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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

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 68 and 800 and Chapter VIII [1]

Name Change and Amendment of References To Reflect Establishment of the Grain Inspection, Packers and Stockyards Administration

ACTION: Final rule.

SUMMARY: This rule amends 7 CFR parts 68 and 800 and chapter VIII to reflect the abolishment of the Federal Grain Inspection Service (FGIS) as an agency of the Department of Agriculture and the transfer of its program authority to a newly created agency, the Grain Inspection, Packers and Stockyards Administration (GIPSA).

EFFECTIVE DATE: January 31, 1995.

FOR FURTHER INFORMATION CONTACT: George Wollam, GIPSA–FGIS, USDA, Room 0623 South Building, P.O. Box 96454, Washington, DC, 20090–6454; FAX (202) 720–4628; telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1 (SM 1010–1), Reorganization of the Department of Agriculture on October 20, 1994. SM 1010–1 orders the abolition of the Federal Grain Inspection Service and the establishment of the Grain Inspection, Packers and Stockyards Administration, which assumes the function previously performed by FGIS. This rule amends 7 CFR parts 68 and 800 and the heading of chapter VIII to bring Agency regulations into alignment with the Departmental reorganization.

This rule relates to internal Agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12868. Finally, this action is not a rule as defined by the Regulatory Flexibility Act. Pub. L. No. 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Parts 68 and 800

Administrative practice and procedures, Grain inspection, and Agricultural commodities.

For reasons set forth in the preamble and background, 7 CFR chapters I and VIII are amended as follows:

CHAPTER I—[AMENDED]

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 68.1 is amended by revising paragraphs (b)(2) and (b)(43) to read as follows:

§ 68.1 Meaning of terms.

* * * * *

(b) * * *

(2) *Administrator.* The Administrator of the Grain Inspection, Packers and Stockyards Administration or any person to whom the Administrator's authority has been delegated.

* * * * *

(43) *Service.* The Federal Grain Inspection Service of the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

* * * * *

CHAPTER VIII—GRAIN INSPECTION, PACKERS AND STOCKYARD ADMINISTRATION (FEDERAL GRAIN INSPECTION SERVICE), DEPARTMENT OF AGRICULTURE

1. The heading of the 7 CFR chapter VIII is revised to read as set forth above.

PART 800—GENERAL REGULATIONS

2. 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.*)

3. Section 800.0 is amended by revising paragraphs (b)(3) and (b)(91) to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) * * *

(3) *Administrator.* The Administrator of the Grain Inspection, Packers and Stockyards Administration or any person to whom authority has been delegated.

* * * * *

(91) *Service.* The Federal Grain Inspection Service of the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

* * * * *

§ 800.0 [Amended]

4. Section 800.0 is further amended by removing footnote 1.

5. Section 800.2 is revised to read as follows:

§ 800.2 Administrator.

The Administrator is delegated, from the Secretary, responsibility for administration of the United States Grain Standards Act and responsibilities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Administrator is responsible for the establishment of policies, guidelines, and regulations by which the Service is to carry out the provisions of the Act and the Agricultural Marketing Act of 1946. The regulations promulgated under the Agricultural Marketing Act of 1946 appear at part 68 of this title (7 CFR part 68). The Administrator is authorized by the Secretary to take any action required by law or considered to be necessary and proper to the discharge of the functions and services under the Act. The Administrator may delegate authority to the Deputy Administrator and other appropriate officers and

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Grain Inspection, Packers and Stockyards Administration (7 U.S.C. 75a; 7 CFR 68.5).

employees. The Administrator may, in emergencies or other circumstances which would not impair the objectives of the Act, suspend for period determined by the Administrator any provision of the regulations or official grain standards. The Administrator may authorize research; experimentation; and testing of new procedures, equipment, and handling techniques to improve the inspection and weighing of grain. The Administrator may waive the official inspection and official weighing requirements pursuant to Section 5 of the Act.

6. Section 800.7 is revised to read as follows:

§ 800.7 Information about the Service, Act, and regulations.

Information about the Grain Inspection, Packers and Stockyards Administration, Service, Act, regulations, official standards, official criteria, rules of practice, instructions, and other matters related to the official inspection or Class X or Class Y weighing of grain may be obtained by telephoning or writing the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, P.O. Box 96454, Washington, D.C. 20090–6454, or any field office or agency of the Service.

7. In § 800.8 paragraphs (b), (d), and (e) are revised to read as follows:

§ 800.8 Public information.

* * * * *

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.5, will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, at 14th Street and Independence Avenue, SW., Washington, D.C. 20250. The public may request access to these materials during regular working hours, 8:00 a.m. to 4:30 p.m., est, Monday through Friday except for holidays.

* * * * *

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.6 and shall be addressed as follows: Office of the Administrator, Grain Inspection, Packers and Stockyards Administration; FOIA Request, U.S. Department of Agriculture, P.O. Box 96454, Washington, D.C. 20090–6454.

* * * * *

(c) *Appeals.* Any person whose request under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.13. Appeals shall be addressed to the Administrator, Grain Inspection, Packers and Stockyards Administration, FOIA Appeal, P.O. Box 96454, Washington, D.C. 20090–6454.

Dated: January 24, 1995.

James R. Baker,

Administrator.

[FR Doc. 95–2219 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–EN–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–059–2]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the list of generally infested areas under the gypsy moth quarantine and regulations by removing and adding areas in Ohio and Virginia. These changes affected 7 areas in Ohio and 5 areas in Virginia. These actions were necessary to restrict the interstate movement of regulated articles to prevent the artificial spread of gypsy moth and to delete unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: March 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Terry McGovern, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–6365 (Hyattsville); (301) 734–6365 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on September 13, 1994 (59 FR 46899–46902, Docket No. 94–059–1), we amended the gypsy moth regulations in 7 CFR part 301 by removing Franklin County in Virginia from the list of generally infested areas in § 301.45–3(a), and by adding Carroll, Cuyahoga, Jefferson, Lucas, Portage, Stark, and Summit Counties in Ohio, and Bath, Greensville, and Highland Counties and the city of Emporia in Virginia to the list of generally infested areas in that section.

Comments on the interim rule were required to be received on or before November 14, 1994. We received one comment in favor of the interim rule. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301.45–3 and that was published at 59 FR 46899–46902 on September 13, 1994.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 25th day of January 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–2314 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AC98 and 0560–AD41

1993-Crop and 1994-Crop Sugarcane and Sugar Beets Price-Support Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Sugar Price-Support Program is conducted by the Commodity Credit Corporation (CCC) in accordance with Section 206 of the Agricultural Act of 1949, as amended (the 1949 Act). This final rule amends the regulation by setting forth 1993-crop and 1994-crop loan rates to be used in administering the Sugar Price-Support Program. The national (weighted-average) loan rate for 1993-crop and

1994-crop raw cane sugar shall be 18.00 cents per pound. The national (weighted-average) loan rate for 1993-crop refined beet sugar shall be 23.62 cents per pound and for 1994-crop refined beet sugar shall be 23.43 cents per pound.

EFFECTIVE DATES: January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Colacicco, Consolidated Farm Service Agency, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7788.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by OMB under Executive Order 12866.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the impact of implementation of this rule is available on request from the above-named individual.

Federal Assistance Program

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this final rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

An Environmental Evaluation with respect to the price-support loan program has been completed. It has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

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).

Paperwork Reduction Act

The amendments to 7 CFR part 1435 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule: preempt State laws to the extent such laws are inconsistent with the provisions of this final rule; are not retroactive; and are not subject to administrative appeal remedies.

Background

This final rule amends 7 CFR part 1435 to set forth the 1993 and 1994 national price-support levels for use in administering CCC sugar price-support programs. Section 206 of the 1949 Act provides that the Secretary of Agriculture (Secretary) shall support the price of the 1991 through 1997 domestically grown crops of sugarcane and sugar beets through nonrecourse loans. Section 206 further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18 cents per pound for raw cane sugar, and that the Secretary shall support the price of domestically grown sugar beets at such a level that reflects an amount that bears the same relation to the support level for sugarcane as the weighted average of producer returns for sugar beets bears to the weighted average of producer returns for sugarcane for the most recent 5-year period for which data are available, plus an amount that covers sugar beet processor fixed marketing expenses.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Price-support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is amended as follows:

PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

2. Section 1435.4 is amended by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) to read as follows:

§ 1435.4 Method of support and loan rates.

* * * * *

(c) The basic (weighted average) loan rates for the 1993 crops of domestically grown:

(1) Sugarcane shall be 18 cents per pound of raw cane sugar; and

(2) Sugar beets shall be 23.62 cents per pound of refined beet sugar.

(d) The basic (weighted average) loan rates for the 1994 crops of domestically grown:

(1) Sugarcane shall be 18 cents per pound of raw cane sugar; and

(2) Sugar beets shall be 23.43 cents per pound of refined beet sugar.

* * * * *

Signed in Washington, DC, on January 26, 1995.

Grant Buntrock,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–2318 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 94–093–2]

Brucellosis in Cattle and Bison; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that increased the amount of Federal indemnity for brucellosis reactor and brucellosis-exposed cattle and bison destroyed during herd depopulation, and that increased the amount of Federal indemnity for cattle and bison destroyed after being sold or traded from a herd subsequently found to be affected with brucellosis. These actions were necessary to give owners sufficient financial incentive to promptly destroy brucellosis-affected cattle and bison, in order to accelerate the eradication of brucellosis in the United States and to protect other cattle and bison from brucellosis.

EFFECTIVE DATE: March 2, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. M. J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February 1995. Telephone: (301) 436–4918 (Hyattsville); (301) 734–7708 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on October 17, 1994 (59 FR 52233–52235, Docket No. 94–093–1), we amended the regulations regarding payment of indemnity in 9 CFR part 51 to increase the amount of Federal indemnity for brucellosis reactor and brucellosis-exposed cattle and bison destroyed during herd depopulation, and to increase the amount of Federal indemnity for cattle and bison destroyed after being sold or traded from a herd that is subsequently found to be affected with brucellosis.

Comments on the interim rule were required to be received on or before December 16, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 51 and that was published at 59 FR 52233–52235 on October 17, 1994.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 25th day of January 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–2316 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Environment, Safety and Health

10 CFR Part 602

Epidemiology and Other Health Studies Financial Assistance Program

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) Office of Environment, Safety and Health (EH) is issuing a rule to implement an Epidemiology and Other Health Studies Financial Assistance Program. The rule will support EH use of financial assistance awards when they are the appropriate instruments for programmatic activities. The rule will also facilitate a fully open and competitive process for obtaining financial assistance awards. This action is taken to support EH's mission to protect the health of DOE workers, as well as other individuals associated with energy production, transmission, and use.

EFFECTIVE DATE: The final rule is effective March 2, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Heather Stockwell, Acting Director, Office of Epidemiology and Health Surveillance (EH–42), U.S. Department of Energy, Washington, DC 20585; facsimile: 301–903–4677; telephone: 301–903–3721.

SUPPLEMENTARY INFORMATION:

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VIII. Intergovernmental Review
IX. Review under Executive Order 12612
X. Review under Executive Order 12778
XI. Catalog of Federal Assistance

I. Introduction

DOE is amending chapter II of title 10 of the Code of Federal Regulations (CFR) by adding a new part 602 for use of financial assistance awards to support the EH program of epidemiology and other health-related research. EH health-related financial assistance awards previously were made under provisions of the generally applicable DOE Financial Assistance Rules (10 CFR part 600). Part 600 provides basic DOE procedures for the award and administration of financial instruments, but does not contain program-specific requirements for particular types of financial assistance awards. Part 602 builds on and supplements part 600 by describing the special needs and requirements of the EH Epidemiologic and Other Health Studies Financial Assistance Program. Because the rules work together, it is necessary to refer to both part 600 and this proposal to obtain a comprehensive picture of program procedures. The rule, in conjunction with part 600, provides a framework for an ongoing, comprehensive program for the receipt, review, and evaluation of award applications, and provides specific guidance for pre- and post-award administration. A discussion of the major provisions of the rule, organized by rule section, follows.

