of the credential from the institution, in a higher level educational program at another institution for which the prior educational program provided substantial preparation.

(2) For purposes of paragraph (d)(1)(iii)(A) of this section, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less.

(3) An appeal submitted under paragraph (d)(1)(i) of this section is considered to be filed in a timely manner if the institution submits a letter of appeal by the 30-day deadline notifying the Secretary's designated department official that it is appealing on this basis, including with that letter a copy of the institution's request to each cognizant guaranty agency for verification of the cohort default rate data, and submits the verified data to the Secretary's designated Department official within five working days of its receipt from the guaranty agency. For purposes of paragraph (d)(4) of this

section, the institution's appeal is not considered complete until the institution submits the verified data to the Secretary's designated Department official.

(4) The Secretary issues a decision on the institution's appeal within 45 days after the institution submits a complete appeal that addresses the applicable criteria in paragraphs (d)(1)(i) through (iii) of this section to the Secretary's designated Department official.

(5) The Secretary's decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(6) The Secretary withdraws the notification of loss of participation in the FFEL programs sent to an institution under paragraph (c)(1) of this section, if the Secretary determines that the institution's appeal satisfies one of the grounds specified in paragraphs (d)(1)(i) through (iii) of this section.

(7) (i) An institution that appeals under paragraph (d)(1)(i) of this section must submit a written request to the guaranty agency or agencies that guaranteed the loans used in the calculation of its cohort default rate to verify the data used to calculate its cohort default rate and simultaneously provide a copy of that request to the Secretary's designated Department official.

(ii) The written request must include the names and social security numbers of the borrowers the institution wishes the agency to verify and detailed information on the nature of the suspected inaccuracy in the data the institution is requesting the agency to verify.

(8) An institution must include in its appeal a certification by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(9) An institution that appeals on the ground that it meets the criteria contained in paragraph (d)(1)(iii) of this section must include in its appeal the following information:

(i) For purposes of paragraph (d)(1)(iii)(A)(*1*) of this section—

(A) The number of students who were enrolled on at least a half-time basis at the institution in the relevant twenty-four month period; and

(B) The name, address, and social security number of each of the institution's current and former students who received Federal Stafford or Federal SLS loans during that twenty-four month period.

(ii) For purposes of paragraph (d)(1)(iii)(A)(*2*) of this section:

(A) The number of students who were enrolled on at least a half-time basis at the institution in the relevant twenty-four month period; and

(B) The name, address, social security number and Expected Family Contribution (EFC) (formerly institutions were required to use the Pell Grant index), if applicable, of each student from a disadvantaged economic background who was enrolled on at least a half-time basis at the institution in the relevant twenty-four month period and the measure and data used to determine that the student is from a disadvantaged economic background.

(iii) For purposes of paragraph (d)(1)(iii)(B)(*1*) of this section—

(A) The number of students who were enrolled on a full-time basis at the institution in the relevant twenty-four month period;

(B) For each of those former students who received a degree, certificate, or other recognized educational credential from the institution, the student's name, address, and social security number;

(C) For each of those former students who transferred to a higher level educational program at another institution, the name, address, social security number of the student, and the name and address of the institution to which the student transferred and the name of the higher level program; and

(D) For each of those students who remained enrolled and was making satisfactory academic progress toward completion of the educational program, the student's name, address, and social security number.

(iv) For purposes of paragraph (d)(1)(iii)(B)(*2*) of this section—

(A) The number of students who received a degree, certificate, or other recognized educational credential at the institution in the relevant twenty-four month period;

(B) For each of those former students who is employed or had been employed for at least 13 weeks following receipt of a degree, certificate or other credential from the institution, the student's name, address, and social security number, the employer's name and address, the student's job title, and the dates the student was so employed; and

(C) For each of those former students who enrolled in a higher level educational program at another institution for which the appealing institution's educational program provided substantial preparation, the former student's name, address, and social security number, the subsequent institution's name and address, the name of the educational program, and the dates the former student was so enrolled.

(e) *Definitions.* The following definitions apply to this section and § 668.90:

(1)(i)(A) For purposes of the Federal Stafford loan and Federal SLS cohort default rate, except as provided in paragraph (e)(1)(ii) of this section, the term *cohort default rate* means—

(*1*) For any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a Federal Consolidation Loan that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on such loans who default before the end of the following fiscal year; and

(*2*) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a Federal Consolidation Loan that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on Federal Stafford loans or Federal SLS loans in any of the three most recent fiscal years, who default before the end of the fiscal year immediately following the year in which they entered repayment.

(B) In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance.

(ii) (A) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(C) Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(D) For the purposes of this definition, a loan made in accordance with section 428A of the HEA (or a Federal Consolidation Loan a portion of which is used to repay a Federal SLS loan) shall not be considered to enter

repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree, certificate, or other recognized educational credential at the participating institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance based on such enrollment. Each eligible lender of a loan made under section 428A (or a Federal Consolidation Loan a portion of which is used to repay a Federal SLS loan) of the HEA shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this definition, and the guaranty agency shall provide that information to the Secretary.

(iii) (A) A cohort default rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(B) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(iv) (A) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(B) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate applies to the new, consolidated institution and all of its current locations.

(C) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from all of the institutions that are merging. This cohort default rate applies to the new consolidated institution.

(D) For a location of one institution that becomes a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

(2) *Fiscal year* means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(i) *Federal SLS Program participation.* An institution loses its participation in the Federal SLS Program if the Secretary determines that the institution's cohort default rate for the most recent fiscal year for which that rate is available is equal to or greater than 30 percent. However, the institution's loss of participation does not apply to a student who is not an undergraduate student or who has received a Federal SLS loan previously for enrollment in the same educational program at the institution (except that previous receipt of a Federal SLS loan shall not qualify a student for a Federal SLS loan with respect to an extension of the duration of that educational program that was effected on or after November 8, 1989).

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

12. Section 668.22 is revised to read as follows:

§ 668.22 Institutional refunds and repayments.

(a) *General.* (1) An institution shall have a fair and equitable refund policy under which the institution makes a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV, HEA program assistance, or whose parent received a Federal PLUS loan on behalf of the student if the student—

(i) Does not register for the period of enrollment for which the student was charged; or

(ii) Withdraws, drops out, is expelled from the institution or otherwise fails to complete the program on or after his or her first day of class of the period of enrollment for which he or she was charged.

(2) The institution shall provide a clear and conspicuous written statement containing its refund policy, including the allocation of refunds and repayments to sources of aid, together with examples of the application of this policy, to a prospective student prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement. The institution shall make its policy known to currently enrolled students. The institution shall include in its statement the procedures that a student must follow to obtain a refund, but the institution shall return the portion of a refund allocable to the Title IV, HEA programs in accordance with paragraph (f) of this section whether the student follows those procedures or not. If the institution changes its refund policy, the institution shall ensure that all students are made aware of the new policy.

(3) The institution shall publish the costs of required supplies and equipment and shall substantiate to the Secretary upon request that the costs are reasonably related to the cost of providing the supplies and equipment to students.

(b) *Fair and equitable refund policy.* (1) For purposes of paragraph (a) of this section, an institution's refund policy is fair and equitable if the policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law;

(ii) The specific refund standards established by the institution's nationally recognized accrediting agency if those standards are approved by the Secretary;

(iii) The *pro rata* refund calculation described in paragraph (c) of this section, for any student attending the institution for the first time whose withdrawal date is on or before the 60 percent point in time in the period of enrollment for which the student has been charged; or

(iv) For purposes of determining a refund when the *pro rata* refund calculation under paragraph (b)(1)(iii) of this section does not apply, and no standards for refund calculations exist under paragraph (b)(1) (i) and (ii) of this section, the larger of—

(A) The specific refund standards contained in Appendix A to this part; or

(B) The institution's refund policy.

(2) For purposes of paragraph (b)(1)(iii) of this section, "the 60 percent point in time in the period of enrollment for which the student has been charged" is—

(i) In the case of an educational program that is measured in credit hours, the point in calendar time when 60 percent of the period of enrollment for which the student has been charged, as defined in paragraph (d) of this section, has elapsed; and

(ii) In the case of an educational program that is measured in clock hours, the point in time when the student completes 60 percent of the clock hours scheduled for the period of enrollment for which the student is charged as defined in paragraph (d) of this section.

(3) The institution must determine which policy under paragraph (b)(1) of this section provides for the largest refund to that student.

(c) *Pro rata refund.* (1) *Pro rata refund,* as used in this section, means a refund by an institution to a student attending that institution for the first time of not less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the withdrawal date, rounded downward to the nearest 10 percent of that period, less—

(i) (A) Any unpaid amount of a scheduled cash payment for the period of enrollment for which the student has been charged. A scheduled cash payment is the amount of institutional charges that is not paid for by financial aid for the period of enrollment for which the student has been charged exclusive of—

(*1*) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn; and

(*2*) Late disbursements of loans made under the Federal Stafford Loan, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d).

(B) The unpaid amount of a scheduled cash payment is computed by subtracting the amount paid by the student for the period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged;

(ii) A reasonable administrative fee not to exceed the lesser of—

(A) Five percent of the tuition, fees, room and board, and other charges assessed the student; or

(B) One hundred dollars;

(iii) Any application fee charged by the institution; and

(iv) The portion of "board" charges (i.e., meal tickets) that have been expended by the student that exceed the portion attributable to the period for which the student attended at the time of withdrawal. The institution must include in the refund any unexpended "board" credits.

(2) (i) For purposes of this section, "other charges assessed the student by the institution" include, but are not limited to, charges for any equipment (including books and supplies) issued by an institution to the student. The institution may deduct from the refund owed under this paragraph the documented cost to the institution of equipment issued to the student if the institution specifies in the enrollment agreement a separate charge for equipment which the student actually obtains or if the institution refers the student to a vendor operated by an affiliated or related entity and the student does not return the equipment in good condition, allowing for reasonable wear and tear, within 20 days following the date of the student's withdrawal. The student shall be liable for the amount, if any, by which the documented cost for equipment not returned in good condition exceeds the refund under this paragraph. Equipment is not considered to be returned in good condition if the equipment cannot be reused because of clearly recognized health and sanitary reasons, and this fact is clearly and conspicuously disclosed in the enrollment agreement.

(ii) An institution may not delay its payment of the portion of a refund allocable under this section to a Title IV, HEA program or a lender under 34 CFR 682.607 by reason of the process for return of equipment prescribed in paragraph (c)(4)(i) of this section.

(3) For purposes of this section—

(i) "Room" charges do not include charges that are passed through the institution from an entity that is not under the control of, related to, or affiliated with the institution; and

(ii) "Other charges assessed the student by the institution" do not include fees for group health insurance, if this insurance is required for all students and the purchased coverage remains in effect for the student throughout the period for which the student was charged.

(4) (i) For purposes of this section, a student attending an institution for the first time is a student who—

(A) Has not previously attended at least one class at the institution; or

(B) Received a refund of 100 percent of his or her tuition and fees (less any permitted administrative fee) under the institution's refund policy for previous attendance at the institution.

(ii) A student remains a first-time student until the student either—

(A) Withdraws, drops out, or is expelled from the institution after attending at least one class; or

(B) Completes the period of enrollment for which he or she has been charged.

(5) For purposes of paragraph (c)(1) of this section, "the portion of the period of enrollment for which the student has been charged that remains" is determined—

(i) In the case of an educational program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the student's withdrawal date;

(ii) In the case of an educational program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of scheduled clock hours remaining to be completed by the student in that period as of the student's withdrawal date; and

(iii) In the case of an educational program that consists predominantly of correspondence courses, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the number of lessons not submitted by the student.

(d) *Period of enrollment for which the student has been charged.* (1) For purposes of this section, "the period of enrollment for which the student has been charged," means the actual period for which an institution charges a student, except that the minimum period must be—

(i) In the case of an educational program that is measured in credit hours and uses semesters, trimesters, quarters, or other academic terms, the semester, trimester, quarter or other academic term; or

(ii) In the case of an educational program that is measured in credit hours and does not use semesters, trimesters, quarters, or other academic terms, or an educational program that is measured in clock hours, the lesser of the length of the educational program or an academic year.

(2) If an institution charges by different periods for different charges, the "period of enrollment for which the student has been charged" for purposes of this section is the longest period for which the student is charged. The institution must include any charges assessed the student for the period of enrollment or any portion of that period of enrollment when calculating the refund.

(e) *Overpayments.* (1) An institution shall determine whether a student has received an overpayment for noninstitutional costs for the period of enrollment for which the student has been charged if—

(i) The student officially withdraws, drops out, or is expelled on or after his or her first day of class of that period; and

(ii) The student received Title IV, HEA program assistance other than from the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program for that period.

(2) (i) To determine if the student owes an overpayment, the institution shall subtract the noninstitutional costs that the student incurred for that portion of the period of enrollment for which the student has been charged from the amount of all assistance (other than from the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program) that the institution disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(f) *Repayments to Title IV, HEA programs of institutional refunds and overpayments.* (1)(i) An institution shall return a portion of the refund calculated in accordance with paragraph (b) of this section to the Title IV, HEA programs if the student to whom the refund is owed received assistance under any Title IV, HEA program other than the FWS Program.

(ii) The portion of the refund that an institution shall return to the Title IV, HEA programs may not exceed the amount of assistance that the student received under the Title IV, HEA programs other than under the FWS Program for the period of enrollment for which the student has been charged.

(2) For purposes of this section, except for the calculation of a *pro rata* refund required under paragraph (b)(1)(iii) of this section—

(i) An institutional refund means the amount paid for institutional charges for the period of enrollment for which the student has been charged minus the amount that the institution may retain under paragraph (f)(2)(iii) of this section for the portion of the period of enrollment for which the student has been charged that the student was actually enrolled at the institution;

(ii) An institution may not include any unpaid amount of a scheduled cash payment in determining the amount that the institution may retain for institutional charges. A scheduled cash payment is the amount of institutional charges that has not been paid by financial aid for the period of enrollment for which the student has been charged, exclusive of—

(A) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn; and

(B) Late disbursements of loans made under the Federal Stafford, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d);

(iii) In determining the amount that the institution may retain for the portion of the period of enrollment for which the student has been charged during which the student was actually enrolled, an institution shall—

(A) Compute the unpaid amount of a scheduled cash payment by subtracting the amount paid by the student for that period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged; and

(B) Subtract the unpaid amount of the scheduled cash payment from the amount that may be retained by the institution according to the institution's refund policy; and

(iv) An institution shall return the total amount of Title IV, HEA program assistance (other than amounts received from the FWS Program) paid for institutional charges for the period of enrollment for which the student has been charged if the unpaid amount of the student's scheduled cash payment is greater than or equal to the amount that may be retained by the institution under the institution's refund policy.

(3)(i) A student must repay to the institution or to the Title IV, HEA programs a portion of the overpayment as determined according to paragraph (e) of this section. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR parts 673, 674, 675, 676, 690, and 691).

(ii) The portion of the overpayment that the student or the institution (if the institution recovers the overpayment) shall return to the Title IV, HEA programs may not exceed the amount of assistance received under the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program for the period of enrollment for which the student has been charged.

(iii) Unless otherwise provided for in applicable program regulations—

(A) If the amount of the overpayment is less than $100, the student is considered not to owe an overpayment, and the institution is not required to contact the student or recover the overpayment; and

(B) If the amount of the refund is $25 or less, the institution is not required to pay the refund.

(g) *Allocation of refunds and overpayments.* (1) Except as provided in paragraph (g)(2) of this section, if a student who received Title IV, HEA program assistance (other than assistance under the FWS Program) is owed a refund calculated in accordance with paragraph (b) of this section, or if a student who received Title IV, HEA program assistance (other than assistance under the FWS, Federal Stafford Loan, Federal PLUS, or Federal SLS Program) must repay an overpayment calculated in accordance with paragraph (e) of this section, an institution shall allocate that refund and any overpayment collected from the student in the following order:

(i) To eliminate outstanding balances on Federal SLS loans received by the student for the period of enrollment for which he or she was charged.

(ii) To eliminate outstanding balances on unsubsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(iii) To eliminate outstanding balances on subsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(iv) To eliminate outstanding balances on Federal PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(v) To eliminate outstanding balances on Federal Direct Stafford loans received by the student for the period of enrollment for which he or she was charged.

(vi) To eliminate outstanding balances on Federal Direct PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(vii) To eliminate outstanding balances on Federal Perkins loans received by the student for the period of enrollment for which he or she was charged.

(viii) To eliminate any amount of Federal Pell Grants awarded to the student for the period of enrollment for which he or she was charged.

(ix) To eliminate any amount of Federal SEOG Program aid awarded to the student for the period of enrollment for which he or she was charged.

(x) To eliminate any amount of other assistance awarded to the student under programs authorized by Title IV of the HEA for the period of enrollment for which he or she was charged.

(xi) To repay required refunds of other Federal, State, private, or institutional student financial assistance received by the student.

(xii) To the student.

(2) The institution must apply the allocation policy described in paragraph (g)(1) of this section consistently to all students who have received Title IV, HEA program assistance and must conform that policy to the following:

(i) No amount of the refund or of the overpayment may be allocated to the FWS Program.

(ii) No amount of overpayment may be allocated to the Federal Stafford Loan, Federal PLUS, or Federal SLS Program.

(iii) The amount of the Title IV, HEA program portion of the refund allocated to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate borrower's lender by the institution in accordance with program regulations (34 CFR part 682).

(iv) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate program account or accounts by the institution within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

(v) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate program account or accounts within 30 days of the date that the student repays the overpayment.

(h) *Financial aid.* For purposes of this section "financial aid" is assistance that a student has been or will be awarded (including Federal PLUS loans received on the student's behalf) from Federal; State; institutional; or other scholarship, grant, or loan programs.

(i) *Refund dates*—(1) *Withdrawal date.* (i) Except as provided in paragraphs (i)(1) (ii) and (iii) of this section, a student's withdrawal date is the earlier of—

(A) The date that the student notifies an institution of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(B) If the student drops out of the institution without notifying the institution (does not withdraw officially), the last recorded date of class attendance by the student, as documented by the institution.

(ii) If the student has not returned to the institution at the expiration of a leave of absence approved under paragraph (i)(2) of this section, the student's withdrawal date is the last recorded date of class attendance by the student, as documented by the institution. If the student returns to the institution after the expiration of the leave of absence but during the award year or (for the Federal Stafford Loan, Federal PLUS, and Federal SLS programs) during the period of enrollment in which the student was granted the leave of absence, the student may not receive additional Title IV, HEA program assistance for coursework that he or she has not completed.

(iii) If the student is enrolled in an educational program that consists predominantly of correspondence courses, the student's withdrawal date is normally the date of the last lesson submitted by the student, if the student failed to submit the subsequent lesson in accordance with the schedule for lessons established by the institution. However, if the student establishes in writing, within 60 days of the date of the last lesson that he or she submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the institution may restore that student to "in school" status for purposes of funds received under the Title IV, HEA programs. The institution may not grant the student more than one restoration to "in school" status on this basis.

(2) *Leaves of absence.* A student who has been absent from an institution and has been granted a leave of absence by the institution, in accordance with this paragraph, is not considered to have withdrawn from the institution for purposes of this section. In any twelve-month period, an institution may grant a single leave of absence to a student provided that—

(i) The student has made a written request to be granted a leave of absence;

(ii) The leave of absence involves no additional charges by the institution to the student; and

(iii) The leave of absence does not exceed—

(A) Sixty days;

(B) Six months, under either of the following circumstances:

(*1*) The student's educational program does not consist predominantly of correspondence courses, and the institution's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(*2*) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the institution with a written recommendation from a physician for a leave of absence longer than 60 days; or

(C) The length of time between the beginning of the leave of absence and the institution's next period of enrollment, under the following circumstance: The institution's next period of enrollment after the start of the leave of absence begins more than thirty days after the beginning of the leave of absence, and a corresponding period of nonenrollment (i.e., summer break) prevents a student from enrolling in any coursework.

(3) *Timely payment.* An institution shall pay a refund that is due—

(i) If a student officially withdraws or is expelled, within 30 days after the student's withdrawal date;

(ii) If a student drops out, within 30 days of the earliest of the—

(A) Date on which the institution determines that the student dropped out;

(B) Expiration of the academic term in which the student withdrew; or

(C) Expiration of the period of enrollment for which the student has been charged; or

(iii) If a student does not return to the institution before the expiration of an approved leave of absence under paragraph (i)(2) of this section, within 30 days after the last day of the leave of absence.

(Authority: 20 U.S.C. 1091b, 1092, 1094)

13. Section 668.23 is revised to read as follows:

§ 668.23 Audits, records, and examinations.

(a) An institution or a foreign institution as defined 34 CFR 600.52 that participates in the Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal Pell Grant, PAS, or FDSL Program shall comply with the regulations for that program concerning—

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b) (1) An institution or a foreign institution as defined 34 CFR 600.52 that participates in any Title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the appropriate State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(2) A third-party servicer shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, and the Comptroller General of the United States, or their authorized representatives, a guaranty agency in

whose program the institution contracting with the servicer participates, and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(3) The institution's or servicer's cooperation must include—

(i) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records;

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution or servicer shall not—

(A) Refuse to supply any relevant information;

(B) Refuse to permit interviews with those personnel that do not include the presence of the institution's or servicer's management; and

(C) Refuse to permit interviews with those personnel that are not tape recorded by the institution or servicer.

(c)(1)(i) An institution or a foreign institution as defined 34 CFR 600.52 that participates in the FDSL, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Pell Grant, or PAS Program shall have performed a financial and compliance audit of its Title IV, HEA programs.

(ii) A third-party servicer that administers funds or determines student eligibility shall have a financial and compliance audit performed of every aspect of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer has a contract, unless—

(A) The servicer contracts with only one participating institution; and

(B) The audit of that institution's participation involves every aspect of the servicer's administration of that Title IV, HEA program.

(iii) To meet the requirements of paragraph (c)(1)(ii) of this section, a third-party servicer that contracts with more than one participating institution may submit a single financial and compliance audit report that covers every aspect of the servicer's administration of the participation in the Title IV, HEA programs for each institution with which the servicer contracts.

(iv) The audit required under paragraph (c)(1) (i) or (ii) of this section shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

(2) (i) The institution shall have an audit performed at least once every year.

(ii) The servicer shall have an audit performed at least once every year.

(3) If the institution is participating in the Title IV, HEA programs for the first time, the institution shall have the audit performed at least once every year for the first five years of the institution's participation.

(4) Notwithstanding paragraph (c)(2) of this section—

(i) The institution shall have an audit performed at least once every two years if—

(A) The institution receives less than $100,000 in total annual funding under the Title IV, HEA programs for the period covered by the audit; or

(B) The institution had no deficiencies identified in its most recently submitted audit report and that report was submitted in a timely fashion; and

(ii) The servicer shall have an audit performed at least once every two years if—

(A) The servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit; or

(B) The servicer had no material exceptions identified in the servicer's most recently submitted audit report and that report was submitted in a timely fashion.

(5) (i) The institution is not required to have an audit performed for any year in which the institution receives less than $25,000 in total annual funding under the Title IV, HEA programs.

(ii) The servicer is not required to have an audit performed for any year in which the servicer administers less than $250,000 under the Title IV, HEA programs.

(6) (i) The institution's first audit must cover the institution's activities for the entire period of time since the institution began to participate in the Title IV, HEA program for which the audit is performed. Each subsequent audit must cover the institution's activities for the entire period of time since the preceding audit.

(ii) The servicer's first audit must cover the servicer's activities for its first full fiscal year beginning after the effective date of these regulations, and include any period from the effective date to the beginning of the first full fiscal year. Each subsequent audit that the servicer has performed must cover the servicer's activities for the entire period of time since the servicer's preceding audit.

(7) Notwithstanding paragraph (c) (4) and (5) of this section, the Secretary may, as the Secretary deems necessary, request any institution or third-party servicer to have an audit performed on an annual basis.

(8) The institution or servicer, as applicable, shall submit its audit report to the Department of Education's Inspector General in accordance with the deadlines established in audit guides developed by the Department of Education's Office of Inspector General.

(9) The Secretary may require the institution or servicer to provide, upon request, to cognizant guaranty agencies and eligible lenders under the FFEL programs, State agencies, nationally recognized accrediting agencies, and State postsecondary review entities designated under subpart 1 of part H of Title IV of the HEA, the results of any audit conducted under this section.

(d) Procedures for audits are contained in audit guides developed by, and available from, the Department of Education's Office of Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations and GAO's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

(e) (1) An institution, a foreign institution as defined 34 CFR 600.52, or a third-party servicer that has an audit conducted in accordance with this section shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(2) A third-party servicer shall give the Secretary and the Inspector General access to records or other documents necessary to review an institution's audit.

(3) An institution shall give the Secretary and the Inspector General access to records or other documents

necessary to review a third-party servicer's audit.

(f) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of title 31, United States Code); or

(2) Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(g) Upon written request, an institution, a foreign institution as defined 34 CFR 600.52, or a third-party servicer shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any Title IV, HEA program funds.

(h)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution or foreign institution as defined 34 CFR 600.52 shall establish and maintain, on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The educational program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her educational program;

(iv) Any refunds due or paid to the student, the Title IV, HEA program or accounts, and the student's lender under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see § 668.19);

(vii) The verification of student aid application data; and

(viii) Financial and other institutional records necessary to determine the institutional eligibility, financial responsibility, and administrative capability of the institution.

(2)(i) An institution or a foreign institution as defined 34 CFR 600.52 shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA program assistance, that are relevant to the institution's admission standards.

(ii) An institution or a foreign institution as defined 34 CFR 600.52 at which only certain educational programs have been determined eligible shall establish and maintain records regarding the admission requirements and educational qualifications of each regular student enrolled in the eligible program or programs, whether the student received Title IV, HEA program assistance or not.

(3) Records required under applicable program regulations and this part shall be—

(i) Systematically organized;

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion; and

(iii) Retained by the institution for the longer of at least five years from the time the record is established or the period of time required under the applicable program regulations of this part.

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141 and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

14. Section 668.26, as proposed to be redesignated in a Notice of Proposed Rulemaking published on February 17, 1994 (59 FR 8061), is revised to read as follows:

§ 668.26 End of an institution's participation in the Title IV, HEA programs.

(a) An institution's participation in a Title IV, HEA program ends on the date that—

(1) The institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students;

(2) The institution loses its institutional eligibility under 34 CFR part 600;

(3) The institution's participation is terminated under the proceedings in subpart G of this part;

(4) The institution's period of participation, as specified under § 668.13, expires, or the institution's provisional certification is revoked under § 668.13;

(5) The institution's program participation agreement is terminated or expires under § 668.14;

(6) The institution's participation ends under § 668.17(c); or

(7) The Secretary receives a notice from the appropriate State Postsecondary Review Entity designated under subpart 1 of part H of Title IV of the HEA that the institution's participation should be withdrawn.

(b) If an institution's participation in a Title IV, HEA program ends, the institution shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the date that the participation ends—

(i) All financial, performance, and other reports required by appropriate Title IV, HEA program regulations; and

(ii) A letter of engagement for an independent audit of all funds that the institution received under that program, the report of which shall be submitted to the Secretary within 45 days after the date of the engagement letter;

(3) Inform the Secretary of the arrangements that the institution has made for the proper retention and storage for a minimum of five years of all records concerning the administration of that program;

(4) If the institution's participation in the Federal Perkins Loan or FDSL Program ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under that program;

(5) If the institution's participation in the NEISP or SSIG Program ended—

(i) Inform immediately the State in which the institution is located of that fact; and

(ii) Notwithstanding paragraphs (c) through (e) of this section, follow the instructions of that State concerning the end of that participation;

(6) If the institution's participation in all the Title IV, HEA programs ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under the National Defense/Direct Student Loan and ICL programs; and

(7) Continue to distribute refunds according to § 668.22.

(c) If an institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students, the institution shall—

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, any unexpended funds that the institution has received under the Title IV, HEA programs for attendance at the institution, less the institution's administrative allowance, if applicable; and

(2) Return to the appropriate lenders any Federal Stafford Loan and Federal SLS program proceeds that the institution has received but not delivered to, or credited to the accounts of, students attending the institution.

(d)(1) An institution may use funds that it has received under the Federal Pell Grant or PAS Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess

sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if—

(i) The institution's participation in that Title IV, HEA program ends during a payment period;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Stafford or Federal SLS loan to satisfy any unpaid commitment made to the student under the Federal Stafford Loan or Federal SLS Program only if—

(i) The institution's participation in that Title IV, HEA program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation;

(iv) The commitment was made for attendance during that period of enrollment; and

(v) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(3) An institution may use funds that it has received under the FDSL Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Direct Student loan only if—

(i) The institution's participation in the FDSL Program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment; and

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(e) For the purposes of this section—

(1) A commitment under the Federal Pell Grant and PAS programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report;

(2) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid; and

(3) A commitment under the Federal Stafford and Federal SLS programs occurs when the Secretary or a guaranty agency notifies the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094, 1099a–3)

15. Section 668.81, as proposed to be amended in a Notice of Proposed Rulemaking published on February 17, 1994 (59 FR 8062), is further amended by removing paragraph (a)(2); redesignating paragraph (a)(1) introductory text as paragraph (a) introductory text; redesignating paragraphs (a)(1)(i) through (iv) as paragraphs (a)(1) through (4), respectively; removing the word "or" after the semi-colon in paragraph (c)(1); revising paragraph (c)(2); adding paragraphs (c)(3) and (4); and revising paragraph (d) to read as follows:

§ 668.81 Scope and special definitions.

* * * * *

(c) * * *

(2) An institution fails to qualify for initial certification or provisional certification to participate in any Title IV, HEA program because the institution does not meet the factors of financial responsibility and standards of administrative capability contained in subpart B of this part;

(3) A participating institution's or a provisionally certified participating institution's period of participation, as specified under § 668.13, has expired; or

(4) A participating institution's provisional certification is revoked under the procedures in § 668.13.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to a participating institution (i.e., advance payments and payments by way of reimbursements).

* * * * *

16. A new Appendix A to Part 668 is added to read as follows:

Appendix A to Part 668—Standards for Acceptable Refund Policies by Participating Institutions

For purposes of § 668.22(b)(1)(iv)(A), the Secretary considers an institution to have a fair and equitable refund policy if the institution uses a policy that meets the minimum requirements of this appendix. These requirements are a modified version of guidelines developed by the National Association of College and University Business Officers. These requirements do not affect an institution's obligation to comply with other Department of Education regulations.

(I) *The governing board of the institution must review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies must receive board attention and approval.

(II) *The institution must seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is an essential approach for assessing student needs and creating public awareness of institutional requirements.

(III) *The institution must publish a current schedule of all student charges (including the costs of required supplies and equipment), publish a statement of the purpose for such charges and related refund policies, have those statements readily available free of charge to current and prospective students, and substantiate that the costs of required supplies and equipment are reasonably related to the cost of providing the supplies and equipment to the students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment of the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *The institution must clearly designate all optional charges as "optional" in all published schedules and related materials.* Charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Statements accompanying the schedule may include institutional endorsements of the optional program or service. The institution must state clearly in its schedule if a charge is optional for some students but required for others.