II. Discussion of Comments on Proposed Rule

DOE issued a proposed rule in the **Federal Register** on October 18, 1993, [58 FR 53671] to amend existing regulation 10 CFR part 600 to support EH use of financial assistance awards when they are the appropriate instruments for programmatic activities. The proposed rule was to also facilitate a fully open and competitive process for obtaining financial assistance awards. Comments were requested through November 17, 1993. DOE received written comments from two university research administration offices.

One commentator stated that the proposed rules appear reasonable and expressed willingness to work productively with DOE. The other commentator expressed concern about EH having a financial assistance rule separate from other DOE program offices. The correspondent noted that Federal agencies are now required to eliminate unnecessary internal management regulations and questioned the need for the proposed EH rule. The commentator urged DOE to withdraw the proposed rule and to administer the Epidemiology and Other Health Studies Financial Assistance Program under the existing Office of Energy Research Financial Assistance Rule (10 CFR part 605). Noting that the proposed rule is similar to 10 CFR part 605, the commentator suggested that EH issue annual program announcements under that existing rule.

DOE has decided not to withdraw the rule for three reasons. First, DOE needs program-specific financial assistance rules to address unique mission requirements. Section 602.5, for example, describes specific EH program areas. Focusing upon the health of the

DOE workforce and related issues, these program areas are distinct from those of other DOE offices. In light of the Secretary of Energy's emphasis on protecting worker and community health, DOE must have a targeted financial assistance mechanism to ensure these areas are properly supported. Further, section 602.9 commits DOE to use independent evaluators to ensure credible and inclusive peer review. This explicit commitment is essential, given the high degree of public and congressional interest in occupational and environmental health studies pertaining to DOE.

Second, DOE is currently reviewing its financial assistance rules under Executive Order 12861. Some of the revisions may eliminate the need for separate program rules by better accomodating the desire of assistance programs to address their unique mission in the use of financial assistance.

Third, the large majority of DOE financial assistance regulations are already in place at 10 CFR part 600. This means that nearly all the requirements for audits, patents, financial management, and many other administrative activities remain unaffected by the EH rule. The EH rule merely defines a narrow, but significant, range of programmatic needs. Codification of these needs will help those seeking financial assistance to understand EH mission requirements and to develop effective proposals to address these requirements.

III. Final Rule

Section 602.1 defines the purpose and scope of part 602 as setting policies and procedures for award and administration of EH health related research, education/training, conferences, and communication activities through financial assistance awards.

Section 602.2 establishes applicability, stating that part 602 requirements apply to awards made on or after the effective date of the rule. It also states that part 602 supplements and does not replace 10 CFR part 600.

Section 602.3 defines terms used in the rule. As definitions in 10 CFR part 600 apply to terms in part 602, it was unnecessary to provide definitions except for a few terms with special meaning for the EH program of epidemiologic and other health studies.

Section 602.4 governs deviations from the rule. It allows for single-case deviations from part 602 if authorized by the Assistant Secretary for EH, the Head of the Contracting Activity, or their designees. There is no provision for class deviation. If a proposed single-case deviation from part 602 is also a deviation from 10 CFR part 600, the provisions for deviations contained in both rules will apply. Section 602.4 allows for program control over single-case deviations of a purely program nature, but assures that deviations relating to generic provisions are also authorized pursuant to the procedures contained in the generic rules.

Section 602.5 establishes that research, education/training, conferences, and communication activities in various EH program areas are eligible for awards under part 602. The program areas are listed in the section and may be expanded by **Federal Register** notice.

Section 602.6 sets forth eligibility for awards. The only categorical restriction pertains to Federal agencies. DOE anticipates that most recipients will participate through institutions because of the substantial material and business management resources needed to conduct projects under the program.

Section 602.7 establishes procedures relating to award solicitation, including mechanisms to publicize award availability and distribute application forms and other information. The section also states that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted under award solicitations.

Section 602.8 sets forth provisions and procedures required to apply for an award, including prescribed forms and other information requirements. Nothing in this section or in 10 CFR part 600 will prohibit appropriate contacts between potential applicants and DOE staff prior to submission of applications. Such contacts may include discussions of broad advice on research areas of interest or administrative procedures. Requests for information that might provide an unfair competitive advantage are not permitted.

Section 602.9 describes procedures for application evaluation and selection. While DOE employees will evaluate the applications and make award selections, every effort will be made to use reviewers apart from DOE employees and contractors. Use of outside reviewers will ensure that the best experts are available to conduct technical evaluations and will also ensure open and credible peer review of applications. This is also in keeping with the Federal Government's tradition of using a broad range of peer reviewers to evaluate the scientific and technical merit of research proposals.

Section 602.9(d) sets forth the evaluation criteria. They are necessarily broad because of the wide variety of projects and approaches anticipated. The criteria are consistent with those used by other DOE offices and Government agencies in similar programs. Section 602.9(d)(5) will permit DOE to establish, in a notice of availability or separate solicitation, evaluation criteria consistent with the purpose of part 602 other than those listed in the rule.

Section 602.9(g) states that selection of applications for award will be based upon findings of technical evaluations, including peer reviews. These evaluations will be conducted according to procedures specified in the EH Merit Review System, which was published as a Program Notice in the **Federal Register** on November 25, 1992.

Section 602.10 sets forth certain additional requirements that are not specifically addressed in 10 CFR part 600. The section requires recipients performing research involving human subjects, recombinant DNA molecules (and/or organisms and viruses containing recombinant DNA molecules) or warm-blooded animals to comply with certain Federal requirements. While these concerns are not common under DOE-funded projects, they require special attention because of their importance. The treatment of these matters is similar to that required by other Federal agencies.

Section 602.11 provides for a project period that is long and flexible enough to accommodate research. Measurable results often take years and cannot be accurately predicted. On the other hand, DOE must assure adequate programmatic review. Accordingly, initial project periods of up to 3 years will be the norm. Project periods may exceed 5 years only if DOE makes a renewal award or allows an extension. To assure adequate financial accountability and review, section 602.11(b) provides a general budget period of 12 months, which is the norm as provided under 10 CFR 600.106. To allow for those projects that are not suited to this limitation, DOE may allow for a budget period of 24 months.

Section 602.12 establishes that cost sharing, while always welcome, is not a factor in evaluating or selecting applications under the program. DOE wishes to fund the best projects, not just those of institutions capable of cost sharing arrangements.

Section 602.13 states that DOE is liable only for the funds noted in the Notice of Financial Assistance Award. No additional obligations are required to support or extend a specific award.

Section 602.14 allows fee payment to small business concerns under

appropriate circumstances to permit all qualified parties to participate in the program. In establishing the need for and the amount of any such fee, the intrinsic benefits of an award provided to the recipient, such as advance payments and title to property, will be taken into consideration.

Section 602.15 establishes that DOE will not provide indirect costs for conferences and scientific/technical meetings. Conferences and meetings do not require the institutional infrastructure needed to support research projects.

Section 602.16 sets forth requirements pertaining to national security classified information. DOE does not intend this program to use or develop classified information. If projects develop information that may be classified, the section provides requirements for its handling and review. Such projects may be terminated by mutual agreement.

Since the initial publication of this rule the designated title of this official has been changed from Director of Classification to Director of Declassification.

Section 602.17 describes requirements for project continuation funding and reporting. This section outlines the varieties of reports required for project accounting and budgeting. A table summarizing the types of reports, time for submission, and number of copies is set forth in Appendix A to this part.

Section 602.18 encourages participants to disseminate project results promptly and will allow DOE to waive technical reporting requirements if the information is published or accepted for publication in an appropriate journal.

Section 602.19 establishes requirements for project records and data. Because DOE is committed to the preservation and sharing of information with potential value for research or other purposes, projects are required to implement proper data and records management procedures. These procedures shall include development and maintenance of documentation for electronic data. The section also requires award recipients to comply with designated DOE records and data management needs, including providing information to the Comprehensive Epidemiologic Data Resource or to another repository, as DOE directs.

IV. Regulatory Review

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 95 Stat. 1164), which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE concluded that this rule would only affect small entities as they apply for and receive awards and does not create additional economic impacts on such entities. Accordingly, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

OMB has approved information collection requirements under this rule under control numbers 1910–0400 and 1910–1400.

VII. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule is categorically excluded under the DOE National Environmental Policy Act (NEPA) regulations (10 CFR part 1021, appendix A to subpart D) from preparation of either an Environmental Assessment or an Environmental Impact Statement under the NEPA of 1969 (42 U.S.C. 4321, et. seq. [1976]) as a rulemaking establishing application and review procedures for grants and cooperative agreements.

VIII. Intergovernmental Review

This program is generally not subject to the intergovernmental review requirements of Executive Order 12372, as implemented by 10 CFR part 1005. However, certain applications for financial assistance awards may require this review. Such applications, including those from governmental or nongovernmental entities that involve research, development, or demonstration activities, are subject to the provisions of the Executive Order and 10 CFR part 1005 when such activities: (1) have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public. Entities planning to submit such applications should contact the Office of Epidemiology and Health Surveillance (EH–42), U.S. Department of Energy, Washington, DC 20585 for further information.

IX. Review Under Executive Order 12612

Executive Order 12612 requires review of regulations or rules for any substantial direct effects on States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among various levels of Government. This rule amends, by addition of a new part, existing regulations for a financial assistance program to stimulate research and development. There will not be any substantial direct effects on States.

X. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

XI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Epidemiology and Other Health Studies Financial Assistance Program is 81.108.

List of Subjects in 10 CFR Part 602

Energy, Grant programs—health, Health, Medical research, Occupational safety and health, Reporting and recordkeeping requirements, Research.

For the reasons set forth in the preamble, chapter II of title 10 CFR is

amended by adding a new part 602, as set forth below.

Issued in Washington, DC, on January 18, 1995.

Tara O'Toole,

Assistant Secretary Environment, Safety and Health.

Chapter II of title 10 CFR is amended by adding part 602 to read as follows:

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

Sec.
602.1 Purpose and scope.
602.2 Applicability.
602.3 Definitions.
602.4 Deviations.
602.5 Epidemiology and Other Health Studies Financial Assistance Program.
602.6 Eligibility.
602.7 Solicitation.
602.8 Application requirements.
602.9 Application evaluation and selection.
602.10 Additional requirements.
602.11 Funding.
602.12 Cost sharing.
602.13 Limitation of DOE liability.
602.14 Fee.
602.15 Indirect cost limitations.
602.16 National security.
602.17 Continuation funding and reporting requirements.
602.18 Dissemination of results.
602.19 Records and data.
Appendix A to Part 602—Schedule of Renewal Applications and Reports

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308.

§ 602.1 Purpose and scope.

This part sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements by DOE (through the Office of Environment, Safety and Health or any office to which its functions are subsequently redelegated) for health related research, education/training, conferences, communication, and related activities.

§ 602.2 Applicability.

(a) This part applies to all grants and cooperative agreements awarded after the effective date of this rule.

(b) Except as otherwise provided by this part, the award and administration of grants and cooperative agreements shall be governed by 10 CFR part 600 (DOE Financial Assistance Rules).

§ 602.3 Definitions.

In addition to the definitions provided in 10 CFR part 600, the following definitions are provided for purposes of this part:

Conference and communication activities means scientific or technical conferences, symposia, workshops, seminars, public meetings, publications, video or slide shows, and other presentations for the purpose of communicating or exchanging information or views pertinent to DOE.

DOE means the United States Department of Energy.

Education/Training means support for education or related activities for an individual or organization that will enhance educational levels and skills, in particular, scientific or technical areas of interest to DOE.