(V) *The institution must clearly identify charges and deposits that are nonrefundable*

as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or nonrefundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g., tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *The institution must refund housing rental charges, less a deposit, as long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *The institution must refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract.* Subsequent board charges should be refunded on a *pro rata* basis. It is reasonable to make a refund for those goods and services not consumed. The deposit should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional refund policy must include the following requirements:*

A. The institution must refund 100 percent of the tuition charges, less an administrative fee that does not exceed the lesser of $100 or 5 percent of the tuition, if the student submits written notice of cancellation on or before one week preceding the first day of classes for the period of enrollment for which the student was charged.

B. The institution must refund at least 90 percent of the tuition charges if the student submits written notice of cancellation between the end of the period of time specified in (VIII) A. and the end of the first 10 percent (in time) of the period of enrollment for which the student was charged.

C. The institution must refund at least 50 percent of the tuition charges if the student submits written notice of cancellation between the end of the first 10 percent (in time) of the period of enrollment for which the student was charged and the end of the first 25 percent (in time) of that period of enrollment.

D. The institution must refund at least 25 percent of the tuition charges if the student submits written notice of cancellation between the end of the first 25 percent (in time) of the period of enrollment for which the student was charged and the end of the first 50 percent (in time) of the period of enrollment.

E. The institution may deduct from the refund owed under this paragraph the documented cost to the institution of equipment issued to the student if the institution specifies in the enrollment agreement a separate charge for equipment that the student actually obtains or if the institution refers the student to a vendor operated by an affiliated or related entity and the student does not return the equipment in good condition, allowing for reasonable wear and tear, within 20 days following the date of the student's withdrawal. The student shall be liable for the amount, if any, by which the documented cost for equipment exceeds the refund under this paragraph. Equipment is not considered to be returned in good condition if the equipment cannot be reused because of clearly recognized health and sanitary reasons, and this fact is clearly and conspicuously disclosed in the enrollment agreement.

(IX) *The institution must assess no penalty charges where the institution, as opposed to the student, is in error.* Penalty charges, such as those involving late registration fees, change-of-schedule fees, and late payment fees, must not be assessed if it is determined that the student is not responsible for the action causing the charges to be levied.

(X) *The institution must advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that the request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *The institution must pay or credit refunds due in accordance with § 668.22(h)(4).*

(XII) *The institution must publicize, as a part of its dissemination of information on charges and refunds, that an appeals process exists for students or parents who believe that individual circumstances warrant exceptions from published policy. The informational materials must include the name, title, and address of the official responsible for handling appeals.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

PART 690—FEDERAL PELL GRANT PROGRAM

17. The heading for part 690 is revised to read as set forth above.

18. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

19. Section 690.83 is amended by adding a new paragraph (e) to read as follows:

§ 690.83 Submission of reports.

* * * * *

(e) (1) Notwithstanding paragraphs (a), (b), (c) (1) or (2), or (d) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraph (e) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988 and timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit.

(3) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

* * * * *

(Authority: 20 U.S.C. 1070a, 1094, 1226a–1)

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix to Preamble

Subparts A and B of the Student Assistance General Provisions Regulations

I. Academic Year

A. Section 481(d)(2) of the HEA provides that an "academic year" must require a minimum of 30 weeks of instruction time in which a student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours or at least 900 clock hours at an institution that measures program length in clock hours.

Issues that the community was asked to address and the community's views:

1. How should prorations be calculated? For example, if 22 weeks are offered, how does an institution determine the portion of an academic year that applies?

• Prorations of an academic year in educational programs shorter than an academic year should be based solely on the number of credit or clock hours provided, without regard to the number of weeks required. Proration should not be used for educational programs of one academic year or longer. Attempts to prorate the length of an academic year using both weeks and credit or clock hours would be inconsistent and confusing, because credit or clock hours are not always evenly distributed over the calendar length of an educational program. [Kansas City]

• Prorations should be based on the minimum number of clock or credit hours that a full-time student in an eligible program is scheduled to take in an academic year. Prorations should not be based on the number of weeks in the academic year. A minority opposed inclusion of a reference to "eligible program" in this recommendation. [Atlanta]

2. What is a week? How should portions of a week be treated?

• A week should include any week during a portion of which the educational process takes place. [Kansas City]

• A majority of participants recommended that an instructional week be defined in terms of a fixed standard of clock hours of instruction. Thus, for example, if regulations define an instructional week as the completion of 30 clock hours, a student who completes 90 clock hours of instruction in two calendar weeks should be considered to have completed the equivalent of three instructional weeks. [New York]

• A week should be defined as a seven-day period that can begin on any day of the week. The seven-day periods continue for 30 periods of time. [San Francisco]

• A "week" should be defined as either each seven-day period within an enrollment period; or each seven-day period (within an enrollment period) during which any instruction occurred. [Atlanta]

3. What is instructional time? Should periods provided for orientation, testing, and vacation count?

• Instructional time should be measured on the basis of calendar weeks that begin on Monday and end on Sunday. Instructional time should consist of a period of continuous enrollment beginning with the first week of classes and ending with the conclusion of the period of enrollment, including any normally scheduled breaks in the academic calendar. [Kansas City]

• Instructional time should include time spent reading and taking examinations. [New York]

• The interests of students, institutions, and other constituents need to be considered in determining instructional time. Some participants recommended that the determination be left to accrediting agencies. Other participants recommended that the determination be left to the Secretary. [San Francisco]

4. What consideration should be given to programs with condensed class schedules, or to weekend programs?

• Because instructional time should be measured on the basis of periods of continuous enrollment, special consideration for condensed schedules or weekend programs is unnecessary. [Kansas City]

• The interests of students, institutions, and other constituents need to be considered in determining how to treat condensed schedules and weekend programs. Some participants recommended that the determination be left to accrediting agencies. Other participants recommended that the determination be left to the Secretary. [San Francisco]

• Condensed programs that include the equivalent of the workload of a regular academic-year program should be considered to meet the definition of academic year. [Atlanta]

5. How does the new definition affect less-than-full-time students?

• The definition does not affect part-time students. [Kansas City]

• A student who completes fewer than the required minimum number of clock or credit hours during the 30-week period should be considered less-than-full-time. [San Francisco]

• The length of the academic year is irrelevant to determining the enrollment status of students. Enrollment status is determined by the length of time (in terms of credit or clock hours) that a student takes to complete a "program." [Atlanta]

II. Eligible Program

A. Effective July 1, 1993, section 481(b) and (c) of the HEA require a proprietary institution of higher education or a postsecondary vocational institution to provide an eligible program of training that prepares students for gainful employment in a recognized occupation. Section 481(e) of the HEA requires an eligible program to consist of at least 600 clock hours, 16 semester hours, or 24 quarter hours offered during a minimum of 15 weeks, if the program admits students who have not completed the equivalent of an associate degree. An eligible program must consist of at least 300 clock hours, eight semester hours, or 12 quarter hours offered during a minimum of ten weeks, if the program is an undergraduate program requiring the equivalent of an associate degree for admission or if the program is a graduate or professional program.

The Secretary is required to develop regulations to determine the quality of educational programs of less than 600 clock hours. Those regulations must, at a minimum, require those educational programs to have verified completion and placement rates of at least 70 percent. An educational program of more than 300 clock hours and less than 600 clock hours that meets the Secretary's regulations qualifies for eligibility under the Federal Family Education Loan programs even if the educational program is not an undergraduate program requiring the equivalent of an associate degree for admission, and even if the educational program is not a graduate or professional program.

Issues that the community was asked to address and the community's views:

1. What is the equivalent of an associates degree?

• An associates degree should be a degree which meets the degree requirements of any State for an associate degree. [Kansas City]

• An associates degree should represent the completion of any educational program that meets State licensure requirements and that equals at least the length of a typical associate degree program. [Kansas City]

• An associates degree should represent the completion of any educational program leading to a vocational objective if the program is at least 1,800 clock hours, (60 or 48) semester hours, or (90 or 64) quarter hours. (The variation in credit hours depends on whether the negotiators decide to use the number of credits required to earn an associate degree or the number of credits required for completion of at least two academic years.) [Kansas City]

• An associates degree should represent the completion of an educational program that is at least two academic years in length. [Kansas City]

• An associates degree should represent the completion of an educational program leading to licensure in an occupation, if a community college offers an associate degree program for that occupation. [Kansas City]

• An associates degree should be determined by the professional judgment of the Secretary. [Kansas City]

• An associates degree should be determined by an institution's State licensing agency. [Kansas City]

• An associates degree should consist of previous training in the same field of study as that for which the eligible program prepares training. [Kansas City]

• An associates degree should, for occupations with apprenticeship programs, require the completion of five-year apprenticeship programs. [Kansas City]

• An associates degree should represent the completion of the equivalent of two years of successful academic work in a postsecondary environment or a professional license that required a specific period of training and perhaps work experience. [New York]

• An associates degree should represent the completion of the equivalent of at least two academic years of study, subject to compliance with applicable State laws and regulations. [San Francisco]

• An associates degree should represent the completion of 60 semester hours or the equivalent. [Atlanta]

2. What are other measures of "quality" for programs of less than 600 hours?

• An educational program should be considered to satisfy the Secretary's quality measures if a program that prepares students for State licensure in an occupation; a program that prepares students for certification by a nationally recognized professional or industry association; or a program that is approved by a nationally recognized accrediting agency or association. [Kansas City]

• No additional measures should be included. [New York, Atlanta]

3. How should the required job placement and graduation rates be calculated? How often should the rates be calculated?

• The methodology and timing for the calculations should be identical to those

required under the Carl D. Perkins Vocational and Applied Technology Education Act and the Student Right-to-Know and Campus Security Act. [Kansas City]

• Calculation of completion rates should be based on the formula used under the Student Right-to-Know and Campus Security Act, except that the calculation should not include time-specific constraints. [New York]

• Calculation of placement rates should be based on the formula used under the Student Right-to-Know and Campus Security Act, except that only completers should be counted in the denominator. No time frame should be used in the calculation. [New York]

• Regulations should define completion rate, graduation rate, and full-time employment (which should specify a period of time in a job). [San Francisco]

• Calculations should be based over a two-three year period to reflect long-term trends and avert the adverse impact of short-term problems such as those caused by economic conditions. Institutions that fall below the minimum rates ought to be provided appeal procedures. [San Francisco]

• Because there are many State regulations and accrediting agency standards governing this area, institutions should be allowed to follow the most restrictive ones. Institutions following the most restrictive regulations and standards should not be required to maintain multiple sets of documentation demonstrating compliance with a variety of regulations and standards. [San Francisco]

• The cohort for calculation of placement rates should include placement in jobs related to the occupation for which students are trained. [San Francisco]

• In calculating placement rates, students should be counted as employed if they obtain jobs within 180 days of graduation. Students should be counted as employed if they obtain jobs in the field for which they were trained or a related field. Students (such as those in continuing education or in the military) who are not looking for a job should be excluded from the calculation. The calculation should be based on a percentage of graduates. Incarcerated or physically incapacitated students should be excluded from the calculation. [Atlanta]

4. What documentation is required to support the institution's completion and job placement rates?

• Documentation should be identical to that required under the Carl D. Perkins Vocational and Applied Technology Education Act and the Student Right-to-Know and Campus Security Act. [Kansas City]

• Documentation should be any documentation required by the institution's State or accrediting agency. The rates can be verified through required compliance audits. [New York]

Calculations should be included in the Fiscal Operations Report and Application to Participate (FISAP) for the campus-based programs. The time-frame for reporting this data should be relatively short, to ensure that the data is relevant. [San Francisco]

• A student's placement information should be maintained in each student's file. Placement information should be available for the purposes of audits. [San Francisco]

• Institutions should maintain employment records on file to confirm placements. Employment records should not be submitted to the Department of Education. [Atlanta]

III. Program Participation Agreement

A. Section 487(a)(5) requires an institution to provide assurances that the institution will provide, upon request and in a timely fashion, information relating to its administrative capability and financial responsibility to the Secretary, the designated State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, the appropriate guaranty agency, and accrediting agency or association.

Issues that the community was asked to address and the community's views:

1. How should agencies obtain this information from institutions?

• Other agencies should obtain the information through IPEDS or accrediting agency annual reports. [San Francisco]

• Requests should be made in writing to the Chief Executive Officer and the Chief Financial Officer of the institution. [Kansas City]

2. Should there be a standard information-sharing format?

• There should be a standard information sharing format provided that the institution is allowed to report using its accounting system. [Kansas City]

• There needs to be a standard information sharing format that can be completed readily and corresponds to the institution's fiscal year. [New York]

• The Department should provide a single form that can be used for all agencies. [Atlanta]

B. Section 487(a)(8)(B) requires institutions that advertise job placement rates to make available to prospective students relevant State licensing requirements for any job for which the course of instruction is designed to prepare the student.

Issues that the community was asked to address and the community's views:

1. How often should institutions be required to update licensing data?

• Institutions should update the data whenever State licensing agencies require that updates or regulation must occur. [San Francisco, Kansas City, Atlanta]

• Information always needs to be current. [New York]

2. Should there be a standard format for providing this information to prospective students?

• A typical brochure should be used to convey information to students. [San Francisco]

• There should not be a standard format for providing this information to prospective students. [Kansas City, New York, Atlanta]

• The institution should use the States required format for providing consumer data to students. If the Secretary requires additional information, the information should be consistent with the formats that the institution already uses. [Kansas City]

C. Section 487(a)(13) provides that an institution may not deny Federal financial aid to an eligible student because the student is studying abroad in a program approved for credit by the home institution.

Issues that the community was asked to address and the community's views:

1. Should a consortium agreement be required?

• A consortium agreement should not be required. [Kansas City, San Francisco]

• A consortium agreement should be used for pre-approved work. Institutions need to ensure that two institutions are not giving aid at the same time. [New York]

• A consortium agreement should be required if the student is paying tuition at the home institution and a second institution is involved. Otherwise no consortium agreement should be required. [Atlanta]

2. Does the study-abroad program have to be part of the student's program at the home institution?

• The study abroad program need not be a part of the student's program at the home institution, but must count toward a degree at the institution. [Kansas City]

• The study abroad program should be a part of the student's home program. [San Francisco, Atlanta]

• An institution should not be obligated to enter into an agreement with a student who wants to study abroad. [New York]

3. How should the term "approved for credit" be defined?

• The term "approved for credit" should mean that credits are fully transferable (accepted for credit) into an eligible program offered by the home institution. [Kansas City]

• "Approved for credit" should mean used toward a degree as defined by the institution. [San Francisco]

• "Approved for credit" should mean that it is determined in advance that the credit is accepted at the home institution. [Atlanta]

4. Should a standard format be developed for institutions to report study abroad programs?

• A standard format for institutions to report study abroad programs is not needed. It does not appear that any reporting is required. [Kansas City, New York, San Francisco, Atlanta]

D. Section 487(a)(14)(A) requires a new institution or an institution that undergoes a change of ownership or changes its status as a parent or subordinate institution to develop a Default Management Plan to participate in the FFEL program. The Secretary must approve the plan and the plan must be implemented for two years after the institution is initially certified as an eligible institution or for two years after its change of ownership or status.

Issues that the community was asked to address and the community's views:

1. Should the criteria in Appendix D of current regulations be used as the basis for the Secretary's approval of default plans?

• Unless otherwise required, an institution should use Appendix D or submit any other approved default management plan. [Kansas City, Atlanta]

• If a new institution uses Appendix D, it is subject to things it can't do as a new institution. What is in Appendix D that isn't in the new regulations already? New institutions will certify that they will adopt the stipulated plan they have in place (that has approval from the appropriate State and or accrediting body.) [New York]

2. Should there be other criteria?

• Other criteria should include: a) more follow up once the student leaves the institution; and b) additional cooperation with all partners in the program, i.e., lenders, institutions, and secondary markets. The Department should reassess the method for determining cohort default rate. It is not fair for most institutions. [San Francisco]

• No other criteria is needed. [Atlanta]

E. Section 487(a)(18)(A) requires an institution that offers athletically-related student aid to compile annually data on expenses and revenues of athletic activities and expenses and revenues of the institution.

1. How should the terms "revenues" and "expenses" be defined?

• There should be coordination with NCAA regulations and audit guides. [San Francisco]

• Institutions should be allowed to use the accounting principles and terms they are currently using to define "revenues" and "expenses." [Kansas City]

F. Section 487(a)(19) provides that if a student is unable to meet his or her financial obligation to the institution because of a delay in the disbursement of proceeds of a Title IV, HEA program loan (due to compliance with Title IV requirements or delays attributable to the institution), the institution may not penalize the student in any way, including assessing a late fee; denying the student access to class, the library, or other facilities; or requiring that the student borrow additional funds.

1. How should the term "denial of access to classes" be interpreted?

• "Denial of access" should mean the student is not given access to equipment or supplies. [San Francisco]

2. What should be considered as a condition to meet the definition of a "delay in the delivery of proceeds?"

• This section should not apply to: 1) delays by lenders or guarantors in delivering loan proceeds which are not caused by the necessity of complying with Title IV requirements; and 2) delays attributable to the student's not providing information by known, published, or noticed deadlines, that the institution, lender, or guarantor must have in order to comply with Title IV requirements. (Example, IRS 1040 forms for verification.)

The Secretary should regulate in such a way that it is clear that institutions may charge reasonable interest on unpaid bills where the delay in Title IV delivery is attributed to the student or an agency other than the institution. [Kansas City]

• This section does not address delays for which the student has not met public deadlines or performed all obligations necessary to ensure the delivery of timely aid. [Kansas City]

• If the student does not provide documents, it is not applicable. It should relate only to a 30 day delayed disbursement. [Atlanta]

• No constraints should be put on a student for the delay of that portion of tuition covered by the first-time Stafford loan or in the case of institutional delay. [New York]

• Consideration should be given to the laws of various states since they differ as to when a student must meet his or her financial obligation at an institution. [San Francisco]

3. If a delay is caused by the lender or institution can the guarantee agency take actions that are prohibited under other circumstances?

• No, a guaranty agency should not be allowed to take action if the delay is caused by the lender or institution. [New York]

• G. Section 487(a)(20) prohibits an institution from paying a commission, bonus or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance.

Issues that the community was asked to address and the community's views:

1. How should the Department determine that an institution is not providing commissions, bonuses, and other incentive payments?

• Compliance should be determined through the audit process. Auditors check employment and payroll records. [San Francisco, Atlanta]

2. If an institution awards merit pay to salaried employees in increments as the student successfully completes portions of the course, graduates, or gets placed in a job, would the institution be in compliance?

• Institutions should be allowed to provide merit incentives to employees as long as it cannot be attached to the enrollment process (i.e., servicing retaining, and placing students after the first day of class at the institution.) [Kansas City]

Salaried employees should be rewarded for retention. Any compensation (non-salaried) for the enrollment of financial aid students is illegal. There appears to be opposition to compensating for the "warm body count" and financial aid packages, but it does seem that the statute allows for a legitimate basis for compensation above base salary for areas such as retention, however defined, and/or completion rates. [New York]

• As the intent appears to be elimination of head count recruitment commissions, bonuses on merit pay may be made as long as they are not made solely as the basis of recruitment of the student. The Department should define who is an employee. [Atlanta]

• The institution would be in compliance if an institution awards merit pay to salaried employees in increments as the student successfully completes portions or the course, graduates, or gets placed in a job. [Kansas City]

IV. Annual Audits

A. The Secretary is authorized to prescribe regulations for institutional and third-party servicer audits. Section 487(c)(1)(A)(i) requires an annual audit of the financial condition of the institution in its entirety and an annual audit of the institution's compliance with the requirements governing the Title IV programs. The institution must make these audits available to cognizant guaranty agencies, eligible lenders, State agencies, and the State review entities designated under subpart 1 of part H of Title IV of the HEA.

Issues that the community was asked to address and the community's views:

1. To what extent, if any, should the annual audit requirement be waived or limited? Should this requirement for annual audits be waived for institutions participating in the Quality Assurance Program?

• Annual financial audit should be waived in all instances except in the case of new institutions, institutions undergoing a change in ownership, institutions with a cohort default rate in excess of 25 percent for one year, and institutions that did not satisfy all factors of financial responsibility in their most recent financial statement issued to the Department. Furthermore, institutions would be required to submit no more than two consecutive annual audits before being considered released from the annual audit requirement.

Annual compliance audit should be waived for all institutions except in the case of new institutions, institutions undergoing a change of ownership, and institutions which have undergone a compliance audit within the past three years which resulted in Title IV liabilities in excess of one percent of Title IV funds disbursed.

A further suggestion was made to truncate the audit requirements if the Secretary continues to require an annual audit. A minority of the group felt that annual audits, both financial and compliance, should be required and not waived. Those institutions that meet quality assurance criteria would be required to submit a short form audit on a biannual basis. [Atlanta]

• No further burden should be placed on institutions than their State already requires or than the IRS requires of them. If someone else wants the audit, the Department should be responsible for distributing them. There should be diminishing filing requirements based upon performance evaluation factors and general longevity of institutions to exempt an institution from an annual audit. A minority suggested that pledged assets be accepted at some level in lieu of a certified annual audit. [New York]

• The annual audit requirement could be waived in certain areas, e.g., the institution could be exempt from the student compliance components but not from a financial audit if the institution is in the quality assurance program. [San Francisco]

• The Department should develop a set of guidelines that would permit exemptions. [Atlanta]

2. How should guaranty agencies, lenders, and other parties request audit information from institutions?

• An audit correction action plan should be sent to guaranty agencies and lenders. Requests should be in writing with explanations of why the request is made. Freedom of Information Act procedures could be used. Requests should be made to the appropriate official on campus. Information may not be given to any third-party without the approval of the institution. [San Francisco]

• Requests should be in writing to the Chief Executive Officer and the Chief Financial Officer. A minority of the group believed that all requests should be made in

writing to the Chief Financial Officer only. [Kansas City]

• Institutions should be notified of any requests for information and when information is released to appropriate agencies. The information should be released only to the parties already listed in the statute. [Kansas City]

• Information should be provided to guaranty agencies, lenders, and other parties upon request. [Atlanta]

B. In matters not governed by specific provisions, section 487(c)(1)(B) provides for the establishment of standards of financial responsibility and administrative capability that include any matter the Secretary deems necessary for the sound administration of the financial aid programs (such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution.)

Issues that the community was asked to address and the community's views:

1. What other administrative capability or financial responsibility standards should be considered?

• Agencies other than the Department that are permitted to request the same information should only be allowed to request documents used by the Department. [New York]

• No other standards of financial responsibility should be considered. [Kansas City, San Francisco]

V. Institutional Refund Policy

Section 484B(b)(2) requires that each institution participating in any Title IV, HEA program shall have a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges, to a student who received Title IV assistance (including Federal PLUS loans received on the student's behalf) for a student who does not register for the period of attendance for which assistance was intended or withdraws or otherwise fails to complete the period of enrollment for which assistance is provided.

An institution's refund policy is considered to be fair and equitable if the policy provides for a refund in an amount of at least the largest of the amounts provided under—

(1) The requirements of applicable State law;

(2) The specific refund standards established by the institution's nationally recognized accrediting agency if those standards are approved by the Secretary;

(3) The *pro rata* refund calculation described in the statute for any student whose withdrawal date is on or before the 60 percent point in time in the period of enrollment for which the student has been charged.

The term "*pro rata* refund," means a refund by the institution to a student attending that institution for the first time of not less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less a reasonable administrative fee not to exceed the lesser of five percent of the tuition, fees, room and board, and other charges assessed the student, or $100.

"The portion of the period of enrollment for which the student has been charged that remains," is determined—

(1) In the case of an educational program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student;

(2) In the case of an educational program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student; and

(3) In the case of a correspondence program, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the number of lessons not submitted by the student.

Issues that the community was asked to address and the community's views:

1. How should the "60 percent point in time" be determined? Should this be based on scheduled time in the program or actual attendance?

• The "60 percent point in time" should be based on scheduled time in the program, not on actual attendance. [Kansas City, San Francisco, Atlanta]

• In the absence of formal withdrawal by the student, it is up to the institution to devise a mechanism to determine the last date of attendance. [Kansas City]

2. How should the term "student who is attending the institution for the first time" be defined? Should this mean the first time ever or the first time at the institution?

• Only first year, first-time students should be considered "first time." [San Francisco]

• "A student who is attending such institution for the first time" should be defined as the first time ever rather than the first time at an institution. Some attendees favored defining "first time" as the first time at the institution. Pro ration should continue until the student finishes his or her first period of enrollment for which they have been charged, or until the student has withdrawn from that term, class, or program for which they have been charged. If the student re-enters the institution, they would not be considered a first time student. [Kansas City]

• "First-time student" is a student at that particular institution in their first scheduled period of enrollment for which the student has been charged. [New York, Atlanta]

• "First-time student" should be defined as a student enrolled for the first time at the institution in an eligible program. [Atlanta]

• The regulations should not determine a minimum program length to consider a student as attending at a prior institution or current institution. [Kansas City]

• If a student enrolls for any period of time, drops out, then returns, they are not considered enrolled for the first time for the second enrollment period. If standard terms of enrollment are used, the student should be considered first time for the first term of enrollment for which they were charged. If standard terms are not used, the lesser of 60 percent of the first academic year or 60 percent of the program should be used. [Atlanta]

3. How should the term "period of enrollment for which the student has been charged" be defined?

• The term "period of enrollment for which the student has been charged" should be left to the institution to define based on scheduled time. [New York]

• The "period of enrollment for which the student has been charged" should be defined based on full charges for the increment of the enrollment period defined by the institution as the "period for charges." [Kansas City]

• The "period of enrollment for which the student has been charged" should be defined as the length of time for which the student was initially charged. For example, for an institution that charges by semester, the first semester the student was charged is the relevant period of enrollment. [Atlanta]

• The "period of enrollment for which the student has been charged" should be defined as a minimum of one academic term, quarter, or semester or, for clock hour institutions, as a minimum of one-third of an academic year. If the institution charges for a full program, the length of the program should be defined as an academic period. [Kansas City]

• The "period of enrollment for which the student has been charged" should be defined as the length for which a student would be eligible to receive Title IV assistance. [San Francisco]

4. Should the regulations address specific requirements regarding the treatment of equipment or book costs to be included in *pro rata* refund calculations?

• Books and supplies should be excluded from the *pro rata* calculation. Only fees for services rendered over time, e.g., lab fees, should be included. Exclude "up front" fees (application) and books, supplies, and equipment up to a certain dollar amount. There is a difference between a service fee and a purchase of supplies, equipment, and books. Purchases should be excluded. [New York]

• The regulations should state that equipment, books supplies, telephone charges, parking fines, etc. should not be included with *pro rata* requirements. [Kansas City, Atlanta]

• Charges for equipment, instructional materials, etc. should not be included in the calculation for refund purposes if separately charged by the institution. [San Francisco]

• If books and supplies are provided by the institution and the institution has delivered the books and supplies to the student, the books and supplies should be excluded from the *pro rata* refund policy. [Kansas City]

• Certain fees assessed by the institution should be included in the *pro rata* refund where the students do not realize the benefits over the enrollment period to include one time charges, i.e., application fee, orientation charges, testing fees, and deferred payment fees. Other charges assessed by the

institution should be excluded from the *pro rata* refund when the student does not realize the benefit over the enrollment period to include fines, penalties, and individual charges (i.e., parking fines, and health center charges.) Books and supplies should not be included in *pro rata* refund unless they are considered a mandatory charge by the institution (i.e, not when the student has the option of buying from the institution or some other source.) [Atlanta]

• If all equipment and books are purchased at one time or issued to the student before he or she terminates his or her enrollment, the cost should be included in the refund. The institution should charge the whole amount which is not returnable. Equipment must be returned and able to be used again. If equipment has not yet been issued, the student would be eligible for a 100 percent refund. [San Francisco]

5. Should the regulations address a time frame for student refunds? Should the regulations have a minimum program length that a student must complete before the student will not be considered to be attending "for the first time?"

• The time frame for all refunds should be uniformly 60 days from the date the institution becomes aware that a student has withdrawn. [San Francisco]

• The regulations should indicate the time frame for issuing student refunds to be the same as current refund requirements- within 60 days of determination that a refund is in order. [Kansas City]

• Refunds should be made 30 days from date of determination. [San Francisco]

• Regulations should not address a time frame for refunds since it is already addressed by the State or accrediting agencies. [Atlanta]

6. Should the regulations address how institutions will account for credit balances? Should these funds be kept in a restrictive account rather than the institution's general operating account?

• The regulations should not address how institutions account for credit balances nor restrictive or general operating accounts. A minority of the group felt that students with a baccalaureate degree should be exempt from the language. [Kansas City]

• The group recommends that regulations remain silent on the method by which institutions account for credit balances. [San Francisco, Atlanta]

• After all returns have been made to the Federal program from which the funds came, there should be a reasonable period of time for the student to request his account balance if there are educational costs outstanding. [San Francisco]

7. Since the statute would imply than an institution is required to calculate all three policies and make the payment on the one most generous, should the institution be allowed to determine which is generally most generous an make that the official refund policy?

• Institutions should be allowed to determine the refund policy that is generally most generous and use that policy. Institutions would define "generally most generous." [Kansas City, San Francisco, Atlanta]

• The Department should issue guidelines for institutions to use in determining which method to use. If the institutions use average costs in awarding and packaging, average costs should be used in refunds. [San Francisco]

• Institutions should not be allowed to determine which refund is "generally most generous." This is inconsistent with the statute. The statute does, however, permit institution to develop an algorithm that integrates the three refund policies and yields the calculation "most generous" to each individual student. The requirements should apply only to the calculation of refunds for students who are recipients of financial aid under Title IV. [Kansas City]

8. How should "fair and equitable" be defined?

• Fair and equitable" should be defined as most generous to the student. [San Francisco]

• It is not necessary to define "fair and equitable" separately from the requirements of the statute and the regulations. The Student Commission addresses adequately the definition of "fair and equitable." [Kansas City, Atlanta]

• The statutory mandates requiring *pro rata* refund should be viewed as a limitation and not as an example for the purposes of Title IV refund only. [Kansas City]

VI. Student Consumerism Requirements

A. Under section 485(a), additional provisions have been added to the list of information an institution must disclose, upon request, to students and prospective students as part of the student consumerism requirements.

The institution's refund policy must identify that refunds will be credited in the following order:

(a) To outstanding balances on Federal Family Education Loans;

(b) To outstanding balances on Federal Direct Loans;

(c) To outstanding balances on Federal Perkins Loans;

(d) To awards under Federal Pell Grants program;

(e) To awards under Federal SEOG program;

(f) To awards under Federal Work Study program;

(g) To other Title IV assistance; and

(h) To the student.

Issues that the community was asked to address and the community's views:

1. Should regulations require institutions to publicize how refunds will be processed and what refunds students are entitled to receive in the event that the institution closes?

• Regulations should require institutions to publicize how refunds will be processed and what funds students are entitled to receive in the event the institution closes. [Kansas City]

• Institutions should not have to publicize how refunds will be processed and what funds students are entitled to receive in the event the institution closes. This is not a consumer information issue. This is information to be disbursed if the institution closes. Information should be available to students upon request. A statement could be put in the catalog that will lead the student to ask relevant questions. The Department should work with State Agencies to develop plans that should be made available to students on request. There is very little probability that certain strong institutions will close. All institutions should not be required to disclose this. [San Francisco, Atlanta]

2. Should consumer information address teachouts or other State or accrediting agency mandated requirements to protect student consumers in the case of school closure?