Epidemiology and Other Health Studies means research pertaining to potential health effects resulting from DOE or predecessor agency operations or from any aspect of energy production, transmission, or use (including electromagnetic fields) in the United States and abroad. Related systems or activities to enhance these areas, as well as other program areas that may be described by notice published in the **Federal Register**, are also included.

Principal investigator means the scientist or other individual designated by the recipient to direct the project.

Research means basic and applied research and that part of development not related to the development of specific systems or products. The primary aim of research is scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding rather than focusing on a specific system or product.

§ 602.4 Deviations.

(a) Single-case deviations from this part may be authorized in writing by the Assistant Secretary for Environment, Safety and Health, the Head of the Contracting Activity, or their designees, upon the written request of DOE staff, an applicant for award, or a recipient. A request from an applicant or a recipient must be submitted to or through the cognizant contracting officer.

(b) Whenever a proposed deviation from this part would be a deviation from 10 CFR part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

§ 602.5 Epidemiology and Other Health Studies Financial Assistance Program.

(a) DOE may issue under this part awards for research, education/training, conferences, communication, and related activities in the Office of Environment, Safety and Health program areas set forth in paragraph (b) of this section.

(b) The program areas are:

(1) Health experience of DOE and DOE contractor workers;

(2) Health experience of populations living near DOE facilities;

(3) Workers exposed to toxic substances, such as beryllium;

(4) Use of biomarkers to recognize exposure to toxic substances;

(5) Epidemiology and other health studies relating to energy production, transmission, and use (including electromagnetic fields) in the United States and abroad;

(6) Compilation, documentation, management, use, and analysis of data for the DOE Comprehensive Epidemiologic Data Resource; and

(7) Other systems or activities enhancing these areas, as well as other program areas as may be described by notice published in the **Federal Register**.

§ 602.6 Eligibility.

Any individual or entity other than a Federal agency is eligible for a grant or cooperative agreement. An unaffiliated individual is also eligible for a grant or cooperative agreement.

§ 602.7 Solicitation.

(a) The Catalog of Federal Domestic Assistance number for 10 CFR part 602 is 81.108 and its solicitation control number is EOHSFAP 10 CFR part 602.

(b) An application for a new or renewal award under this solicitation may be submitted at any time to DOE at the address specified in paragraph (c) of this section. New or renewal applications shall receive consideration for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE.

(c) Except as otherwise provided in a notice of availability, applicants may obtain application forms, described in 602.8(b) of this part, and additional information from the Office of Epidemiology and Health Surveillance (EH–42), U.S. Department of Energy, Washington, DC 20585, (301) 903–5926, and shall submit applications to the same address.

(d) DOE will publish program notices in the **Federal Register** regarding the availability of epidemiology and other health studies financial assistance. DOE may also use other means of communication, as appropriate, such as the publication of notices of availability in trade and professional journals and news media.

(1) Each notice of availability shall cite this part and shall include:

(i) The Catalog of Federal Domestic Assistance number and solicitation control number of the program;

(ii) The amount of money available or estimated to be available for award;

(iii) The name of the responsible DOE program official to contact for additional

information and an address where application forms may be obtained;

(iv) The address for submission of applications; and

(v) Any evaluation criteria in addition to those set forth in § 602.9 of this part.

(2) The notice of availability may also include any other relevant information helpful to applicants such as:

(i) Program objectives;

(ii) A project agenda or potential area of project initiatives;

(iii) Problem areas requiring additional effort; and

(iv) Any other information that identifies areas in which grants or cooperative agreements may be made.

(e) DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

(f) DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted.

(g) To be considered for a renewal award under this part, an incumbent recipient shall submit a continuation or renewal application, as provided in § 602.8 (c) and (h) of this part.

§ 602.8 Application requirements.

(a) An original and seven copies of the application for initial support must be submitted, except that State and local governments and Indian tribal governments shall not be required to submit more than the original and two copies of the application.

(b) Each new or renewal application in response to this part must include:

(1) An application face page, DOE Form 4650.2 (approved by OMB under OMB Control No. 1910–1400). However, the face page of an application submitted by a State or local government or an Indian tribal government shall be the face page of Standard Form 424 (approved by OMB under OMB Control Number 0348–0043).

(2) A detailed description of the proposed project, including its objectives, its relationship to DOE's program, its impact on the environment, if any, and the applicant's plan for carrying it out.

(3) Detailed information about the background and experience of the recipients of funds or, as appropriate, the principal investigator(s) (including references to publications), the facilities and experience of the applicant, and the cost-sharing arrangements, if any.

(4) A detailed budget for the entire proposed period of support with written justification sufficient to evaluate the itemized list of costs provided on the entire project. Applicants should note the following when preparing budgets:

(i) Numerical details on items of cost provided by State and local government and Indian tribal government applicants shall be on Standard Form 424A, ''Budget Information for Non-Construction Programs'' (approved under OMB Control No. 0348–0044). All other applicants shall use budget forms ERF 4620.1 (approved by OMB under Control No. 1910–1400).

(ii) DOE may, subsequent to receipt of an application, request additional budgetary information from an applicant when necessary for clarification or make informed pre-award determinations under 10 CFR part 600.

(5) Any pre-award assurances required pursuant to 10 CFR parts 600 and 602.

(c) Applications for a renewal award must be submitted with an original and seven copies, except that State and local governments and Indian tribal government applicants are required to submit only an original and two copies (Approved by OMB under OMB Control Numbers 0348–00050348–0009.)

(d) The application must be signed by an official who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the award, if one is issued, or if unaffiliated, by the individual applicant. (See § 602.17(a)(1) for requirements on continuation awards.)

(e) DOE may return an application that does not include all information and documentation required by statute, this part, 10 CFR part 600, or the notice of availability, when the nature of the omission precludes review of the application.

(f) During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

(g) In addition to including the information described in paragraphs (b), (c), and (d) of this section, an application for a renewal award must be submitted no later than 6 months before the expiration of the project period and must be on the same forms as required for initial applications. The renewal application must outline and justify a program and budget for the proposed project period, showing in detail the estimated cost of the proposed project, together with an indication of the amount of cost sharing, if any. The application shall also describe and explain the reasons for any change in the scope or objectives of the proposed project and shall compare and explain any difference between the estimates in the proposed budget and actual costs experienced as of the date of the application.

(h) DOE is not required to return an application to the applicant.

(i) Renewal applications must include a separate section that describes the results of work accomplished through the date of the renewal application and how such results relate to the activities proposed to be undertaken in the renewal period.

§ 602.9 Application evaluation and selection.

(a) Applications shall be evaluated for funding generally within 6 months, but in any event no later than 12 months, from the date of receipt by DOE. After DOE has held an application for 6 months, the applicant may, in response to DOE's request, be required to revalidate the terms of the original application.

(b) DOE shall perform an initial evaluation of all applications to ensure that the information required by this part is provided, that the proposed effort is technically sound and feasible, and that the effort is consistent with program funding priorities. For applications that pass the initial evaluation, DOE shall review and evaluate each application received based on the criteria set forth below and in accordance with the Office of Environment, Safety and Health Merit Review System developed, as required, under DOE Financial Assistance Regulations, 10 CFR part 600.

(c) DOE shall select evaluators on the basis of their professional qualifications and expertise. To ensure credible and inclusive peer review of applications, every effort will be made to select evaluators apart from DOE employees and contractors. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

(d) DOE shall evaluate new and renewal applications based on the following criteria that are listed in descending order of importance:

(1) The scientific and technical merit of the proposed research;

(2) The appropriateness of the proposed method or approach;

(3) Competency of research personnel and adequacy of proposed resources;

(4) Reasonableness and appropriateness of the proposed budget; and

(5) Other appropriate factors consistent with the purpose of this part established and set forth in a Notice of Availability or in a specific solicitation.

(e) DOE shall also consider as part of the evaluation other available advice or information, as well as program policy

factors, such as ensuring an appropriate balance among the program areas listed in § 602.5 of this part.

(f) In addition to the evaluation criteria set forth in paragraphs (d) and (e) of this section, DOE shall consider the recipient's performance under the existing award during the evaluation of a renewal application.

(g) Selection of applications for award will be based upon the findings of the technical evaluations (including peer reviews, as specified in the Office of Environment, Safety and Health Merit Review System), the importance and relevance of the proposal to the Office of Environment, Safety and Health's mission, and the availability of funds. Cost reasonableness and realism will also be considered.

(h) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a commitment that DOE will make an award.

§ 602.10 Additional requirements.

(a) A recipient performing research or related activities involving the use of human subjects must comply with DOE regulations in 10 CFR part 745, ''Protection of Human Subjects,'' and any additional provisions that may be included in the special terms and conditions of an award.

(b) A recipient performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (51 FR 16958, May 7, 1986), or such later revision of those guidelines, as may be published in the **Federal Register**. (The guidelines are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room BBB, Bethesda, MD 20892, or from the Office of Epidemiology and Health Surveillance, (EH–42), U.S. Department of Energy, Washington, DC 20585).

(c) A recipient performing research on warm-blooded animals shall comply with the Federal Laboratory Animal Welfare Act of 1966, as amended (7 USC 2131 et seq.), and the regulations promulgated thereunder by the Secretary of Agriculture at 9 CFR chapter I, subchapter A, pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal awards. The recipient shall comply with the guidelines described in the Department of Health and Human Services Publication No. [NIH] 86–23, ''Guide for the Care and Use of Laboratory Animals,'' or succeeding revised editions. (This guide is available from the Office for Protection from Research Risks, Office of the Director, National Institutes of Health, Building 31, Room 4B09, Bethesda, MD 20892, or from the Office of Epidemiology and Health Surveillance, (EH–42), U.S. Department of Energy, Washington, DC 20585).

§ 602.11 Funding.

(a) The project period during which DOE expects to provide support for an approved project under this part shall generally not exceed 3 years and may exceed 5 years only if DOE makes a renewal award or otherwise extends the award. The project period shall be specified on the Notice of Financial Assistance Grant (DOE Form 4600.1).

(b) Each budget period of an award under this part shall generally be 12 months and may be as much as 24 months, as DOE deems appropriate.

§ 602.12 Cost sharing.

Cost sharing is not required, nor will it be considered, as a criterion in the evaluation and selection process unless otherwise provided under § 602.9(d)(5).

§ 602.13 Limitation of DOE liability.

Awards made under this part are subject to the requirement that the maximum DOE obligation to the recipient is the amount shown in the Notice of Financial Assistance Award as the amount of DOE funds obligated. DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

§ 602.14 Fee.

(a) Notwithstanding 10 CFR part 600, a fee may be paid, in appropriate circumstances, to a recipient that is a small business concern, as qualified under the criteria and size standards of 13 CFR part 121, in order to permit the concern to participate in the Epidemiology and Other Health Studies Financial Assistance Program. Whether or not it is appropriate to pay a fee shall be determined by the contracting officer, who shall, at a minimum, apply the following guidelines:

(1) Whether the acceptance of an award will displace other work that the small business is currently engaged in or committed to assume in the near future; or

(2) Whether the acceptance of an award will, in the absence of paying a fee, cause substantial financial distress to the business. In evaluating financial distress, the contracting officer shall balance current displacement against reasonable future benefit to the company. (If the award will result in the beneficial expansion of the existing business base of the company, then no fee would generally be appropriate.) Fees shall not be paid to other entities except as a deviation from 10 CFR part 600, nor shall fees be paid under awards in support of conferences.

(b) To request a fee, a small business concern shall submit with its application a written self-certification that it is a small business concern qualified under the criteria and size standards in 13 CFR part 121. In addition, the application must state the amount of fee requested for the entire project period and the basis for requesting the amount and must also state why payment of a fee by DOE would be appropriate.