• Consumer information should not address teachouts or other state or accrediting agency mandated requirements to protect student consumers in the case of institution closure. [Kansas City, Atlanta]

3. Should institutional discretion be permitted when determining the order in which loan funds under the FFEL program are returned?

• Institutional discretion should be permitted when determining the order in which loan funds under the FFEL program are returned. [Kansas City, San Francisco, Atlanta]

4. Should guarantee and origination fees be included in the refund to totally pay off a FFEL program loan?

• Guaranty and origination fees should not be included in the refund to totally payoff an FFEL program loan. [Kansas City]

• Guaranty and origination fees should be included in the refund to totally payoff an FFEL program loan. [Atlanta]

• The full amount should be included in the refund as a deterrent to default on the small remaining amount. This should be done at the institution's discretion. Institutions should not be required to pay back money they have not received, i.e., guaranty and origination fees. Institution should be permitted to include these fees if they choose. [San Francisco]

5. How should the guaranty agencies monitor students to ensure that multiple FFEL funds are treated as one for the purposes of billing and deferments from one lender?

• Guaranty agency monitoring of students to ensure that multiple FFEL funds are treated as one for the purpose of billing and deferments from one lender should be handled under the FFEL program. This is not a consumer information issue. [Kansas City, San Francisco]

• Guaranty agency monitoring of students to ensure that multiple FFEL funds are treated as one for the purpose of billing and deferments from one lender should be done through the National Student Loan Data Bank. Agencies should identify all loans obtained through that agency. [Atlanta]

VII. Institutional Eligibility and Certification Procedures—Part H, Subpart 3

A. Section 498(a), (b), and (f) of the HEA establish application requirements and procedures for the Secretary to use to determine an institution's legal authority to operate within a State, accreditation, financial responsibility, and administrative capability.

Issues that the community was asked to address and the community's views:

1. What information should the Secretary require on the form to supplement the specific information required by the statute?

• Information should include documentation of an institution's accreditation or preaccreditation, degree-granting authority, authority to provide postsecondary education, and State licensure. [Kansas City]

• With one exception, participants were satisfied that information currently collected on the Department's application forms is adequate, and new requirements would needlessly add burden. One participant recommended a separate application for proprietary institutions. [New York]

• Specific categories should be established for different types of institutions and academic functions. Information should include the names and social security numbers of key administrative personnel and board members. [San Francisco]

• Provided that new information required by statute is collected (financial statements, description of student aid processing at the institution, information on main and branch campuses, and information on the institution's third-party servicers), information currently collected is sufficient. However, additional information should be collected on whether an institution's owner has had substantial control over a closed institution that owes refunds to students or lenders. [Atlanta]

2. Should the Audit Guide be revised to require the auditor to verify the information on the application form?

• Participants recommended no changes in the audit guide. [Kansas City, New York, San Francisco, Atlanta]

• A minority of participants indicated that there should be changes, without specifying what changes are needed. [Kansas City]

B. Section 498(c)(1) addresses financial responsibilities and requires an institution to show that it is able to provide promised services, to provide administrative resources necessary to Title IV duties, and the meet all of its financial obligations including refunds and repayments to the Secretary for Title IV liabilities.

Issues that the community was asked to address and the community's views:

1. What information should be required from an institution to permit the Secretary to determine that the institution provides the services described in its official publications and statements?

• No additional information needs to be collected from institutions. [Kansas City, San Francisco]

• If the Secretary needs additional information, the Secretary should be able to collect it from data made available through State and accrediting functions. [Kansas City, New York, Atlanta]

• The best way to obtain information would be through site visits. [New York, Atlanta]

• The Department needs to take action on institutions with failing financial statements, rather than simply collect them. [New York]

• The establishment of uniform financial standards would be difficult, because different standards need to apply to different types of institutions. [New York]

2. What supporting information should be submitted to establish that an institution has the administrative resources to comply with its program responsibilities?

• The financial information concerning each branch campus of an institution should be evaluated, without simply relying on the financial information of an institution as a whole. [New York]

• Employee biographies with social security numbers should be provided. [San Francisco]

3. What level of financial resources are needed to demonstrate that an institution can meet potential refund and repayment obligations, and should institutions be required to set aside funds for these purposes?

• An institution should be able to provide for the payment of refunds that could occur over a 30-day period, but the institution should not be required to set aside funds specifically for this purpose. [Kansas City]

• The statutory provisions for institutions to maintain cash reserves unless they are covered by State tuition recovery plans should be sufficient. [New York]

• No requirements are necessary. The Department should have the discretion to review and establish amounts when necessary. [San Francisco]

C. Section 498(c)(2) requires that, notwithstanding section 498(c)(1), if an institution fails to meet the criteria prescribed by the Secretary with respect to operating losses, net worth, asset-to-liabilities ratios, or operating fund deficits, the institution must provide the Secretary with satisfactory evidence of its financial responsibility in accordance with section 498(c)(3).

Issues that the community was asked to address and the community's views:

1. What standards should be set for each of these criteria?

• One standard should not be applicable to all institutions. [New York]

• Institutions should be allowed to explain their financial statements before decisions in this area are reached. [New York]

• The institutions financial condition should be examined over a certain time period so that decisions regarding its financial responsibility are based on a trend. [New York]

• The Department should particularly consider an institution's statement of cash flow. [New York]

• Ratios that are used to measure stability in the business world should be used. [New York]

• Current standards should be used with Departmental discretion. [San Francisco]

• Standards for these criteria should be: a ratio of assets to liabilities of 1:1, showing a positive net worth, and not having two consecutive years of negative operating cash flow or its equivalent for fund accounting purposes. These should be indicators of financial responsibility, not absolute minimums. The importance of each criteria should be given its proper weight. [Atlanta]

D. Section 498(c)(3) provides that the Secretary may find an institution to be financially responsible, notwithstanding failure under 498(c)(1) and 498(c)(2), if the institution; (1) Provides third-party guarantees of at least one-half of annual potential liabilities, (2) is backed by the full faith and credit of a State or its equivalent, (3) establishes that it is a going concern capable of meeting all its obligations, or (4) has met comparable standards set by the Secretary.

Issues that the community was asked to address and the community's views:

1. What type of third-party guarantees will be acceptable to the Secretary?

• Acceptable third-party guarantees should include bonds, institutional collateral, or a tuition recovery fund. [New York]

• Acceptable third-party guarantees should include performance bonds, letters of credit, or other comparable instruments. [Kansas City, Atlanta]

• Acceptable third-party guarantees should include performance bonds, letters of credit, third-party escrow arrangements, and certificates of deposit. [San Francisco]

2. Under what conditions will each type of instrument be used?

• These measures should be used for institutions that close or institutions that don't properly repay any required refunds. [New York]

• These measures should be used only if the institution can find no other way to prove its financial status. The institution should have an opportunity to negotiate with the Department before the third-party guarantees are imposed. [Kansas City]

• These measures should be used anytime the Secretary determines that the institution is not meeting its financial responsibilities. [San Francisco]

• These measures should be used if an institution fails to satisfy a liability established by the Secretary after an administrative review process. [Atlanta]

3. How does the Secretary determine the amount equal to one-half of the annual potential liabilities of an institution, which is the minimum guarantee amount?

• This should be determined based on the institution's retention or refund history [New York]

• The annual potential liability should be defined as the sum of the difference between charges paid by the student (regardless of the source of payment) and the *pro rata* amounts earned by the institution according to its applicable refund policy. [Atlanta]

• The annual potential liability should be based upon the institution's annual Title IV funds multiplied by one-half of its withdrawal rate. [San Francisco]

4. What standards will be used to determine when guarantees in excess of the minimum amount will be required for an institution that fails to demonstrate financial responsibility?

• Guarantees in excess of the minimum amount should be required if the institution must also have funds to make teach out arrangements. [New York]

• Guarantees in excess of the minimum amount should not be imposed. [Kansas City, Atlanta]

• Guarantees in excess of the minimum amount should be required when the institution cannot meet its current financial obligations. [Atlanta]

5. How can an institution that does not demonstrate financial responsibility otherwise show that it is capable of meeting all of its financial obligations.

• All factors must be analyzed as a whole. [New York]

• The Department should use the process used by accrediting agencies to determine financial responsibility. [New York]

• Institutions should be considered financially responsible if they are on reimbursement. [Kansas City, Atlanta]

• Institutions should be considered financially responsible if they are funded through an escrow arrangement. [San Francisco, Atlanta]

E. Section 498(c)(4) provides that the determination that an institution has met certain standards of financial responsibility will be based on an audited and certified financial statement, done in accordance with standards of the American Institute of Certified Public Accountants. Additional audits may be required.

Issues that the community was asked to address and the community's views:

1. When would the Secretary require additional audits, and what additional items should be required for such audits?

• The Department should be able to request a more detailed audit of a particular segment of the audited financial statement. [New York]

• The Department should take into account the cost of requests for additional information. [New York]

• The Department should be able to request the more frequent submission of audited financial statements in cases of fraud, abuse, or a negative program review finding. For additional submissions requested at the Secretary's discretion, it is suggested that the Secretary be willing to look at something other than a full audited financial statement. [Kansas City]

• At the discretion of the Secretary, additional reports could include CPA prepared *pro forma* statements, cash forecasts, enrollment forecasts, and operating budgets with comparisons of actual to budget. [San Francisco]

• There should be no need for interim reports since they are now required annually. If interim information is requested, it should be unaudited. However, if an institution is seeking relief from a previously imposed fiscal restriction before its next scheduled statement, the interim statement should be audited. [Atlanta]

2. What guidelines and time periods should be set for provisional certification?

• Each institution should be treated on a case-by-case basis subject to the Secretary's discretion. [New York]

• A two-year time period should be used for provisional certification. [New York]

• The time period should not exceed three-years and the institution should have the ability to achieve full certification sooner. [San Francisco]

F. Section 498(c)(5) provides that an institution must maintain sufficient cash reserves to ensure repayment of any required refunds. Institutions that participate in and contribute to a State tuition recovery fund would be exempt from this requirement.

Issues that the community was asked to address and the community's views:

1. What are sufficient cash reserves? How are they measured, what types of funds may be included, and how are they protected from use for other purposes?

• Sufficient cash reserves should be defined as a certain percent of unearned tuition based on the institution's refund history and established only when there is an indication of a problem or high-risk institution. This could be part of provisional certification. [New York]

• Sufficient cash reserves should be defined as 100 percent of any unearned tuition liability from Title IV awards. A minority of the group thought an amount to cover loans where the loan guarantee might be invalidated because of fraud should also be included. Cash reserves should include cash, accounts receivable, and liquid assets that can be converted to cash within 30 days. [Kansas City]

• If the institution has been timely (60 days) in processing refunds for one year, no cash reserves should be required. If the institution has not been timely, an increasing percentage should be reserved based on the total Title IV funds processed by the institution. The regulations should be written to provide incentives for institutions with a good performance record. The Department should take into account whether the refunds were delinquent because of personnel problems as compared to a poor financial position. When an institution is required to reserve cash, any earnings should accrue to the institution. Letters of credit should be permitted as a substitute for a cash reserve. [San Francisco]

• A cash reserve is sufficient if it equals anticipated refund to be paid during a 30 day period based on the average of refunds paid during the preceding 12 month period. Cash reserves are defined as cash and cash equivalents plus other current assets that can be converted to cash within 30 days. Segregation of the cash reserve is not required by law nor is it desirable. [Atlanta]

2. What are the components of a state tuition recovery fund that demonstrates that an institution contributing to the fund will be able to pay refunds?

• If an institution contributes to a State tuition recovery fund they should be exempt automatically from this requirement. [New York]

• The components of a State tuition recovery fund that will demonstrate that an institution contributing to the fund will be able to pay refunds are those tuition recovery components that will pay a lender the required refund and/or pay the student the required refund. [Atlanta]

3. What information must institutions provide to permit the Secretary to determine that an institution will be able to use the tuition recovery fund to pay refunds if the institution itself is unable to do so?

• An institution should provide a letter from the State that confirms that they will be able to use the State tuition recovery fund to pay refunds. [New York]

• An institution should provide a description of the legal structure of the fund and audited financial statements so the Secretary may determine that the institution will be able to use the tuition recovery fund. [San Francisco]

4. Should the Secretary compile and maintain a list of State tuition recovery funds if that meets the requirements that permit an institution's participation in that fund to operate in lieu of its cash reserve requirements?

• The Secretary should compile and maintain a list of State tuition recovery funds that meet the requirements that permit an institution's participation in that fund to operate in lieu of the cash reserve requirements. [New York, San Francisco, Atlanta]

• An institution should provide the name and address of the State tuition recovery fund to confirm that they will be able to use the State tuition recovery fund to pay refunds. [Atlanta]

G. Section 498(d) authorizes the Secretary to establish procedures and standards relating to administrative capability, including the consideration of past performance of institutions or individuals in control of such institutions and maintenance of records.

Issues that the community was asked to address and the community's views:

1. What measures of past performance will be used, and what time periods should be included in the review?

• No other standards of administrative capability or financial responsibility should be considered. There is an inundation of oversight responsibility and the requirements placed on institutions is sufficient. [Kansas City, San Francisco, Atlanta]

• In certain cases, institutional administrators should meet a minimum experience requirement (e.g., five years of prior experience in administration.) [San Francisco]

• School owners, corporate directors and officers, and the chief school administrator should be required to monitor and investigate school compliance, take whatever steps are within the person's authority to effect the correction of non-compliance, and report to the Department, the accrediting agency, and the State licensing agency any non-compliance that has not been corrected. California law requires this. [San Francisco]

• The current § 668.14 and § 668.15 should be used to measure administrative capability with the exception of the withdrawal rates. [Kansas City]

• A minority of the group recommended that the Secretary look into all complaints filed against institutions with the local law enforcement authorities even though the complaint may not warrant pulling of an institution's license or loss of accreditation. [Kansas City]

• The Department should look at the past two audits to see that performance reviews have corrected all the deficiencies as a basis that the institution is administratively capable. This should not be determined arbitrarily, but should be determined by a review. [New York]

• Research data is needed to establish a basis for past performance. Other measures of past performance that should be used: Placement, default and withdrawal rates, past performance reviews and implementation of recommendations, personnel turnover, and faculty/student ratio. [San Francisco]

• Default rates, course completion and withdrawal rates, and job placement rates

must be considered together. These should be triggers that, in certain combinations, should cause more review of administrative capability. Mitigating circumstances must be considered. [New York]

• Standards for default rates, course completion and withdrawal rates, and job placement rates should be applicable to all institutions. No new standards should be set without historical data. [San Francisco]

• Student or consumer complaints against an institution should be taken into consideration if a pattern of legitimate complaints indicate a need for review by an outside entity. [New York]

• There should be no standard measure of an institution's administrative capability with respect to student or consumer complaints against an institution. The Department should review trends and the nature of complaints. [San Francisco]

H. Section 498(g) provides that the Secretary may certify an institution's eligibility for a period not to exceed four years.

Issues that the community was asked to address and the community's views:

1. Should the Secretary adopt rules addressing the length of a period of eligibility and if so what should these standards be?

• The four-year periods of eligibility should be based on award years. [Kansas City]

• Any schedule developed for the review of institutions for this purpose should be published. [New York]

• Regulations and standards in this area are not necessary; the statute is specific enough. [San Francisco]

• In cases where the eligibility process requires a site visit, and the Secretary is unable to perform the site visit in a timely manner, eligibility should continue beyond the expiration date until the eligibility process is completed. [Atlanta]

I. Section 498(h) provides that the Secretary may provisionally certify an institution for not more than one year for initial certification, or three years under certain conditions. Provisional certification may be withdrawn if the institution is unable to meet its responsibilities. Also, if an accrediting agency's recognition is withdrawn, the Secretary may continue the eligibility of accredited institutions for up to 18 months.