(c) If the contracting officer determines that payment of a fee is appropriate under paragraph (a) of this section, the amount of fee shall be that determined to be reasonable by the contracting officer. The contracting officer shall, at a minimum, apply the following guidelines in determining the fee amount:

(1) The fee base shall include the estimated allowable cost of direct salaries and wages and allocable fringe benefits. This fee base shall exclude all other direct and indirect costs.

(2) The fee amount expressed as a percentage of the appropriate fee base, pursuant to paragraph (c)(1) of this section, shall not exceed the percentage rate of fee that would result if a Federal agency contracted for the same amount of salaries, wages, and allocable fringe benefits under a cost reimbursement contract.

(3) Fee amounts, determined pursuant to paragraphs (c)(1) and (c)(2) of this section, shall be appropriately reduced when:

(i) Advance payments are provided; and/or

(ii) Title to property acquired with DOE funds vests in the recipient (10 CFR part 600).

(d) Notwithstanding 10 CFR part 600, any fee awarded shall be a fixed fee and shall be payable on an annual basis in proportion to the work completed, as determined by the contracting officer, upon satisfactory submission and acceptance by DOE of the progress report. If the project period is shortened due to termination, or the project period is not fully funded, the fee shall be reduced by an appropriate amount.

§ 602.15 Indirect cost limitations.

Awards issued under this part for conferences and scientific/technical

meetings will not include payment for indirect costs.

§ 602.16 National security.

Activities under the Epidemiology and Other Health Studies Financial Assistance Program are not expected to involve classified information (i.e., Restricted Data, Formerly Restricted Data, National Security Information). However, if in the opinion of the recipient or DOE such involvement becomes expected prior to the closeout of the award, the recipient or DOE shall notify the other in writing immediately. If the recipient believes any information developed or acquired may be classified, the recipient shall not provide the potentially classified information to anyone, including DOE officials with whom the recipient normally communicates, except the Director of Declassification, and shall protect such information as if it were classified until notified by DOE that a determination has been made that it does not require such handling. Correspondence that includes the specific information in question shall be sent by registered mail to the U.S. Department of Energy, Attn: Director of Declassification, NN–50, Washington, DC 20585. If the information is determined to be classified, the recipient may wish to discontinue the project, in which case the recipient and DOE shall terminate the award by mutual agreement. If the award is to be terminated, all material deemed by DOE to be classified shall be forwarded to DOE in a manner specified by DOE for proper disposition. If the recipient and DOE wish to continue the award, even though classified information is involved, the recipient shall be requested to obtain both personnel and facility security clearances through the Office of Safeguards and Security for Headquarters awards or from the cognizant field office Division of Safeguards and Security for awards obtained through DOE field organizations. Costs associated with handling and protecting any such classified information shall be negotiated at the time that the determination to proceed is made.

§ 602.17 Continuation funding and reporting requirements.

(a) A recipient shall periodically report to DOE on the project's progress in meeting the project objectives of the award. The following types of reports shall be used:

(1) *Progress Reports.* After issuance of an initial award, recipients must submit a satisfactory progress report to receive a continuation award for the remainder of the project period. The original and two copies of the required report must be submitted to the Office of Environment, Safety and Health program manager 90 days prior to the anticipated continuation funding date. The report should include results of work to date and emphasize findings and their significance to the field, and any real or anticipated problems. The report also should contain the following information: On the first page, provide the project title, principal investigator/project director name, period of time the report covers, name and address of recipient organization, DOE award number, the amount of unexpended funds, if any, that are anticipated to be left at the end of the current budget period. If the amount exceeds 10 percent of the funds available for the budget period, provide information as to why the excess funds are anticipated to be available and how they will be used in the next budget period. The report should state whether the aims have changed from the original application, and if they have, provide revised aims. A completed budget page must be submitted with the continuation progress report when a change to anticipated future costs will exceed 25 percent of the original recommended future budget.

(2) *Notice of Energy Research and Development (R&D) Project.* A Notice of Energy R&D Project, DOE Form 1430.22, which summarizes the purpose and scope of the project, must be submitted in accordance with the Distribution and Schedule of Documents set forth in Appendix A to this part, Schedule of Renewal Applications and Reports. Copies of the form may be obtained from a DOE contracting office.

(3) *Special Reports.* The recipient shall report the following events to DOE as soon after they occur as possible:

(i) Problems, delays, or adverse conditions that will materially affect the ability to attain project objectives or prevent the meeting of time schedules and goals. The report must describe remedial action that the recipient has taken, or plans to take, and any action DOE should take to alleviate the problems.

(ii) Favorable developments or events that enable meeting time schedules and goals sooner, or a lower cost than anticipated, or producing more beneficial results than originally projected.

(4) *Final Report.* A final report covering the entire project must be submitted by the recipient within 90 days after the project period ends or the award is terminated. Satisfactory completion of an award will be contingent upon the receipt of this report. The final report shall follow the same outline as progress reports. Recipients will provide, as part of the final report, a description of records and data compiled during the project, along with a plan for its preservation or disposition (see § 602.19 of this part). All manuscripts prepared for publication should be appended to the final report.

(5) *Financial Status Report (FSR) (OMB No. 0348–0039).* The FSR is required within 90 days after completion of each budget period. For budget periods exceeding 12 months, an FSR is also required within 90 days after this first 12 months unless waived by the contracting officer.

(b) DOE may extend the deadline date for any report if the recipient submits a written request before the deadline, that adequately justifies an extension.

(c) A table summarizing the various types of reports, time for submission, and number of copies is set forth in appendix A to this part. The schedule of reports shall be as prescribed in this table, unless the award document specifies otherwise. These reports shall be submitted by the recipient to the awarding office.

(d) DOE, or its authorized representatives, may make site visits, at any reasonable time, to review the project. DOE may provide such technical assistance as may be requested.

(e) Recipients may place performance reporting requirements on a subrecipient consistent with the provisions of this section.

§ 602.18 Dissemination of results.

(a) Recipients are encouraged to disseminate research results promptly. DOE reserves the right to utilize, and have others utilize to the extent it deems appropriate, the reports resulting from research awards.

(b) DOE may waive the technical reporting requirement of progress reports set forth in § 602.17, if the recipient submits to DOE a copy of its own report that is published or accepted for publication in a recognized scientific or technical journal and that satisfies the information requirements of the program.

(c) Recipients are urged to publish results through normal publication channels in accordance with the applicable provisions of 10 CFR part 600.

(d) The article shall include an acknowledgement that the project was supported, in whole or in part, by a DOE award, and specify the award number, but state that such support does not

constitute an endorsement by DOE of the views expressed in the article.

§ 602.19 Records and Data

(a) In some cases, DOE will require submission of certain project records or data to facilitate mission-related activities. Recipients, therefore, must take adequate steps to ensure proper management, control, and preservation of all project records and data.

(b) Awardees must ensure that all project data is adequately documented. Documentation shall:

(1) Reference software used to compile, manage, and analyze data;

(2) Define all technical characteristics necessary for reading or processing the records;

(3) Define file and record content and codes;

(4) Describe update cycles or conditions and rules for adding or deleting information; and

(5) Detail instrument calibration effects, sampling and analysis, space and time coverage, quality control measures, data algorithms and reduction methods, and other activities relevant to data collection and assembly.

(c) Recipients agree to comply with designated DOE records and data management requirements, including providing electronic data in prescribed formats and retention of specified records and data for eventual transfer to the Comprehensive Epidemiologic Data Resource or to another repository, as directed by DOE. Recipients will provide, as part of the final report, a description of records and data compiled during the project along with a plan for its preservation or disposition.

(d) Recipients agree to make project records and data available as soon as possible when requested by DOE.

APPENDIX A TO PART 602.—SCHEDULE OF RENEWAL APPLICATIONS AND REPORTS

Type	When due	Number of copies for awarding office
1. Summary: 200 words on scope and purpose (Notice of Energy R&D Project).	Immediately after a grant is awarded and with each application for renewal.	3
2. Renewal period ends	6 months before the budget	8
3. Progress Report period (or as part of a renewal application)	90 days prior to the next budget period	3
4. Other progress reports, brief topical reports, etc. (Designated when significant results develop or when work has direct programmatic impact).	As deemed appropriate by DOE or the recipient	3
5. Reprints, Conference	Same as 4. above	3
6. Final report of the project	Within 90 days after completion	3
7. Financial Status Report (FSR)	Within 90 days after completion of the project period; for budget periods exceeding 12 months an FSR is also required within 90 days after the first 12-month period.	3

Note: Report types 5 and 6 require with submission two copies of DOE Form 1332.16, University-Type Contractor and Grantee Recommendations for Disposition of Scientific and Technical Document.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks; Regulations G, T, U and X

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and deletions from the previous Foreign List.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to and deletions from the OTC List, which was last published on October 31, 1994 (59 FR 54381), and which became effective November 14, 1994. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under a rule approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below is one deletion from the Foreign List. There are no new additions to the Board's Foreign List, which was last published October 31, 1994 (59 FR 54381), and which became

effective November 14, 1994. The Foreign List includes those foreign securities that meet the criteria in § 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List, and one deletion from the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

ABSOLUTE ENTERTAINMENT, INC.
No par common
APPLIED CARBON TECHNOLOGY, INC.
No par common
BAKER HUGHES INCORPORATED
Warrants (expire 03–31–95)
BASE TEN SYSTEMS, INC.
Series B, rights expire 11–10–94
BREAKWATER RESOURCES, LTD.
No par common
C–TEC CORPORATION
Transferable subscription rights
CENTOCOR, INC.
Warrants (expire 12–31–94)
COMMUNICATIONS & ENTERTAINMENT CORPORATION
Class A, $.05 par common
COMMUNITY HEALTH COMPUTING CORP.
$.01 par common
COMPUTER CONCEPTS CORPORATION
$.0001 par common
COMSTOCK BANK (Neveda)
$.50 par common
CONTINENTAL SAVINGS OF AMERICA, A FEDERAL SAVINGS BANK
Series A, non-cumulative convertible preferred
CPI AEROSTRUCTURES, INC.
Warrants (expire 09–16–95)
DELPHI INFORMATION SYSTEMS, INC.
$.10 par common
DIGITAL PRODUCTS CORPORATION
$.025 par common Class A, warrants (expire 02–07–95)
Class B, warrants (expire 02–07–97)
ENZON, INC.
Warrants (expire 11–01–94)
EQUIVEST FINANCE, INC.
$.05 par common
EROX CORPORATION
No par common
GATEWAY INDUSTRIES, INC.
No par common
GENZYME CORPORATION
Warrants (expire 12–31–94)
GLOBAL SPILL MANAGEMENT, INC.
$.001 par common
GREAT AMERICAN RECREATION, INC.
$1.00 par common
GREENWICH PHARMACEUTICALS INC.
$.10 par common
HIGHWOOD RESOURCES LTD.
No par capital
HOENIG GROUP INC.
Class A, warrants (expire 10–31–94)
INOTEK TECHNOLOGIES CORPORATION
$.01 par common
JACKPOT ENTERPRISES, INC.
Warrants (expire 01–31–96)
JB OXFORD HOLDINGS INC.
$.01 par common
KENDALL SQUARE RESEARCH CORP.
$.01 par common
MEDIA VISION TECHNOLOGY, INC.
Convertible subordinated debentures due 2003
MENLEY & JAMES, INC.
$.01 par common
MICROCARB INC.
$.01 par common
MPTV, INC.
$.005 par common
MRV COMMUNICATIONS, INC.
Warrants (expire 12–07–97)
NAHAMA & WEAGANT ENERGY COMPANY
No par common
NATIONAL CONVENIENCE STORES, INC.
Warrants (expire 03–09–98)
NATIONAL DIAGNOSTICS, INC.
No par common Warrants (expire 09–19–97)
NYCAL CORPORATION
No par common
OPTO MECHANIK, INC.
$.10 par common
P & F INDUSTRIES, INC.
$10.00 par cumulative convertible preferred
PRICE REIT, INC., THE
$.01 par common
PUROFLOW INCORPORATED
$.06–2/3 par common
SGI INTERNATIONAL
No par common
SPORTS/LEISURE, INC.
$.01 par common
TAT TECHNOLOGIES LTD.
Class A, warrants (expire 03–30–95)
TELIOS PHARMACEUTICALS, INC.
Warrants (expire 09–26–96)
TJ SYSTEMS CORPORATION
Series A, $.01 par convertible preferred
U.S. CAPITAL GROUP INC.
$.10 par common
UNITED STATES EXPLORATION, INC.
$.0001 par common
VEST, H.D., INC.
Class B, warrants (expire 11–21–94)

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

AGNICO-EAGLE MINES LIMITED
No par common
AMERIFED FINANCIAL CORPORATION (Illinois)
$.01 par common
AMITY BANCSHARES, INC. (Illinois)
$.01 par common
AMVESTORS FINANCIAL CORP.
No par common
ANCHOR BANCORP, INC. (New York)
$.01 par common
ASSOCIATED COMMUNICATIONS CORP.
Class A, $.10 par common
Class B, $.10 par common
BABBAGE'S, INC.
$.10 par common
BANYAN MORTGAGE INVESTORS L.P.
Depositary units of limited partnership interest
BARRETT RESOURCES CORPORATION
$.01 par common
BIOSURFACE TECHNOLOGY, INC.
$.01 par common
BROCK CANDY COMPANY
Class A, $.01 par common
CARENETWORK, INC.
$.01 par common
CARSON PIRIE SCOTT & CO.
$.01 par common

CENTRAL INDIANA BANCORP
No par common
CENTRAL JERSEY BANCORP
$2.50 par common
CHARTER FSB BANCORP INC.
$.01 par common
COASTAL HEALTHCARE GROUP, INC.
$.01 par common
COMMERCE BANK (Virginia)
$2.50 par common
CORRECTIONS CORPORATION OF AMERICA
$1.00 par common
Warrants (expire 09–14–97)
DATASOUTH COMPUTER CORPORATION
$.01 par common
DIGIDESIGN, INC.
$.001 par common
EASTOVER CORPORATION
No par shares of beneficial interest
F & C BANCSHARES, INC. (Florida)
$1.00 par common
F & M NATIONAL CORPORATION
$2.00 par common
FIRST WESTERN FINANCIAL CORPORATION
$1.00 par common
GALEY & LORD, INC.
$.01 par common
GENCARE HEALTH SYSTEMS, INC.
$.02 par common
GENERAL ATLANTIC RESOURCES, INC.
$.01 par common
GERMANTOWN SAVINGS BANK (Pennsylvania)
$.10 par common
GRENADA SUNBURST SYSTEM CORPORATION
$1.00 par common
HOME FEDERAL SAVINGS BANK (Washington, DC)
$.01 par common
IDB COMMUNICATIONS GROUP, INC.
$.01 par common
INFORMATION AMERICA, INC.
$.01 par common
INPUT/OUTPUT, INC.
$.01 par common
INTERGROUP HEALTHCARE CORPORATION
$.001 par common
ITHACA BANCORP, INC. (New York)
$1.00 par common
JONES SPACELINK, LTD.
Class A, $.01 par common
KEPTEL, INC.
No par common
KIRSCHNER MEDICAL CORPORATION
$.10 par common
KNOWLEDGEWARE, INC.
No par common
KOLL MANAGEMENT SERVICES, INC.
$.01 par common
LASER PRECISION CORPORATION
$.10 par common
LCI INTERNATIONAL, INC.
$.01 par common
5% cumulative convertible exchangeable preferred
MEDSTAT GROUP, INC., THE
$.01 par common
NATIONAL CONVENIENCE STORES, INC.
$.01 par common
ORTHOMET, INC.
$.10 par common
PALMER TUBE MILLS LIMITED
American Depositary Receipts
PREMIERE PAGE, INC.
$.01 par common
PRICE REIT, INC., THE
Series B, $.01 par common
PROVIDENTIAL CORPORATION
$.0001 par common
PUROLATOR PRODUCTS COMPANY
$.01 par common
QUINCY SAVINGS BANK (Massachusetts)
$.10 par common
RELIFE, INC.
Class A, $.01 par common
RHNB CORPORATION
$2.50 par common
ROCK FINANCIAL CORPORATION
$3.33⅓ par common
SCOTT'S LIQUID GOLD, INC.
$.10 par common
SEAGATE TECHNOLOGY, INC.
$.01 par common
6¾% convertible subordinated debentures
SERVICE FRACTURING COMPANY
$1.00 par common
SNAPPLE BEVERAGE CORPORATION
$.01 par common
SORICON CORPORATION
$.01 par common
SUMMIT BANCORP, INC. (Washington)
$.01 par common
SYNERGEN, INC.
$.01 par common
SYNOPTICS COMMUNICATIONS, INC.
$.01 par common
TRICO PRODUCTS CORPORATION
No par common
TRICONEX CORPORATION
No par common
UNSL FINANCIAL CORP.
$1.00 par common
WINSTON FURNITURE COMPANY, INC.
$.01 par common
ZENITH LABORATORIES, INC.
No par common

Additions to the List of Marginable OTC Stocks

7TH LEVEL, INC.
$.01 par common
ABER RESOURCES LTD.
No par common
ADIA S.A.
American Depositary Receipts
ALABAMA NATIONAL BANCORPORATION
$1.00 par common
AMERCO
$.25 par common
AMERICAN CINEMA STORES INC.
$.001 par common
AMERICAN RESOURCES OF DELAWARE, INC.
$.00001 par common
AMERICAN SENSORS, INC.
No par common
ANDYNE COMPUTING LTD.
No par common
APOLLO GROUP, INC.
Class A, no par common
APPLIED VOICE TECHNOLOGY, INC.
$.01 par common
APPLIX, INC.
$.0025 par common
AREL COMMUNICATIONS & SOFTWARE LTD.
Ordinary shares
Series A, warrants (expire 12–01–96)
ARK RESTAURANTS CORPORATION
$.01 par common
ASPEN TECHNOLOGY, INC.
$.01 par common
ASSOCIATED GROUP, INC., THE
Class A, $.10 par common
Class B, $.10 par common
AVERT, INC.
No par common
Warrants (expire 12–22–95)
B.U.M. INTERNATIONAL, INC.
$.02 par common
BARRY'S JEWELERS, INC.
No par common
Warrants (expire 07–01–2002)
BITWISE DESIGNS, INC.
$.001 par common
BOLLE AMERICA, INC.
$.01 par common
BONSO ELECTRONICS INTERNATIONAL, INC.
$.0005 par common
Warrants (expire 12–16–99)
BRIDGEPORT MACHINES, INC.
$.01 par common
BTG, INC.
No par common
CAMCO FINANCIAL CORPORATION
$1.00 par common
CANNONDALE CORPORATION
$.01 par common
CARVER FEDERAL SAVINGS BANK (New York)
$.01 par common
CENTURY COMMUNICATIONS CORPORATION
Class A, $.01 par common
CINCINNATI MICROWAVE, INC.
Warrants (expire 12–31–98)
CLUCKER'S WOOD ROASTED CHICKEN, INC.
$.01 par common
COMMUNITY FINANCIAL HOLDING CORP.
$5.00 par common
COMMUNITY SAVINGS, F.A. (Florida)
$1.00 par common
CONCORDIA PAPER HOLDINGS, LTD.
American Depositary Shares
CONESTOGA ENTERPRISES, INC.
$5.00 par common
COVENANT BANK FOR SAVINGS (New Jersey)
$5.00 par common
COVENANT TRANSPORT, INC.
Class A, $.01 par common
CROCKER REALTY INVESTORS, INC.
$.001 par common
D & K WHOLESALE DRUG, INC.
$.01 par common
DIPLOMAT CORPORATION
Warrants (expire 11–04–98)
DUCKWALL-ALCO STORES, INC.
$.0001 par common
EAST TEXAS FINANCIAL SERVICES, INC.
$.01 par common
EDELBROCK CORPORATION
$.01 par common
ELRON ELECTRONIC INDUSTRIES, LTD.
Warrants (expire 09–01–98)
EMCARE HOLDINGS INC.
$.01 par common
EPIC DESIGN TECHNOLOGY, INC.
No par common
EQUITY CORPORATION
$.01 par common

F B & T FINANCIAL CORPORATION
$1.25 par common
FAMILY GOLF CENTERS, INC.
$.01 par common
FIDELITY SOUTHERN CORPORATION
No par common
FIRST AMERICAN HEALTH CONCEPTS, INC.
No par common
FIRST SAVINGS BANK OF NEW JERSEY, S.L.A.
$.10 par common
FIRSTFEDERAL FINANCIAL SERVICES CORPORATION
Series B, 6½% no par cumulative convertible preferred
FLORES & RUCKS INC.
$.01 par common
FLORSHEIM SHOE COMPANY, THE
No par common
FPA MEDICAL MANAGEMENT, INC.
$.001 par common
FSB FINANCIAL CORPORATION
$.01 par common
GENZYME CORPORATION (Tissue Repair)
$.01 par common
GORAN CAPITAL, INC.
No par common
GYRODYNE COMPANY OF AMERICA, INC.
$1.00 par common
HARCOR ENERGY COMPANY
$.10 par common
HASKEL INTERNATIONAL, INC.
Class A, no par common
HEALTH-MOR INC.
$1.00 par common
HERZFELD CARIBBEAN BASIN FUND, INC., THE
$.001 par common
ICC TECHNOLOGIES, INC.
$.01 par common
INNOVATIVE TECH SYSTEMS, INC.
$.001 par common
INTERNATIONAL VERIFACT, INC.
No par common
Warrants (expire 01–05–98)
INTERSTATE NATIONAL DEALER SERVICES, INC.
$.01 par common
ISOLYSER COMPANY, INC.
$.001 par common
ITI TECHNOLOGIES, INC.
$.01 par common
IWI HOLDING, LIMITED
No par common
JP FOODSERVICE, INC.
$.01 par common
KFX INC.
$.001 par common
KNIGHT TRANSPORTATION, INC.
$.01 par common
KS BANCORP, INC. (North Carolina)
No par common
LIN TELEVISION CORPORATION
$.01 par common
LTX CORPORATION
13½% convertible debentures
MANHATTAN BAGEL COMPANY
No par common
MEDCATH INCORPORATED
$.01 par common
MEDPLUS, INC.
No par common
MICREL, INCORPORATED
No par common
MICRION CORPORATION
No par common
MICROTEC RESEARCH, INC.
$.001 par common
MID-STATES PLC
American Depositary Receipts
MULTI-MARKET RADIO, INC.
Class A, $.01 par common
Class A, warrants (expire 03–23–99)
Class B, warrants (expire 03–23–99)
NATIONAL GAMING CORPORATION
$.01 par common
NETCOM ON-LINE COMMUNICATION SERVICES, INC.
$.01 par common
NEW ENGLAND COMMUNITY BANCORP, INC.
Class A, $.10 par common
NEW ENGLAND REALTY ASSOCIATES LIMITED PARTNERSHIP
Depositary Receipts
NORTHWEST SAVINGS BANK (Pennsylvania)
$.01 par common
NOVAMETRIX MEDICAL SYSTEMS, INC.
Class A, warrants (expire 12–08–97)
Class B, warrants (expire 12–08–99)
OIS OPTICAL IMAGING SYSTEMS, INC.
$.01 par common
OLD YORK ROAD BANCORP, INC. (Pennsylvania)
$1.00 par common
ORBIT SEMICONDUCTOR, INC.
$.001 par common
ORTEL CORPORATION
$.001 par common
ORTHODONTIC CENTERS OF AMERICA INC.
$.01 par common
OWOSSO CORPORATION
$.01 par common
PANDA PROJECT, INC., THE
$.01 par common
PHAMIS, INC.
$.0025 par common
PHYSICIAN RELIANCE NETWORK INC.
No par common
PINNACLE SYSTEMS, INC.
No par common
PLASMA-THERM, INC.
$.01 par common
PRICE ENTERPRISES, INC.
$.0001 par common
PULASKI BANK, A SAVINGS BANK
$1.00 par common
QUALITY SEMICONDUCTOR, INC.
$.001 par common
REPUBLIC BANK (Florida)
$2.00 par common
RIDE SNOWBOARD COMPANY
No par common
SANTA FE FINANCIAL CORPORATION
$.10 par common
SECURITY DYNAMICS TECHNOLOGIES, INC.
$.01 par common
SHIVA CORPORATION
$.01 par common
SINGING MACHINE COMPANY, INC., THE
$.01 par common
Warrants (expire 11–10–99)
SMC CORPORATION
No par common
SPARTA PHARMACEUTICALS, INC.
$.001 par common
SPECIALTY TELECONSTRUCTORS, INC.
Warrants (expire 11–02–99)
SPORT-HALEY, INC.
No par common
STILLWATER MINING COMPANY
$.01 par common
TELE-MATIC CORPORATION
$.01 par common
TELEMUNDO GROUP, INC.
Series A, $.01 par common
TELEWEST COMMUNICATIONS PLC
American Depositary Receipts
TELTRONICS, INC.
$.001 par common
THOMPSON PBE, INC.
$.01 par common
TMBR/SHARP DRILLING, INC.
$.10 par common
TOWER SEMICONDUCTOR LTD.
Ordinary Shares (NIS 1.00)
TRANS WORLD GAMING CORPORATION
$.001 par common
Warrants (expire 12–15–99)
TRANSPORT CORPORATION OF AMERICA, INC.
$.01 par common
UNITECH INDUSTRIES, INC.
No par common
VEECO INSTRUMENTS, INC.
$.01 par common
VIDEONICS, INC.
No par common
WAVEPHORE, INC.
No par common
WESCAST INDUSTRIES, INC.
Class A, No par common
WILLIAMS CONTROLS, INC.
$.01 par common
XENOVA GROUP PLC
American Depositary Shares
YOUNG BROADCASTING, INC.
Class A, $.01 par common