Issues that the community was asked to address and the community's views:

1. What standards should be used to determine whether an institution may be granted provisionally certification?

• An institution could be provisionally certified if it does not meet the third criterion for financial responsibility in section 498(c) of the HEA. [Kansas City]

• For an initial application, the Secretary should rely on the statutory language. [New York]

• An institution should be provisionally certified if it is unable to meet a regulatory standard for a reason beyond the institution's control. [New York]

• The Secretary should use the same standards that are used for determining financial responsibility and administrative capability. [San Francisco]

• An institution that meets all requirements for certification other than the completion of a required site visit should be provisionally certified if the Secretary is unable to conduct the site visit in a timely manner. [Atlanta]

2. What procedures and standards should the Secretary use to decide whether an institution that has received provisional certification is unable to meet its responsibilities?

• Before revoking an institution's participation, the Secretary should conduct proceedings for a hearing, and should provisionally certify an institution until the completion of those proceedings. [New York]

• The Secretary should use the same standards that are used for determining financial responsibility and administrative capability. [San Francisco]

• The Secretary should use the results of audits, audited financial statements, and program reviews to determine whether to certify an institution provisionally and conduct a site visit at the institution. [Atlanta]

3. Under what circumstances should the Secretary continue the eligibility of accredited institutions where their accrediting agency loses its recognition? Should the period of extension be the same for all institutions?

• According to a minority of participants, an institution identified as having administrative capability problems should be provisionally certified for no more than one year. [Kansas City]

• All institutions should be provisionally certified for 18 months, and the Secretary should ensure that a process is available for such institutions to become accredited by another agency. [San Francisco]

• Eligibility should be continued in all cases and for the same period of time for all institutions. The Secretary should notify an institution promptly of the Secretary's action, the institution should promptly apply for accreditation with another agency and notify the institution of that fact, and the institution should make a good-faith effort to expedite its accreditation. [Atlanta]

[FR Doc. 94–3879 Filed 2–25–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
February 28, 1994

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

NOFA for Public and Indian Housing Family Investment Centers; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–01]

NOFA for Public and Indian Housing Family Investment Centers

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

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces a total of $74 million in funding, including FYs 1993 and 1994 appropriations of $25,000,000 and $25,674,991, respectively, for Family Investment Centers for families living in public and Indian housing. This program provides grants to public housing agencies and Indian housing authorities (collectively HAs) to provide families living in public and Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence. The grants will be of up to three to five years in duration, depending upon the activities undertaken. Regulations on this program will be published in a consolidated rule on resident initiatives that the Department anticipates publishing in early 1994.

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, ranking factors, and application processing, including how to apply and how selections will be made.

DATES: Application kits will be available beginning March 24, 1994. The application deadline will be 4:30 p.m., local time, on June 22, 1994.

ADDRESSES: An application kit may be obtained from the local HUD Field Office with delegated responsibilities over an applicant public/Indian housing agency (See Appendix for listing), or by calling the HUD Resident Initiatives Clearinghouse toll free number 1–800–955–2232. Telephone requests must include your name, mailing address, or post office address (including zip code), telephone number (including area code), and should refer to document FR–3397–N–01. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Resident Initiatives (ORI), or Dom Nessi, Director, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone numbers: ORI (202) 708–3611; and ONAP (202) 708–1015 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 (not a toll free number) for information on the program.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). Information on the estimated public reporting burden was provided for public comment in a separate notice published in the **Federal Register** on February 17, 1994 (59 FR 8012). The Department expects that a control number will be issued by OMB about March 22, 1994, after completion of a 30-day comment period for the paperwork burden notice. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

No person may be subjected to a penalty for failure to comply with the information collection requirements until they have been approved and assigned an OMB control number. The public reporting burden for the collection of information requirements contained in the February 17 notice is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The February 17 notice invites interested persons to submit comments on the paperwork burden proposals to Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

I. Purpose and Substantive Description

A. Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FIC). Implementing regulations for the program will be promulgated as part of a consolidated rule on resident initiatives, which the Department anticipates publishing next year. This NOFA is being issued in conformity with the statutory requirements before the final rule is in place in order to make funding available as soon as possible.

B. Allocation Amounts

In the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102–389, approved October 6, 1992), Congress appropriated $25 million for Family Investment Centers; an additional $25,674,991 is available for the program through an appropriation in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, approved October 28, 1993). These amounts are being combined with excess recaptured funds carried over from FY 1993 to make a total of $75 million available for funding Family Investment Center activities. An additional $10 million may become available pending Secretarial and congressional actions.

Of the $75 million total current funds, $74 million is being made available under this NOFA. The Department intends to use $1 million for purposes of demonstrating ways for families living in public and Indian housing in a neighborhood undergoing a concentrated effort of local revitalization to gain access to education and employment activities to achieve self-sufficiency and independence, by enabling HAs to develop facilities for training and support services. These funds will be used to mobilize public and private resources to expand and improve delivery of services, to provide funding for essential training and support services that cannot otherwise be funded, to improve the capacity of management to assess the training and services needs of eligible families, to coordinate the provision of training and services that meet such needs and to ensure the long-term provision of such training and services. HUD expects that this funding will demonstrate the importance of comprehensive support services in contributing to the local neighborhood revitalization. A separate Notice announcing these funds and soliciting public comment is expected to be published soon in the **Federal Register**.

To ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application under this NOFA (published: February 28, 1994. A public housing agency/Indian housing authority (collectively, HAs) may apply to establish one or more Family Investment Centers for more than one public or Indian housing development; however the maximum grant amount per applicant under this NOFA is $1 million.

C. Overview and Policy

The stated purpose of section 22 is:

[T]o provide families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence by: (a) developing facilities in or near public housing for training and support services; (b) mobilizing public and private resources to expand and improve the delivery of such services; (c) providing funding for such essential training and support services that cannot otherwise be funded; and (d) improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services.

Although Section 22 is phrased in terms of families living in public housing, the program is also available to Indian Housing Authorities (IHAs), because of section 527 of the National Affordable Housing Act (104 Stat. 4216; 42 U.S.C. 1437aa note) (NAHA). Section 527 extends the applicability of many NAHA provisions affecting Title I of the 1937 Act (including section 515, which added Section 22) to housing operated by an IHA.

FIC provides funding to HAs to access educational, housing, or other social service programs to assist public and Indian housing residents toward self-sufficiency. On May 13, 1993, 33 representatives from public/Indian housing authorities, resident organizations, and nonprofit housing agencies were convened to discuss and make suggestions during the design stage of the Family Investment Centers program. The Department envisions that FIC will complement other self-sufficiency activities, such as the Family Self-Sufficiency (FSS) Program (see 58 FR 30858 (May 27, 1993) for the interim rule that currently governs the FSS programs) and the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). As an incentive to become self-sufficient, the earnings of public or Indian Housing families participating in the FIC shall not be treated as income for the purposes of any other program or provision of State or Federal law, including rent assistance (see Section I.F(5) of this NOFA). The FIC is administered by the Department's Office of Resident Initiatives in the Office of Public and Indian Housing, with assistance from a network of Resident Initiatives Coordinators (RICs) in HUD's Regional and Field Offices.

D. Definitions

Eligible Residents means participating residents of a participating HA. If the HA is combining FIC with the Family Self-Sufficiency (FSS) program, the term also means Public Housing FSS and Section 8 families participating in the FSS program.

Secretary means the Secretary of Housing and Urban Development.

Service Coordinator means, for purposes of this NOFA, any person who is responsible for:

(1) Determining the eligibility of families to be served by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a HA-wide or less than HA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding under this NOFA;

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under this program;

(6) Coordinating the development and implementation of the FIC program with other self-sufficiency programs and other education and employment programs; or

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Supportive Services means new or significantly expanded services essential to providing families in public and Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. (HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided). Supportive services may include:

(1) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(2) Employment training and counseling (*e.g.*, job training, preparation and counseling, job development and placement, and follow-up assistance after job placement);

(3) Computer skills training;

(4) Education (*e.g.*, remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency;

(5) Transportation, as necessary to enable any participating family member to receive available services or to commute to his or her place of employment;

(6) Personal welfare (*e.g.*, substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(7) Supportive Health Care Services (*e.g.*, outreach and referral services); and

(8) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

Vacant Unit means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and, as a result, the amount paid by the family to the HA is zero.

E. Eligibility

(1) *Eligible Applicants.* Funding for this program is limited to public and Indian housing authorities. The factors for award reflect that more than half of the points possible are for the provision of supportive services, whether provided by the HA or through partnerships with other social service agencies. Facilities assisted shall be on or near the premises of public or Indian housing. Two or more HAs may apply jointly if they demonstrate that it is feasible to run the program together; however, the maximum grant per application under this NOFA is $1,000,000.

Although the program is intended to benefit public and Indian housing residents, an applicant that is otherwise eligible and is combining FIC activities with FSS activities may use FIC funds to serve both HA residents and section 8 families who are participating in the FSS Program. For all other families using FIC services, costs incurred are to be borne by other resources.

To be eligible under this NOFA, a HA cannot have serious unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance

with civil rights laws unless the HA is operating in compliance with HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [PHAs only] or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57) [PHAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(2) *Eligible Activities.* Program funds may be used for the following activities:

(a) The renovation, conversion, or combination of vacant dwelling units in a HA development to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas in a HA development to accommodate the provision of supportive services;

(c) The renovation of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(ii) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

(3) *Other Eligibility Related Requirements.* (a) Grants used solely for the activities listed in paragraphs (a), (b), or (c) of Section I.E(2), "Eligible Activities," of this NOFA, shall be completed within three years of the effective date of the grant. Each applicant should submit a description of the renovation or conversion to be conducted, along with a budget and timetable for those activities. Other eligible activities may be funded over a maximum five-year period.

(b) Each applicant must submit a budget, timetable, and list of milestones for the five-year period (following initial receipt of funding), at least, covered by the applicant's description of supportive services. Milestones shall include the number of families to be served, types of services, and dollar amounts to be allocated over the five-year period.

(c) Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities funded under this NOFA.

(d) When a grant application is approved, the HA must receive approval from HUD to conduct renovation or conversions. Approval must be provided prior to drawing down funds.

(e) If a renovation is done off-site, the HA must provide documentation that it has control of the proposed property. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation (see Sections III.B(3) and III.C(15) of this NOFA).

F. Other Program Requirements

(1) *Resident Involvement.* The Department has a longstanding policy of encouraging HAs to promote resident involvement, and to facilitate cooperative partnerships to achieve specific and mutual goals. Therefore, residents must be included in the planning and implementation of this program. The HA shall develop a process that assures that RC/RMC/RO representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application in response to this NOFA. The HA shall give full consideration to the comments and concerns of the residents. The process shall include:

(a) Informing residents of the selected developments regarding the preparation of the application, and providing for residents to assist in the development of the application, as appropriate.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development(s) involved; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the application final.

(c) Provide to any resident organization representing the development a summary of the resident comments and its response to them, and notify residents of the development(s) that this summary and response are available for reading in the management office.

(d) After HUD approval of a grant, notify residents of the development, and any representative organizations of approval, of the grant; notify the residents of the availability of the HUD approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

(2) *Training/Employment/Contracting of HA Residents.* (a) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods. For purposes of training and employment, the HA may offer opportunities to Section 3 residents in the following priority: (i) Residents of the housing development for which the assistance is being provided; (ii) residents who reside within a project area as defined in 24 CFR 135.15 and who reside in developments managed by the HA that is expending the assistance; and (iii) other residents of the Section 3 area. Therefore, at a minimum each HA and each of its contractors and subcontractors receiving funds under this program shall make best efforts to employ HA residents to provide services and renovation or conversion work.

(b) For purposes of the requirements under Section 3, a best effort means that the HA shall:

(1) Attempt to recruit HA residents from the appropriate areas through local advertising media, signs placed at the proposed FIC project site, and community organizations and public or private institutions operating within the development area. The HA shall include in its outreach and marketing efforts, procedures to attract the least likely to apply for this program because it includes construction/renovation type of activities, *i.e.*, low-income

households headed by women and persons with disabilities; and

(2) Determine the qualifications of HA residents when they apply, either on their own or on referral from any source, and employ HA residents if their qualifications are satisfactory and the contractor has openings. If the HA is unable to employ residents determined to be qualified, those residents shall be listed for the first available openings.

(3) *Davis-Bacon Requirements.* All laborers and mechanics employed by contractors or the HA in renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5). All architects, technical engineers, draftsmen, and technicians employed with respect to such work shall be paid not less than the wages prevailing in the locality as determined by HUD. These requirements do not apply to volunteers under the conditions set out in 24 CFR part 70.

(4) *Resident Compensation.* Residents employed to provide services funded under this program or described in the application shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

(5) *Treatment of Income.* (a) *1937 Act.* As provided in section 22(i) of the United States Housing Act of 1937 (1937 Act), no service provided to a HA resident under this program may be treated as income for the purpose of any other program or provision of State, Tribal, or Federal law. Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any HA resident resulting from participation in the FIC program shall not be considered as income in computing the tenant's total annual income that is used to determine the tenant rental payment during:

(i) The period that the resident participates in the program; and

(ii) The period that begins with the commencement of employment of the resident in the first job acquired by the resident after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(*A*) The date the resident ceases to continue employment without good cause; or

(*B*) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program.

(b) *NAHA.* In addition, as provided in section 957 of NAHA, the rent charged to a family whose monthly adjusted income increases as a result of the employment of a member of the family who was previously unemployed may not be increased as a result of the increased monthly adjusted income due to such employment by more than 10 percent in each 12-month period during the 36-month period beginning upon such employment.

(6) *Reports.* Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

G. Ranking Factors

Each application for grant award will be evaluated if it is submitted as required under Section II.B of this NOFA and meets the eligibility requirements in Section I.E of this NOFA. Applications submitted for funds that include renovation, conversion, or combination of dwelling unit activities will be competitively selected based on the highest scores out of a possible 135 points. Applications submitted for funds solely to implement supportive services will be competitively selected based on the highest scores out of a possible 140 points.

Initially, HUD will distribute funds geographically in order to seek diversity through an appropriate mix of public and Indian housing authorities. Grants will be awarded to the two highest ranked eligible applicants in each funding category per HUD region. In addition, grants will be awarded to the two highest ranked eligible IHA applications in each funding category on a nationwide basis. All of the remaining applications will then be placed in overall nationwide ranking order, with the remaining funds granted in order of rank until all funds are awarded.

HUD will review and evaluate the application as follows, according to whether the application seeks funds for supportive services only or for other activities.

(1) *Conversion/Renovation/ Supportive Services Activities* (Maximum 135 points).

Applications for funds for these activities will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible residents [10 points];

(b) The extent to which the envisioned renovation, conversion and combination activities are appropriate to facilitate the provision of FIC services [15 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the HA has demonstrated that it has partnered with residents in the planning phase for the FIC, and will further include the residents in the implementation phase [15 points];

(e) The extent to which the HA has demonstrated that it will contract with or employ residents to provide services and conduct conversion and renovation activities [15 points];

(f) Certification that the HA is implementing a FSS program. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) may provide similar certification [5 points];

(g) The ability of the HA or designated service provider to provide the supportive services [5 points];

(h) The extent to which the HA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with tribal, State, or local social service agencies [10 points]. In assigning points for this factor, HUD shall consider the extent of the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (*i.e.*, counseling and training); the use of public/Indian housing funds available through existing State and local programs; or other commitments.

(i) The extent to which the HA has demonstrated success in modernization activities under the Comprehensive Grant/Comprehensive Improvement

Assistance (CIAP) Programs (see 24 CFR part 968), the extent to which the HA has a good record of maintaining and operating public housing as determined by the Public Housing Management Assessment Plan (PHMAP) (see 24 CFR part 901) [10 points], and has utilized innovative and workable strategies to improve management (e.g., LEAP, which uses highly skilled retired military personnel in key management positions); and

(j) The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for eligible residents [25 points].

(2) *Supportive Services Only* (Maximum 140 points). Applications for funds for these activities will be scored on the following factors:

(a) Evidence of the need for supportive services by eligible residents. [10 points];

(b) Certification that the HA has control of a site to facilitate the provision of supportive services appropriate for the FIC program [10 points];

(c) The extent to which each service provider has evidenced that supportive services and other resources will be provided until at least the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA [25 points];

(d) The extent to which the HA has demonstrated that it has included residents in the planning phase for the FIC, and will further include the residents in the implementation phase [10 points];

(e) The extent to which the HA has demonstrated that it will contract with or employ residents to provide services [15 points];

(f) Certification that the HA is implementing a FSS program. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) may provide similar certification [5 points];

(g) Past experience in obtaining and providing similar services for HA families [15 points];

(h) The ability of the HA or a designated service provider to provide the supportive services [5 points];

(i) The extent to which the HA has a good record of maintaining and operating public housing, as determined by its Public Housing Management Assessment Plan (PHMAP), and has utilized innovative and workable strategies to improve management (e.g., LEAP, which uses highly skilled retired military personnel in key management positions) [10 points];

(j) The extent to which the HA has coordinated implementation of the program, including those in target areas such as Weed and Seed, Distressed, etc., with tribal, State and/or local social service agencies [10 points]. In assigning points for this factor, HUD shall consider the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (*e.g.*, counseling and training); the use of public/Indian housing funds available through existing State and local programs; or other commitments; and

(k) Extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP-eligible activities that result in employment, training, and contracting opportunities for its residents [25 points].

H. Environmental Review

Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under section 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the HA. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in this NOFA and grant agreements.

II. Application Submissions Process

A. Application Kit

An application kit is required as the formal submission to apply for funding. The kit includes information and guidance on preparation of a Plan and Budget for activities proposed by the applicant. This process facilitates the execution of the grant for those selected to receive funding. An application may be obtained from the local HUD Field/Indian Offices with delegated responsibilities over an applying HA (See Appendix A for listing), or by calling HUD's Resident Initiatives Clearinghouse toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address or P.O. Box (including zip code), and telephone number (including area code), and should refer to document FR–3397–N–01. Applications may be requested beginning March 24, 1994.

B. Application Submission

The original and two copies of the application must be submitted. The Appendix lists addresses of HUD Field/Indian Offices that will accept the completed application.

The application must be physically received by 4:30 p.m., local time, on June 22, 1994. This application deadline is firm to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought on by unanticipated delays or other delivery-related problems. Facsimile and telegraphic applications are not authorized and shall not be considered.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. Applications for Supportive Services Only must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of the need for supportive services by eligible residents;

(4) A description of the supportive services that are to be provided over at least a 5-year period after the initial receipt of funding under this NOFA, and how the supportive services will enhance education and job opportunities for residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence

of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including profit and nonprofit organizations);

(7) A description of the plan for continuing operation of the FIC, and the provision of services to families after completion of the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(8) A certification from an appropriate service agency (in the case of FSS, the certification may be from the Coordinating Committee) that:

(a) The provision of supportive services is well designed to provide families better access to educational and employment opportunities; and

(b) There is a reasonable likelihood that such services will be funded or provided for the entire five-year period, at least, after the initial receipt of funding under this NOFA.

(9) A description of assistance for which the HA is applying;

(10) A narrative on the location of the FIC facility. Provide the precise location of the facility to be used for FIC, and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(11) Evidence that the HA has control of the FIC site. If the facility is off-site, the HA shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility is available to the HA for use as a FIC for the period ending the later of: (i) Five years following the initial receipt of funding under this NOFA, or (ii) one year following the completion of activities funded under this NOFA; lease and the terms, an option description of the

(12) A certification that the HA is implementing a FSS program, if applicable. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) should provide similar certification, if applicable;

(13) A certification that funds used to pay for a Service Coordinator are not duplicate expenses from any other program, including FSS;

(14) A description of the resident involvement in the planning and implementation phases of this program;

(15) A description of the services that HA residents will be employed to provide;

(16) Letters of commitment. The letters should identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; Job Partnership Training Act (JTPA) and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the FIC;

(17) Certification that efforts were made to use or obtain other resources to fund or provide the services proposed;

(18) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(19) A project budget, timetable and narrative;

(20) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding.

(21) Equal Opportunity Requirements. The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(Note: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(22) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(23) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(24) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(25) A certification that:

(a) The HA will include in any contract for renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and

mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

B. Applications for Renovation/Conversion Activities Only must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) A narrative on the location of the off-site facility. if applicable. Provide the precise location of the FIC facility (street address) and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(3) Evidence that the HA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the HA for use as a FIC for the period ending the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(4) A description of services that the HA expects to be provided, to the greatest extent practicable, by HA residents, as described in Section I.F(2) of this NOFA. The Description shall include the position titles and numbers of residents expected to be employed for renovation/conversion activities;

(5) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(6) A project budget, timetable and narrative;

(7) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding.

(8) *Equal Opportunity Requirements.* The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(**Note:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(8) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(9) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(10) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(11) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(12) A certification that:

(a) The HA will include in any contract for renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a-5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

C. Applications for Both Supportive Services and Renovation/Conversion Activities must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of assistance for which the HA is applying;

(4) A description of the need for supportive services by eligible residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the one-year commitment;

(6) A description of the plan for continuing operation of the FIC and the provision of supportive services to families after the later of: (i) five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(7) A description of services that the HA expects to be provided, to the greatest extent practicable by HA residents as provided under Section I.F(2) of this NOFA;

(8) A description of the positions and numbers of residents expected to be employed for renovation, conversion, and other eligible activities;

(9) A certification that the HA is implementing a FSS program, if applicable. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) should provide similar certification, if applicable;

(10) A description of the resident involvement in the planning and implementation phases of this program.

(11) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP) funds for CGP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(12) A project budget, timetable, and narrative;

(13) Letters of commitment. Identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; JTPA and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the FIC.

(14) A narrative on the location of the off-site facility. if applicable. Provide the precise location of the FIC facility (street address) and its accessibility to residents including distance from the development(s), and transportation necessary to receive services;

(15) Evidence that the HA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, an option to lease, indicating that the facility will be available to the HA for use as a FIC for the period ending the later of: (i) Five years following the initial receipt of funding under this NOFA; or (ii) one year following the completion of activities funded under this NOFA;

(16) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding.

(17) *Equal Opportunity Requirements.* The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(Note: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II of the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(17) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(18) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(19) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(20) A certification that:

(a) The HA will include in any contract for renovation or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under

the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the ranking factors specified in this NOFA.

V. Other Matters

A. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section III, Checklist of Application Submission Requirements, of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR parts 35, 965 and 968.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

B. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds to provide families living in public or Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to assist families living in public or Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence, and, thus, could benefit families significantly. However, because the impact on families is beneficial, no further review is considered necessary.

E. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an

unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, and applicant may, through clear earmarking, or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicants's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from nondisclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

I. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act of Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. The Department has determined that an IHA established by an Indian Tribe as a result of the exercise of its sovereign power is not subject to the Byrd Amendment, but an IHA established under State law is subject to those requirements and prohibitions.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: February 7, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–4413 Filed 2–25–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Monday
February 28, 1994

Part IV

Environmental Protection Agency

40 CFR Part 280
Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL–4842–6]

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating a rule to amend the financial responsibility requirements for underground storage tanks (USTs) containing petroleum that appear in subpart H of 40 CFR part 280. Specifically, this rule modifies the financial responsibility compliance date under 40 CFR 280.91(e) for one category of UST owners. Under this modification, Federally-recognized Indian tribes that own USTs on Indian lands are required to comply with Federal Financial Responsibility requirements of 40 CFR part 280 subpart H—Financial Responsibility—by December 31, 1998 if those USTs are in compliance with applicable technical requirements for USTs in 40 CFR part 280. Today's rule extends the deadline for certain USTs owned by Indian tribes from the previous date of February 18, 1994. This change will allow EPA, the Bureau of Indian Affairs and Indian tribes additional time to explore options for solving the root problem of lack of funding for past contamination on Indian lands and further assist tribes with future technical requirements, such as tank upgrading. EPA is not changing the financial responsibility deadline for rural petroleum marketers or local governments. A discussion of the Agency rationale behind this decision can be found in section III. C. under "SUPPLEMENTARY INFORMATION".

EFFECTIVE DATE: This rulemaking is effective on February 28, 1994.

ADDRESSES: The public docket for this rule is in room M2616, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Call (202) 260–9720 for an appointment to review docket materials.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (703) 412–9810 in Virginia. For technical questions, contact Sammy Ng in the Office of Underground Storage Tanks at (703) 308–8882.

SUPPLEMENTARY INFORMATION: EPA is today finalizing a rule that would allow certain Federally-recognized Indian tribes that own USTs containing petroleum on Indian lands additional time to comply with the financial responsibility requirements. Specifically, this rule modifies the compliance date under 40 CFR 280.91(e). Under this modification, Indian tribes that own USTs containing petroleum on Indian lands must comply with the financial responsibility requirements by December 31, 1998. To qualify for the 1998 financial responsibility deadline, tribally-owned USTs must be in compliance with the technical requirements for USTs described in 40 CFR part 280. Technical compliance for USTs includes, for example, leak detection and reporting. The technical requirements criterion has been included to protect human health and the environment on Indian lands. EPA is not changing the financial responsibility deadline for rural petroleum marketers or local governments. A discussion of Agency rationale behind this decision can be found in section III C.

The contents of today's preamble are listed in the following outline:

I. Authority
II. Effective Date
III. Background
IV. Final Rule
  A. Indian Tribes
  B. Implementation of Final Rule
  C. Discussion of Options Proposed but Not Finalized for Petroleum Marketers and Local Governments.
V. Economic Impacts
  A. Economic Impact Analysis
  B. Regulatory Flexibility Analysis
  C. Regulatory Impact Analysis
  D. Paperwork Reduction Act

I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h).

II. Effective Date

This rule will be effective on February 28, 1994, pursuant to 5 U.S.C. 553(d). This rule may be made effective immediately because it extends an existing compliance date and there is good cause to make that extension immediately effective within the meaning of 28 U.S.C. 553(d)(1) and (3).

III. Background

On October 26, 1988, EPA promulgated financial responsibility requirements applicable to owners and operators of underground storage tanks (USTs) containing petroleum (53 FR 43322). To meet the requirements, owners and operators must demonstrate that they can pay for the costs of cleanups and third-party damages resulting from any leaks that may occur. In the final rule, EPA established a phased compliance schedule for owners and operators of petroleum USTs. The principal reason for adopting the phased compliance approach was to provide the time necessary for providers of financial assurance mechanisms (including private insurance companies and states intending to establish state assurance funds) to develop new policies and programs or conform their policies and programs with EPA requirements. See 53 FR 43324.

When devising the phased compliance approach, the Agency wanted to achieve the best balance between the need to demonstrate financial responsibility for UST releases and the time necessary for owners and operators to obtain assurance mechanisms. The Agency attempted to establish compliance dates that were as early as possible, considering the type of assurance different types of facilities were likely to obtain. Petroleum marketers owning or operating 1,000 or more USTs and non-marketers with more than $20 million in tangible net worth were required to comply by January 24, 1989, based primarily on their ability to qualify for self-insurance. Petroleum marketers with 100 to 999 USTs were required to comply by October 26, 1989. These marketers were estimated to be relatively more likely to be able to obtain insurance; some of them were also expected to qualify as self-insurers. Petroleum marketers owning 13 to 99 USTs at more than one facility were originally required to comply by April 26, 1990. However, on May 2, 1990, the Agency published a rule (55 FR 18566) extending this compliance date to April 26, 1991. These marketers were thought to be less likely to be able to obtain insurance than members of the October 26, 1989, compliance group.

Petroleum marketers owning fewer than 13 USTs at more than one facility or owning only one facility with fewer than 100 USTs, as well as non-marketers with less than $20 million in net worth and local governments (including Indian tribes) were originally required to comply by October 26, 1990. This group was expected to rely primarily on state assurance funds for compliance. (State assurance funds provide money for cleanups to owners and operators in their states. Owners and operators in states with assurance funds are deemed to be in compliance with financial responsibility for the amount covered by

the fund once the state submits the fund to EPA for approval unless and until EPA disapproves the fund.) On October 31, 1990, EPA extended the compliance deadline for one year for small marketers (with fewer than 13 USTs or fewer than 100 USTs at a single facility) and small non-marketers (with less than $20 million in net worth), otherwise known as Category IV. This extension was based on the need for additional time for state assurance funds to be developed. In addition, EPA extended the compliance deadline for local governments and Indian tribes until one year after publication of a final rule with additional self-insurance mechanisms for local governments to use to demonstrate compliance. This rule was published on February 18, 1993 (58 FR 9026).

On December 23, 1991, EPA once again extended the compliance deadline for the Category IV group (small marketers with fewer than 13 tanks at more than one facility or fewer than 100 tanks at a single facility as well as non-marketers with net worth less than $20 million) to December 31, 1993 (56 FR 66369). EPA based the extension on its understanding that more members of this compliance group than the Agency had originally projected must rely on state assurance funds, rather than on insurance, to demonstrate compliance with the financial responsibility requirements. EPA believed that, in order for owners and operators to rely on state assurance funds as compliance mechanisms, states must have more time to submit their state assurance funds to EPA for approval. Currently, 31 state assurance funds have been approved by EPA and an additional eight state assurance funds have been submitted to EPA for approval. (It is important to note that upon submission of a state assurance fund to the EPA Regional Administrator, the fund is considered to be approved unless and until EPA disapproves it.) Additionally, the extension provided states with more time to develop and implement financial assistance programs (e.g., direct loan programs, loan guarantee programs, grant programs) which help owners and operators (especially small businesses) pay for technical requirements such as tank upgrading. These technical improvements, in turn, help USTs meet insurers' underwriting criteria.

The Agency, however, continued to be concerned about the effects of its regulations on the regulated community. By analyzing the costs of the requirements, EPA found that the affordability of financial responsibility compliance is often tied to early compliance with technical requirements such as tank upgrading, since, for example, private insurance companies may refuse to provide coverage unless they are certain that a site does not pose a high risk of leaking. EPA believed that the costs associated with the technical requirements are an important factor underlying the inability of some small owners and operators to meet the financial responsibility requirements. These costs coupled with the lack of a state assurance fund, grant, or loan program could force some gas stations to close their tanks when the 1993 financial responsibility compliance date fell. EPA believed that tank closure could be particularly problematic when those tanks provide essential services to rural communities.

As a result of this concern about the availability of fuel in rural areas, EPA proposed a December 31, 1998 compliance date for certain petroleum marketers, local governments, and Indian tribes, that meet Federally-determined criteria (58 FR 43770). The objective of the August 17, 1993 proposed rule was to obtain data on whether an additional extension of the financial responsibility requirements was needed, and for whom. The Agency intended to limit any additional extension to, at most, a small sub-group of marketers currently in Category IV, as well as certain local governments and Indian tribes; EPA did not want to change compliance dates for all Category IV marketers or local governments on the belief that most of these tank owners were already in compliance with the financial responsibility requirements due to the existence of state assurance funds and reliance on self-insurance mechanisms. The August 17, 1993 proposed rule included eligibility criteria limiting the proposed 1998 compliance group to rural petroleum marketers that met a hardship criterion of annual profit on gasoline sales of $15,000 or less, rural local governments that use tanks for essential services such as police and fire departments, and Indian tribes. (The definition of rural was obtained from the Farmers Home Administration within the U.S. Department of Agriculture.) In addition, all owners in the new 1998 compliance group would have to ensure that their tanks were in compliance with applicable technical requirements, such as leak detection. The technical compliance criterion was included to protect human health and the environment regardless of a change in the financial responsibility deadline. EPA also stressed the fact that any change in the financial responsibility compliance date would not remove the liability on the part of the owner or operator to clean-up a leak.