Deletion From the List of Foreign Margin Stocks

JEFFERSON SMURFIT GROUP, PLC
Ordinary shares, par value .25L

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 25, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–2301 Filed 1–30–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 21

RIN 2900–AG56

Veterans Training Under the Service Members Occupational Conversion and Training Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Service Members Occupational Conversion and Training Act of 1992 established a job training program for recently discharged

veterans. That act authorizes the Secretary of Defense to delegate some of the responsibility for implementing it to either the Secretary of Veterans Affairs, the Secretary of Labor or both. The Secretary of Defense has delegated responsibilities to both officials. These regulations will acquaint the public with the way in which Department of Veterans Affairs (VA) will implement the responsibilities which have been delegated to the Secretary of Veterans Affairs.

DATES: Effective date January 31, 1995. Comments must be received on or before April 3, 1995.

ADDRESSES: Mail written comments concerning these proposed regulations to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, Room 1176, 810 Eye Street NW., Washington, DC 20001. Comments should indicate that they are submitted in response to ''RIN 2900–AG56.'' All written comments will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The Service Members Occupational Conversion and Training Act (Pub. L. 101–484, Subtitle G) establishes a program to reimburse employers for part of the cost of training recently discharged veterans in a training program leading to permanent, stable employment. The Service Members Occupational Conversion and Training Act authorizes the Secretary of Defense to enter into an agreement with the Secretary of Veterans Affairs and the Secretary of Labor to implement that program.

On March 11, 1993, the Department of Defense entered into such an agreement with VA and the Department of Labor to implement this program. The Memorandum of Agreement, among other things, places upon VA the responsibility for making payments under the Service Members Occupational Conversion and Training Act and gives VA the authority to issue implementing regulations in order to do so. These regulations are adopted pursuant to that memorandum.

The Service Members Occupational Conversion and Training Act gives the implementing official considerable latitude in implementing certain portions of that Act. The areas in which VA adopted policies which are permitted by law but are not specifically stated in the law are discussed below. Section numbers included in the discussion refer to the section numbers found in Pub. L. 102–484.

While no money was appropriated for the Service Members Occupational Conversion and Training Act for Fiscal Year (FY) 1995, Public Law 103–335, enacted on September 30, 1994, permits unobligated funds designated for the Service Members Occupational Conversion and Training Act that were remaining on September 30, 1994, to be obligated during FY 1995. VA estimates that all of these funds will be obligated by late in the first quarter or early in the second quarter of the fiscal year.

VA notes that money obligated during FY95 and earlier fiscal years will continue to be sent to the veterans' employers as the veterans are trained. Since these programs may be up to 18 months long and the final payment is made to the employer four months after the training program is completed, some of the money obligated early in the second quarter of FY95 will be sent to the employer during the first quarter of FY97.

The Service Members Occupational Conversion and Training Act uses certain terms that are not defined by the Act and are open to a variety of different meanings. Thus, § 21,4802 defines the terms for purposes of the Service Members Occupational Conversion and Training Act in a manner deemed by the Secretary to be consistent with the purpose and intent of the job training program provided by the Act.

The Act requires that, to establish program eligibility based on unemployment, a veteran must have been unemployed for at least 8 of the 15 weeks preceding application (sec. 4485(a)(1)(A)). However, it further states that ''part-time or temporary employment'' as defined by the Secretary will be disregarded in determining the individual's employment for this purpose (sec. 4485(a)(3)).

Accordingly, § 21.4802(k) defines ''part-time'' employment as employment when a work schedule requires a lesser number of hours of work than that which is customary in the community for full-time employment in a given position. VA considered a definition applicable to all employers based upon a fixed number of hours of work per week that would be necessary to reach the full-time rather than part-time employment level. However, since the standard or normal workweek is not consistent among communities, especially where determined by collective bargaining with unions, such a rule could be arbitrary in its application. Further, the definition adopted will maximize the number of veterans who may qualify for training and thus, further the goals of the program.

As noted, ''temporary employment,'' also, is excludable for purposes of determining whether the veteran was employed during the 15-week period preceding application. The Secretary has determined that for this purpose ''temporary employment'' shall be any employment which is not ''permanent.'' (See § 21.4802(r).) The latter term is defined, in turn, as employment which is clearly continuous in nature and which would not terminate upon the completion by the employer of a particular product, task, obligation, contract or assignment. Thus, a veteran, who was ''employed'' on a full-time basis during each of the 15 weeks preceding application, but on a job scheduled to end upon completion of the task being performed, e.g., completion of construction of a particular building, will be found to have been ''unemployed'' for purposes of determining his or her eligibility to participate under the Act. VA could have adopted a more narrow definition of the term ''temporary employment'', but believes to do so would thwart the intent of the statute to provide veterans the opportunity for stable, long-term employment in a career field through training under the Act. This conclusion is based upon the determination that a person employed on a task-limited job has little likelihood of being able to sustain that type of employment for the long term beyond the project at hand.

In addition to these terms, required to be defined for eligibility purposes, the Act uses other terms in discussing the type and duration of employment for which the participating veteran is to be trained by the employer. Section 4487(b) limits approvable job training programs to those not leading to jobs which are ''seasonal,'' ''intermittent,'' or ''temporary.'' The Secretary is adopting, for the purpose of approval of a job training program, the definitions of these terms found in § 21.4802(n), (i) and (s), respectively. A ''temporary job'' is defined as time-limited employment which is known or expected, at the time training begins, to be only of short duration (e.g., 1 year or less). VA has determined that while it would be unreasonable to expect the prospective

employer to assure that the employer will be able to provide lifetime employment to the veteran who successfully completes the job training program, the employer should be able to assure that a reasonable likelihood exists of ongoing employment for the veteran in the position for which trained. It would be wasteful and absurd to subsidize an employer for 18 months of training a veteran for a job known or expected to last only 1 year or less after training is completed. VA notes that section of the statute provides for withholding a portion of the payment due the employer until the veteran has been employed for 4 months after training is completed as an incentive to the employer to retain the veteran in employment. However, a mere guarantee of a job for 4 months clearly would not be sufficient to indicate that the training will result in long-term, stable employment. VA could have circumscribed the duration of employment deemed temporary at any greater number of months or years but settled on a range up to 1 year, consistent with the temporary employment concept generally used in Federal hiring, as reasonably reflecting jobs considered to be of short duration.

The definition of the term ''intermittent job'' recognizes that in most jobs the employee works on a regular schedule. If the nature of the job is such that the employer cannot provide the employee with a regular job schedule, VA has determined that the sporadic nature of the veteran's employment would be intermittent at best and the definition provides accordingly.

The amount of work provided in ''seasonal jobs ''varies from place to place within the United States. For example, in some states along the northern tier outdoor construction is unavailable for half of the work year, while in other states such as Florida and Hawaii this type of work is available year-round. Rather than define ''seasonal job'' by listing specific jobs which are seasonal in at least part of the country, VA has chosen to define this in terms of the number of consecutive days for which no employment is provided. VA chose 90 days because this is approximately one-quarter of the year. A job which provides no work for at least this length of time would truly be seasonal.

Finally, the term ''related employment'' is defined, as more fully explained below, to indicate that the job training to be provided may actually result in long-term employment in a different but ''related job'' or one at a higher level in the same field.

The Service Members Occupational Conversion and Training Act provides a list of items an employer must certify in order to obtain payments for training a veteran. The last item in this list states that the certification may include other criteria which are essential for the effective implementation of the program (sec. 4486(d)(13)). Consequently, the list of items to be certified contains some which are not specifically enumerated in the statute.

Section 21.4822(a)(3)(xiii) requires the employer to consider any prior training the veteran may have had in the field for which he or she is to be trained and to shorten the training program appropriately. The Act requires that the employer not place in a training program anyone who is fully qualified for the job which is the goal of the program. Shortening the training program for those who are partially qualified, VA believes, is in accord with the intent of this restriction and will preserve the limited monetary resources in this program so that the number of veterans to be trained will be maximized.

Section 21.4822(a)(3)(xv) requires the employer to state the number of employees in the firm if the employer wishes to be paid monthly. The Service Members Occupational Conversion and Training Act states that employers may be paid monthly if being paid quarterly would be unduly burdensome for the employer. VA's experience in administering the Veterans' Job Training Act, a similar program with a similar provision, has shown that the burden on the employer is related to the number of employees, because of the need of employers with few employees to maintain their cash flow. Section 21.4832(a)(2) discussed below limits the number of employees an employer may have and still be paid monthly. Hence, the need for this information.

Section 21.4822(a)(3)(xii) provides that the employer will certify that the trainee will have the opportunity to participate in a personal interview with a case manager if one is assigned to him or her. The Service Members Occupational Conversion and Training Act (sec. 4493) provides that the implementing official will provide case managers to be assigned under certain circumstances to veterans in training. The Act further provides that the trainee will have an in-person interview with the case manager within 60 days of entering into training. Under the provisions of the Memorandum of Agreement the Secretary of Labor will provide these case managers. It is reasonable, given the requirements of the law for an in-person interview, that the employer certify that the interview may take place during normal working hours.

The Service Members Occupational Conversion and Training Act provides that the implementing official may prohibit payments to an employer on behalf of new trainees when the completion rate for a training program is disproportionately low due to deficiencies in the quality of the program. The law is specific as to the evidence the official must consider when determining when there are deficiencies in the quality of the program, but the law does not state what a disproportionately low percentage is. Section 21.4823(c) specifies the minimum completion rate needed to qualify for payment.

That paragraph provides that unless the program has had at least five trainees only very strong evidence that deficiencies exist will cause VA to consider whether the completion rate is disproportionately low. Four or fewer trainees do not provide sufficient data for a percentage determination to be meaningful.

If there have been five or more trainees, the regulation provides that, in effect, VA will compare the percentage of trainees who have successfully completed the particular training program during the three years which immediately precede the calculation with the percentage of all trainees who have ever successfully completed all training programs. If the percentage of successful completers of a program is less than half the percentage of successful completers of all programs, the percentage is low and will be considered as disproportionately low if the program fails to meet the other qualifications in the regulation. While the legislative history of the Act fails to define or indicate what constitutes a disproportionately low successful completion rate, VA believes that requiring a successful completion rate of at least half the national average will not place too great a burden on employers. Requiring no greater than half the national average adequately takes into account the fact that with less than 10 or 12 trainees the one unsuccessful trainee may have a large effect on the successful completion rate.

Section 21.4824 provides for withdrawal of approval if VA discovers that the program ceases to meet approval requirements, or the required employer's certifications were false in any material respect, or the employer refuses to make available the progress records for the trainees in a training program. While the Service Members Occupational Conversion and Training

Act does not specifically provide for a withdrawal of program approval, withdrawal of approval is implicit in the law. Since program approval is predicated upon the employer's meeting certain approval requirements, it clearly follows that such approval cannot be maintained if the approval requirements for the employer's program were not or are not met.

Continued compliance with approval requirements is required. For example, one requirement is that there be enough space available to train the trainees. It is conceivable that, after having obtained approval, the employer may move to a new place of business where space is inadequate, thus bringing the employer into noncompliance.

Similarly, VA may discover that an employer's certification was false. For example, an employer may falsely certify that there are sufficient instructor personnel available to train the trainees. Compliance monitoring may reveal that this is not the case. In that event approval should be withdrawn. To continue approval would make meaningless the compliance monitoring provided for in the law.

The Service Members Occupational Conversion and Training Act (sec. 4487(a)(2)) and § 21.4822(a)(3)(xv) provide that employers may be paid monthly if being paid quarterly would be burdensome. Section 21.4832(a) provides for monthly payments if the employer has less than 75 employees and wants to be paid monthly.

As noted above, VA has had experience administering a similar Act, the Veterans' Job Training Act, which had a similar provision, and the department found that the burden was related to the number of employees the employer had, because of the need of these employers to maintain their cash flow. VA believes from its administrative experience that employers with fewer than 75 employees may well find it burdensome to be paid quarterly.

The Service Members Occupational Conversion and Training Act provides that no periodic payment may be made to an employer until the veteran certifies that he or she was employed full time in the training program during the period to be certified, and the employer confirms the certification and states the number of hours the employee worked. However, § 21.4832(a)(3) provides for an exception for the employee's certification if the employee quit or died during the payment period or is similarly unavailable to make the certification. VA does not believe it equitable to withhold a payment which would otherwise be due an employer if circumstances beyond the employer's control make it difficult or impossible for the employer to obtain the certification, particularly if the employee refuses to cooperate.

Similarly, the Service Members Occupational Conversion and Training Act forbids reimbursement of an employer for expenses for tools and other work-related materials until the employer and the employee certify the need for the tools and work-related materials, that the veteran bought them, and that the employer reimbursed the veteran for them. Section 21.4832(c) contains two provisions not made explicit in the Act. First, it provides for payment in certain circumstances if the employee is unavailable to make the certification. Again VA does not believe it is equitable to withhold payment to which an employer otherwise would be entitled, if the employee is unavailable to make the certification.

Second, the regulation requires the employer and veteran to submit a copy of the receipt or other proof of purchase and cost which the employer used to determine the amount for which the veteran was reimbursed. Although not expressly required by the Service Members Occupational Conversion and Training Act, VA believes that its successful monitoring of this program requires documentation for this certification.

Section 21.4832(d)(2) provides that if the employer reduces a trainee's pay below that of his or her starting wage, reimbursement will be made to the employer on the basis of the new lower wage rather than on the basis of the starting wage. This is not stated specifically in the Service Members Occupational Conversion and Training Act but it is implicit in the law.

Occasionally, a trainee begins job training at a project where the Davis-Bacon Act applies. The Davis-Bacon Act provides a two-tier system of wages, a journeyman wage and a training wage, both of which may be higher than the starting wage which the employer usually pays employees. When the project is completed, the trainee may revert to the usual starting wage. Section 21.4802(j) defines normal starting wage in such a way that reimbursement to the employer in this situation would be based on the Davis-Bacon training wage while such a wage was being paid to the eligible person and would be based on the usual starting wage when the eligible person's training wage was not governed by that Act.

VA believes paying the employer at the Davis-Bacon training wage rate even though the employer may be paying the journeyman rate is implicit in the law. The Service Members Occupational Conversion and Training Act provides that job training programs approved under 38 U.S.C. chapter 36 will be considered to meet the approval requirements of the Act. These programs require a graduated wage scale. VA has always considered that someone who has reached the journeyman wage rate may not be considered to be a trainee entitled to educational assistance for training.

The Service Members Occupational Conversion and Training Act requires that employers keep records adequate to show the progress of the veteran and make these records available to authorized representatives of the government. However, that Act does not state the length of time the records must be kept. Section 21.4850(b) would require the employer to keep those records for 3 years following the last month or quarter for which the employer received payment on behalf of the veteran.

Another record retention period could be adopted. However, VA believes that given the limited resources for program oversight, a period of less than 3 years will make it difficult to monitor compliance effectively. On the other hand, the department realizes that retention of records for an indefinite time may well be unduly costly for the employer. Accordingly, the interim rule requires a 3-year retention as a compromise between VA's need to properly monitor compliance and the need to minimize expenses for the employer.

Section 21.4832(b) would allow VA to pay an employer a lump-sum incentive payment after the trainee had worked full-time for 4 months in the job for which the training program was designed to provide training or in a related job. A related job is defined in § 21.4820(m) as one which is found in the Dictionary of Occupational Titles as being in the same occupational work group.

In permitting payment for employment in a related job, VA is reacting to concerns that in some instances a trainee may be promoted before the four months have expired or changing business conditions may force an employer to place the eligible person in a related job. VA believes that this is tantamount to placing the eligible person in the job for which the training program is designed to provide training. The employer should not be placed in a position of losing the payment for essentially carrying out the purpose of the Service Members Occupational Conversion and Training Act. Neither should the eligible person be placed in

a position where she or he would have to forgo a promotion.

Administrative Procedure Act

A substantial portion of the changes made by this interim final rule merely consists of restatements of statutory material and, as such, is not subject to rule making requirements. The rule making changes consist of interpretative rules, general statements of policy, and rules of agency organization, procedure, and practice. As such, they are exempt from the notice and comment provisions of 5 U.S.C. 553.

The changes subject to rule making requirements are also made effective immediately without a 30 day delay since, insofar as they consist of substantive rules, they are interpretative rules and statements of policy.

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this interim rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

No Catalog of Federal Domestic Assistance number has been assigned to the program affected by these regulations.

List of Subjects

38 CFR Part 2

Authority delegation (Government agencies), Veterans Affairs Department.

38 CFR Part 21

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

Approved: November 29, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Parts 2 and 21 are amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for Part 2 continues to read as follows:

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

2. Sections 2.100 and 21.101 are added to read as follows:

§ 2.100 Delegation of authority to the Under Secretary for Benefits or his or her designee to enter into Memoranda of Agreement with authorized representatives of Department of Defense or Department of Labor or both to implement programs authorized by §§ 21.4800 through 21.4856.

This delegation is described in § 21.4854 of this chapter.

(Authority: 38 U.S.C. 512)

§ 2.101 Delegation of authority to the Under Secretary for Benefits, and to supervisory or adjudicative personnel within the jurisdiction of the Veterans Benefits Administration designated by him or her, to make findings and decisions of the Department of Veterans Affairs under the Service Members Occupational Conversion and Training Act, and the applicable regulations, precedents and instructions, relating to programs authorized by §§ 21.4800 through 21.4854.

This delegation is described in § 21.4856 of this chapter.

(Authority: 38 U.S.C. 512)

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

3. The authority citation for part 21 continues to read as follows:

Authority: 38 U.S.C. 501.

4. Subpart F–3 is added to read as follows:

Subpart F–3—Service Members Occupational Conversion and Training Program

Sec.

General

21.4800 Service Members Occupational Conversion and Training Program.
21.4801 [Reserved]
21.4802 Definitions.
21.4803–21.4809 [Reserved]

Eligibility

21.4810 Eligibility requirements for participation.
21.4811 [Reserved]
21.4812 Application and certification.
21.4813–21.4819 [Reserved]

Approval of Employer Programs

21.4820 Job training program approval.
12.4821 [Reserved]
21.4822 Employer applications for approval.
21.4823 Disapproval of entry into programs having unsatisfactory completion rates.
21.4824 Withdrawal of approval.
21.4825–21.4829 [Reserved]

Payments

21.4830 Entrance into training.
21.4831 [Reserved]
21.4832 Payments to employers.
21.4833 [Reserved]
21.4834 Overpayments and forfeits.
21.4835—21.4839 [Reserved]

Counseling

21.4840 Employment counseling services.
21.4841–21.4843 [Reserved]
21.4844 Failure to cooperate.
21.4845–21.4849 [Reserved]

Administrative

21.4850 Inspection of records.
21.4851 [Reserved]
21.4852 Monitoring and investigations.
21.4853 [Reserved]
21.4854 Delegation of authority to the Under Secretary for Benefits.
21.4855 [Reserved]
21.4856 Delegation of authority to the Veterans Benefits Administration.

Subpart F–3—Service Members Occupational Conversion and Training Program

Authority: Subtitle G , Pub. L. 102–484, 106 Stat. 2757–2769

General

§ 21.4800 Service Members Occupational Conversion and Training Program.

Sections 21.4800 through 21.4856 regulate a Service Members Occupational Conversion and Training Program. The purpose of this program is to assist members of the Armed Forces who are forced or induced to leave military service by reason of the drawdown of the Armed Forces and to provide the Secretary of Defense with another tool to manage that drawdown. The program assists eligible persons in entering the civilian workforce through training for employment in a stable and permanent position that involves significant training, VA makes payments to employers who employ and train eligible veterans in these jobs. The payments assist employers in defraying the costs of necessary training.

(Authority: Subtitle G, Pub. L. 102–484, 106 Stat. 2757–2769,10 U.S.C. 1143 note)

§ 21.4801 [Reserved]

§ 21.4802 Definitions.

For the purpose of the Service Members Occupational Conversion and Training Program described in §§ 21.4800 through 21.4856 the following definitions apply.

(a) *Active duty.* The term *active duty* means:

(1) Full-time duty in the Armed Forces, other than active duty for training,

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration;

(4) Service as a cadet at the United States Military, Air Force or Coast Guard Academy, or as a midshipman at the United States Naval Academy, and

(5) Authorized travel to or from such service.

(Authority: 106 Stat. 2757, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143, note)

(b) *Active duty for training.* (1) The term *active duty for training* means:

(i) Full-time duty in the Armed Forces performed by Reserves for training purposes,

(ii) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service,

(iii) In the case of members of the Army National Guard or the Air National Guard of any State, full-time duty under section 316, 592, 593, 594 or 505 of title 32, U.S. Code,

(iv) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10, U.S. Code for a period of not less than four weeks and which must be completed by the member before the member is commissioned, and

(v) Authorized travel to or from such duty.

(2) The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(Authority: 106 Stat. 2757, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143, note)

(c) *Active military, naval or air service.* The term *active military, naval or air service* includes active duty, any period of active duty for training during which the individual concerned was disabled from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled from an injury incurred or aggravated in line of duty.