Current Financial Responsibility Deadlines

January 24, 1989:
Marketers With 1000 or More Tanks; Non-Marketers With Net Worth Greater Than $20 Million.
October 26, 1989:
Marketers With 100–999 Tanks.
April 26, 1991:
Marketers With 13–99 Tanks at More Than One Facility
December 31, 1993:
Marketers With 1–12 Tanks at More Than One Facility or Fewer Than 100 Tanks at One Site; Non-Marketers With Net Worth Less Than $20 Million.
February 18, 1994:
Local Governments and Indian Tribes

IV. Final Rule

EPA received 58 comments on the August 18, 1993 proposed extension. 34 commenters supported an extension for one or more groups. 21 commenters opposed any extension of the financial responsibility requirements. No commenters objected to an extended compliance deadline for Indian tribes while one commenter supported it. One commenter remained neutral on the subject and two additional comments were received regarding the proposed definition of rural, as defined by the Farmers Home Administration.

Based on EPA analysis of the comments received as well as the rest of the administrative record from the proposal, the Agency is finalizing an extension to 1998 for Federally-recognized Indian tribes that own USTs on Indian lands. No other entity (petroleum marketer or local government) has been included in this 1998 compliance group. A discussion of comments relating to a 1998 compliance deadline for petroleum marketers and local governments can be found in section III C.

A. Indian Tribes

Based on an analysis of the administrative record for this rulemaking and lack of opposition to an extension for tribes, EPA is extending the compliance deadline for Tribally-owned USTs on Indian lands to December 31, 1998 if the USTs meet the technical compliance criterion. The Agency is sensitive to the lack of funding available to help Indian tribes pay for environmental problems and acknowledges that mechanisms used by other owners, such as state assurance funds or private insurance, may be

inaccessible to tribes. The Agency has retained the technical compliance criterion in order to protect human health and the environment on Indian lands and expects that inclusion of this criterion may prompt some owners to come into compliance with the technical requirements in order to qualify for the extension. (Tanks owned by Indian tribes which are out of compliance with applicable technical requirements would not be eligible for the 1998 deadline.)

The additional time will also allow the Agency to work with the Bureau of Indian Affairs (BIA) at the U.S. Department of the Interior to explore options for solving the root problem of lack of funding for past contamination on Indian lands and further assist tribes with future technical requirements, such as tank upgrading.

A compliance date of December 31, 1998 was selected for Indian tribes because this date corresponds with the final technical compliance date for tank upgrading. Tribes unable to comply with the financial responsibility requirements at that time face the more costly technical requirement of upgrading their USTs. At that point, tanks not in technical compliance would be forced to close with or without the financial assurance coverage. Conversely, owners able to meet the technical requirements at that time would be more likely to obtain an affordable assurance mechanism, such as private insurance, since the tanks would be considered an insurable, reasonable risk.

B. Implementation of Final Rule

EPA intends to promulgate regulations that pose the least burden to the affected regulated community while protecting human health and the environment. Therefore, no change in reporting requirements or recordkeeping procedures from the October 26, 1988 rule is incorporated into this rule.

The August 17, 1993 proposed rule included a requirement that UST owners self-certify for an extension and keep a record of the proposed compliance checklist on file for enforcement purposes. Based on a review of the comments and the rest of the administrative record for the proposal, the Agency has decided that this self-certification is unnecessary for implementing this rule and has therefore decided to delete the self-certification and recordkeeping requirement.

C. Discussion of Options Proposed But Not Finalized for Petroleum Marketers and Local Governments

As noted above, EPA received 58 comments on the August, 1993 proposed rule. Of the 34 comments received in support of a 1998 compliance deadline, 17 specifically supported an extension only for petroleum marketers. An additional seven comments were received in support of local governments, four for non-marketers (such as rental car companies, etc.), and one for Indian tribes. Five commenters supported an extension for *all* Category IV firms and local governments regardless of criteria, or not at all, concluding that a limited extension would be unfair to the entities not included in the 1998 compliance group.

Twenty-one commenters were against any additional extension to 1998. Of the 21 comments which disagreed with the proposed extension, eight were provided by state agencies that administer UST regulatory or state fund programs. One commenter was neutral, neither agreeing or disagreeing with the proposed compliance date, and two additional comments addressed only the definition of rural.

Commenters arguing for a 1998 compliance date for certain petroleum marketers and local governments stated that the additional time was needed to keep small businesses open. Several commenters said that compliance with financial responsibility was difficult in states without state assurance funds. In fact, of the commenters supporting a 1998 compliance date for one or more groups, 12 out of 35 were received from a state without a state assurance fund. In addition, some commenters said that insurance was not affordable, particularly when tanks have not been upgraded. Two commenters urged an extended compliance date in two states that plan to adopt a state assurance fund or loan program. One of those commenters felt that a 1996 compliance date would be acceptable since it would correspond to the date the state loan program plans to be operational. Another commenter noted that not all local governments can pass one of the four additional self-insurance mechanisms promulgated in February, 1993, and one additional commenter urged EPA to extend the financial responsibility compliance date for hospitals that use their tanks to fuel emergency generators.

Several commenters arguing against an additional extension to 1998 for local governments and petroleum marketers stated that most of these owners were already in compliance due to state assurance funds. Several commenters also stated that an extension would not be fair to those owners already in compliance with the financial responsibility requirements. Others felt an extended compliance group to 1998 would incorrectly imply that the remaining technical compliance dates would be extended by EPA as well. Other commenters noted that the criteria included in the proposed rule were difficult to implement and would prove burdensome to states with regard to enforcement since different petroleum marketers and local governments would have different compliance dates. Other commenters feared that adoption of a 1998 deadline for certain gas stations and local governments would hurt the environment, since the requirement was necessary to ensure that money would be available to pay for cleanups. One commenter stated that previous compliance date extensions reduced the volume of business available to private insurers trying to create a market for UST insurance, thereby increasing the price. Another commenter echoed that sentiment, saying that previous extensions had stopped private mechanisms, such as insurance, from developing fully. Finally, several commenters state that it was appropriate to exclude non-marketers from any additional extension since sales of petroleum were not crucial to their operations.

Based on a review of the comments and the administrative record, EPA has decided *not* to extend the financial responsibility compliance deadline for petroleum marketers, non-marketers, or local governments. While the Agency acknowledges that some of these owners, especially in those few states without a state assurance fund, may have difficulty complying with the financial responsibility requirements, EPA agrees with commenters that say that most owners and operators are already covered by either state assurance funds, self-insurance mechanisms or private insurance. Agency analysis indicates that compliance may be as high as 98% for local governments with the addition of the four self-assurance mechanisms promulgated in February, 1993. In addition, just 14% of all tanks are in states without legislation creating state assurance funds. The Agency also agrees that another extension hurts EPA credibility with regard to upcoming technical compliance dates and agrees that a later compliance date is unfair to owners and operators already in

compliance. In addition, a 1998 compliance deadline for some local governments and petroleum marketers would create an administrative burden for states to implement, since some states would need to change their legislation or regulations in order to adopt the new deadline. EPA also acknowledges the difficulty in trying to define an appropriate subgroup and believes that inclusion of certain marketers and local governments in a new compliance group would create additional confusion in the regulated community.

EPA agrees with commenters who feared that adoption of a 1998 deadline for certain gas stations and local governments might hurt the environment in the event that funds are not available to undertake corrective action. In adopting the phased compliance approach, the Agency wanted to achieve the best balance between the need to demonstrate financial responsibility for UST releases and the ability of different types of tank owners to obtain the assurance mechanisms. In deciding not to extend the compliance deadline for petroleum marketers and local governments, the Agency has decided that, since most marketers and local governments can comply, the balance has to be weighed in favor of demonstrating compliance. On the other hand, the current inability of Indian tribes to demonstrate compliance as explained in section IV.A above led the Agency to reach the opposite decision in that situation.

EPA also received comments with regard to the criteria discussed in the proposed rule applicable to petroleum marketers and local governments. Most commenters supported the use of the Farmers Home Administration definition of rural, but felt that a hardship determination based on profit should be replaced with a measure of yearly throughput of gasoline through an UST system.

V. Economic Impacts

This section provides an estimate of the economic impacts of the proposed rule. Because the proposed rule will not cause an annual impact on the economy of $100 million or more and will not cause an increase in the costs of production or the prices charged by the affected community, a Regulatory Impact Analysis is not required. Instead, EPA has prepared an economic impact analysis to estimate the number of affected facilities that would benefit from this additional flexibility.

A. Economic Impact Analysis

The economic analysis examines the potential economic effects of adopting a new compliance category to 1998 and estimates the number of potentially affected entities.

Overall, approximately 1.3 million USTs are subject to the technical and financial responsibility standards. The number of tribally-owned USTs that could be eligible for the 1998 compliance date numbers approximately 500. These 500 tribally-owned USTs represent approximately 10% of all active tanks on Indian lands. (The remainder of the tanks on Indian lands are owned by private individuals and firms, as opposed to Federally-recognized tribes.) The total number of tanks eligible for the 1998 compliance date would be reduced, however, with the inclusion of the technical compliance criterion.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an Agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: Small businesses, small organizations, and small governmental jurisdictions). EPA believes that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The new compliance deadline to 1998 will provide relief to members of this compliance group by allowing them additional time to comply with the financial responsibility requirements. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis, and certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Regulatory Impact Analysis

1. Executive Order 12866

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to review by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 280

Environmental protection, Administrative practice and procedure, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: February 18, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 280 of title 40 of the Code of Federal Regulations is amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h.

2. Section 280.91 is amended by revising paragraph (e) and adding paragraph (f), to read as follows:

§ 280.91 Compliance dates.

* * * * *

(e) All local government entities (including Indian tribes) not included in paragraph (f) of this section; February 18, 1994.

(f) Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of this part; December 31, 1998.

[FR Doc. 94–4375 Filed 2–25–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Monday
February 28, 1994

Part V

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Notice

DEPARTMENT OF EDUCATION

RIN 1850–ZA00

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Projects in Encouraging Female and Minority Students in Mathematics and Science; Model Science-Based Professional Development Projects in Environmental Education

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1994.

SUMMARY: The Secretary proposes two priorities for fiscal year 1994 under the Dwight D. Eisenhower National Program for Mathematics and Science Education: Model projects in encouraging female and minority students in mathematics and science, and model science-based professional development projects in environmental education. The Secretary expects projects to generate findings that have wide applicability; accordingly, grantees will be expected to evaluate their activities and disseminate information about them.

DATES: Comments must be received on or before March 30, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to Charles Stalford, U.S. Department of Education, 555 New Jersey Avenue NW., room 500F, Washington, DC 20208–5572.

FOR FURTHER INFORMATION CONTACT: Lois Weinberg or Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue NW., room 500, Washington, DC 20208–5572. Telephone: (202) 219–2175. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The goal of the Eisenhower National Program is to support projects of national significance in elementary and secondary schools in mathematics and science education designed to improve the skills of teachers and the quality of instruction in these areas and to increase the access of students to that instruction. The program is authorized under title II, part A, subpart 1, section 2012 of the Elementary and Secondary Education Act of 1965, as amended.

On November 12, 1993, the Secretary announced in the **Federal Register** (58 FR 60007) a proposed priority for the Eisenhower National Program in model professional development in the use of technology for mathematics and science instruction. Now, after considering the intent of the Senate Report that accompanied the Fiscal Year 1994 Department of Education Appropriations Act, the Secretary has decided to propose two additional priorities, announced herein. These priorities will serve (1) to encourage the interest and attainments of female and minority students in mathematics and science and (2) to improve teacher professional development in environmental education.

The Secretary may subsequently conduct an external study or studies of the effectiveness and lessons learned from projects funded under this program. If he does so, projects will be required to cooperate with the conduct of the study, by sharing their experiences, project evaluations, and data.

Regarding priority 1, the Secretary is concerned that the Nation's schools encourage too few minority and female students to study and pursue careers in the fields of mathematics and science. The Secretary believes that the well-documented underrepresentation of minorities and women in these disciplines represents a waste of human talent that the Nation can ill afford. This priority would therefore support, and learn from, projects that seek to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Regarding priority 2, the Secretary believes that environmental education can stimulate students' interest in scientific fields and enhance their understanding of these disciplines. The Secretary also believes that environmental issues are important in their own right and are, therefore, eminently worthy of study. The Secretary finds, however, that environmental education programs of high quality are available in too few of the Nation's schools, in part because American teachers have very limited opportunities to increase their knowledge of environmental issues and to learn the most successful means of providing environmental education. The Secretary proposes, therefore, to support and learn from projects in professional development for teachers in environmental education.

The Secretary draws to the attention of potential applicants responding to priority 2 the National Consortium for Environmental Education and Training (NCEET) at the University of Michigan, an undertaking funded by the Environmental Protection Agency under section 5 of the National Environmental Education Act of 1990. NCEET's primary emphasis is professional development for teachers in environmental education. Potential applicants should consult with NCEET to ensure that their projects are not duplicative of the National Consortium's efforts.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities; nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrently with or following publication of the notice of final priorities.

Applications are not available at this time. However, to have your name placed on a mailing list, please write to: Dwight D. Eisenhower National Program for Mathematics and Science Education, 555 New Jersey Avenue NW., Washington, DC 20208–5572, or FAX your request to: Eisenhower Program: 202–219–2106.

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. Each application shall respond to only one of the two priorities, although an applicant could submit more than one application to respond to more than one priority. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Encouraging Female and Minority Students in Mathematics and Science

The Secretary will support model projects designed to stimulate and sustain the interest and attainments of female and minority children in mathematics and science.

Each project must:

(a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with the State science teachers' association and/or the State mathematics teachers' association

and with at least one other party such as a school, an educational institution, a local or state educational agency, a national education organization, a science-technology center, or a private sector party; with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(d) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

(e) In the case of projects serving elementary and middle schools, increase teachers' own mastery of mathematics and science in order to increase their confidence and skill in teaching these subjects (including skills in providing hands-on learning).

(f) Involve parents and community members as role models and/or mentors for female and minority children.

Proposed Priority 2—Science-Based Teacher Professional Development in Environmental Education

The Secretary will support model science-based professional development projects designed to improve student achievement in environmental education.

Each project must:

(a) Make use of research and the experience of projects that have achieved success in the area of the priority.

(b) Collaborate in the planning and operation of the project with at least two other parties such as schools, educational institutions, local or state educational agencies, national education organizations, science-technology centers, or private sector parties; with these other parties, develop plans for continuing project activities after Federal support has ended.

(c) Evaluate lessons learned from the project and use them to improve activities on a continuing basis.

(d) Disseminate lessons learned to interested parties. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication.

(e) Use environmental education as a means to enhance students' interest, literacy, and achievement in science.

(f) Increase teachers' own mastery of environmental issues, including related scientific issues.

(g) Train teachers to develop varied learning experiences for students in environmental education that include field components and the study of individual themes, such as ecosystems (e.g., wetlands), the water cycle, and global climate change; enable teachers to pilot-test these varied learning experiences with students.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 500, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR part 755.

Program Authority: 20 U.S.C. 2992.

Dated: January 14, 1994.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 94–4427 Filed 2–25–94; 8:45 am]

BILLING CODE 4000–01–P

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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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, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

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