(Authority: 106 Stat. 2757, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143, note)

(d) *Compensation.* The term *compensation* means a monthly payment made by the Department of Veterans Affairs to a veteran because of a service-connected disability.

(Authority: 106 Stat. 2757, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143, note)

(e) *Eligible person.* The term *eligible person* means a veteran who—

(1) Was discharged after August 1, 1990, and

(2) Either—

(i) Served in the active military, naval or air service for a period of more than 90 days, or

(ii) Was discharged or released from active duty because of a service-connected disability.

(Authority: 106 Stat. 2758, Pub. L. 102–464, sec. 4485(a)(2), 10 U.S.C. 1143, note)

(f) *Employer.* The term *employer* means a person or business or other entity which—

(1) Hires the veteran,

(2) Provides work, wages, and supervision,

(3) Either provides or arranges for training for the veteran, and

(4) Can make the certification required by § 21.4822(a).

(Authority: 106 Stat. 2762, Pub. L. 102–484, sec. 4487, 10 U.S.C. 1143, note)

(g) *Full-time employment.* The term *full-time employment* means employment which requires the employee to work a regular schedule of hours per day and days per week established as the standard full-time workweek at the employee's training establishment.

(Authority: 106 Stat. 2758, Pub. L. 102–484, sec. 4485(a)(3), 10 U.S.C. 1143, note)

(h) *Inactive duty training.* (1) The term *inactive duty training* means:

(i) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;

(ii) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned,

(iii) Training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5, U. S. Code), in the Senior Reserve Officers' Training Corps prescribed under chapter 103, of title 10, U. S. Code, and

(iv) In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504 or 505 of title 32, U. S. Code.

(2) The term does not include:

(i) Work or study performed in connection with a correspondence course,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

(Authority: 106 Stat. 2757, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143, note)

(i) *Intermittent job.* The term *intermittent job* means a less than full-time job in which the employee is given no advance regular work schedule due to the unpredictable and sporadic nature of the work needed for the job.

(Authority: 106 Stat. 2760, Pub. L. 102–484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(j) *Normal starting hourly wage.* (1) The term *normal starting hourly wage* means, except as provided in paragraph (j)(2) of this section, the wage paid per hour (exclusive of overtime, premium pay or fringe benefits) on the first day of the job training program to an eligible person whose training program has not been shortened as a result of the employer's evaluation of an eligible person's prior training. This definition applies as to the eligible person whose job training program actually has been shortened, and who, therefore, begins training at a higher hourly wage.

(2) For any eligible person to whom the Davis-Bacon Act applies the term *normal starting hourly wage* means:

(i) The training wage payable under the Davis-Bacon Act (exclusive of overtime, premium pay or fringe benefits) to the eligible person on days during the job training program when the Davis-Bacon Act applies, and

(ii) On days when the Davis-Bacon Act does not govern the wages paid to the eligible person, the wage as determined by paragraph (j)(1) of this section.

(Authority: 106 Stat. 2762, Pub. L. 102–484, sec. 4487, 10 U.S.C. 1143 note)

(k) *Part-time employment.* The term *part-time employment* means permanent employment in a position in which the employee works a regularly scheduled number of hours each workweek that is less than the number of hours customarily required for full-time employment in that position.

(Authority: 106 Stat. 2758, Pub. L. 102–484, sec. 4485(a)(3), 10 U.S.C. 1143 note)

(l) *Permanent employment.* The term *permanent employment* means employment which is clearly continuous in nature. Thus, the term does not include employment which is seasonal, time-limited, or expected to terminate upon completion of a particular product, task, obligation, contract, or assignment.

(Authority: 106 Stat. 2758, Pub. L. 102–484, sec. 4485(a)(3), 10 U.S.C. 1143 note)

(m) *Related job.* The term *related job* means a job which has the following characteristics when compared to another job.

(1) The *Dictionary of Occupational Titles,* 4th edition, revised 1991, shows that—

(i) Both jobs are in the same occupational group, and

(ii) The second job requires the same or higher specific vocational preparation level as the job to which it is being compared, and

(2) The salary being paid to employees with comparable experience and training in the second job is the same or greater than the salary paid in the job to which it is being compared.

(Authority: 106 Stat. 2762, Pub. L. 101–484, sec. 4487(b)(3), 10 U.S.C. 1143, note)

(n) *Seasonal job.* The term *seasonal job* means a job which is subject to a seasonal need or availability resulting in no work for the employed person for 90 or more consecutive calendar days.

(Authority: 106 Stat. 2760, Pub. L. 102–484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(o) *Secretary.* The term *Secretary* means the Secretary of Veterans Affairs unless otherwise indicated by the text of the sentence in which the term appears.

(Authority: 106 Stat. 2760, Pub. L. 102–484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(p) *Service-connected.* The term *service-connected* means, with respect to disability, that the disability was incurred or aggravated in line of duty in the active military, naval or air service.

(Authority: 106 Stat. 2758, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143, note)

(q) *State.* The term *State* means each of the several States, Territories, and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(Authority: 106 Stat. 2758, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143, note)

(r) *Temporary employment.* The term *temporary employment* means employment other than permanent employment.

(Authority: 106 Stat. 2759, Pub. L. 102–484, sec. 4485(a)(3), 10 U.S.C. 1143 note)

(s) *Temporary job.* The term *temporary job* means a time-limited job, particularly one of known, expected, or intended short duration (generally, not to exceed one year and, frequently, shorter).

(Authority: Pub. L. 102–484, sec. 4486(b)(1), 10 U.S.C. 1143 note)

(t) *Unemployed.* The term *unemployed* means that a person is without full-time, permanent employment and wants and is available for full-time, permanent employment.

(Authority: 106 Stat. 2760, Pub. L. 102–484, sec. 4485(a)(3): 10 U.S.C. 1143 note)

(u) *Veteran.* The term *veteran* means a person who—

(1) Served in the active military, naval or air service, as defined in paragraph (c) of this section, and

(2) Was discharged or released therefrom under conditions other than dishonorable.

(Authority: 106 Stat. 2757, Pub. L. 102–484, sec. 4483(2), 10 U.S.C. 1143 note, 38 U.S.C. 101(2))

§§ 21.4803—21.4809 [Reserved]

Eligibility

§ 21.4810 Eligibility requirements for participation.

To establish eligibility for participation in the Service Members Occupational Conversion and Training program, an eligible person, on the date of application, must—

(a) (1) Be unemployed, and

(2) Have been unemployed for at least 8 of the 15 weeks immediately preceding the date of his or her application for participation in a job training program under this subpart, or

(b) Be separated from the active military, naval or air service and must have had a primary or secondary occupational specialty in the Armed Forces which (as determined under regulations prescribed by the Secretary of Defense and in effect before the date of the eligible person's separation) is not readily transferable to the civilian workforce; or

(c) Be entitled to compensation (or but for the receipt of military retired pay would be entitled to compensation) under laws administered by VA for a service-connected disability rated at 30 percent or more.

(Authority: 106 Stat. 2758, Pub. L. 102–484, sec. 4485(a)(1)(B) and (C) 10 U.S.C. 1143 note)

§ 21.4811 [Reserved]

§ 21.4812 Application and certification.

(a) *Application.* An individual must apply to a facility of the Veterans Benefits Administration for participation in a job training program using the form prescribed by VA.

(Authority: 106 Stat. 2759, Pub. L. 102–484, sec. 4485(b)(1), 10 U.S.C. 1143 note)

(b) *Approval.* VA will approve an application to participate in a job training program if:

(1) The applicant is an eligible person who meets the participation requirements of § 21.4810, and

(2) Funds are available to pay employers under this subpart.

(Authority: 106 Stat. 2759, Pub. L. 102–484, sec. 4485(b)(2); 10 U.S.C. 1143 note)

(c) *Certificates.* (1) Upon approving an eligible person's application, VA will furnish the eligible person with a certificate for presentation to an employer with an existing approved job training program or an employer who is willing to develop and seek approval for a job training program. The certificate will state:

(i) The individual's eligibility to participate;

(ii) The date of the certificate's issuance to the eligible person and the period of its validity, and

(iii) Approval of entrance into a job training program is subject to the availability of funds.

(2) A certificate expires 180 days from the date on which it is furnished to the eligible person. However, VA may renew a certificate for an eligible person when the provisions of § 21.4812(b) are met. A renewed certificate expires 180 days from the date on which it is furnished to the eligible person, and may itself be renewed.

(Authority: 106 Stat. 2759, Pub. L. 102–484, sec. 4485(b)(3), 10 U.S.C. 1143 note)

(d) *Disapproval.* If an individual's application is disapproved, VA will give the individual written notice of the decision, including the reasons therefor, a summary of the evidence considered and an opportunity for a hearing. The individual may appeal VA's denial of his or her application under the same process as is provided in Part 19, Subpart B of this chapter.

(Authority: 106 Stat. 2759, Pub. L. 102–484, sec. 4485(b)(3), 10 U.S.C. 1143 note)

§§ 21.4813—21.4819 [Reserved]

Approval of Employer Programs

§ 21.4820 Job training program approval.

(a) *Eligible persons.* An employer may be paid assistance on behalf of a participating eligible person only for providing a program of job training approved by VA as meeting the requirements of this section and § 21.4822.

(1) The training provided under an employer's job training program must be in a field of employment providing a reasonable probability of stable, long-term employment and, except as provided in paragraph (a)(3)(ii) of this section, such training must be provided for a period of not less than 6 nor more than 18 months.

(2) An employer may provide all or part of a job training program under an agreement with an educational institution offering the training through a course or courses which have been approved under § 21.4253 or § 21.4254 for the enrollment of veterans.

(3) Notwithstanding the provision of paragraph (a)(1) that prohibits a training program from being more than 18 months long—

(i) An apprenticeship or other on-job training program approved under 38 U.S.C. 3687 will, upon the employer's submission of an application in accordance with § 21.4822 containing the certification required by § 21.4822(a)(3)(iii), be considered to have met all requirements for approval under this subpart, and will be approved unless found ineligible under paragraph (b) of this section, and

(ii) If a job training program described in paragraph (a)(3)(i) of this section requires more than 18 months of training to complete, the period of training approvable for purposes of this subpart will be limited to the first 18 months of training under the program, or a period of training not to exceed 18 months from the point at which the eligible person enters the program in the case where the employer grants credit for prior training. (See § 21.4832(a)(3)).

(Authority: 106 Stat. 2762, Pub. L. 102–484, sec. 4486(h); 10 U.S.C. 1143 note)

(b) *Ineligible programs.* VA will not approve a job training program for employment—

(1) Which consists of seasonal, intermittent or temporary jobs,

(2) Under which commissions are the primary source of income,

(3) Which involves political or religious activities,

(4) With any department, agency, instrumentality or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

(5) Which will not be performed in a State.

(Authority: 106 Stat. 2760, Pub. L. 102–484, sec. 4486(b); 10 U.S.C. 1143 note)

§ 21.4821 [Reserved]

§ 21.4822 Employer applications for approval.

(a) *Applications for approval of job training programs.* (1) The employer must apply for approval of a job training program to the Director of the VA facility having jurisdiction over the place where the eligible person will be trained.

(2) The employer's application for approval of a job training program under this subpart must be in the form prescribed by the Secretary of Veterans Affairs and, except for a program of apprenticeship or other on-job training approved under 38 U.S.C. 3687, must include the employer's certification of the matters set forth in paragraphs (a)(3) and (a)(4) of this section.

(3) The employer must make and submit the following general certifications with the application.

(i) The employer plans that—

(A) Upon the eligible person's completion of the job training program, the employer will employ the eligible person in the position for which he or she has been trained, and

(B) This position will be a full-time, permanent employment position available to the eligible person at the end of the training period.

(ii) The wages and benefits to be paid to an eligible person participating in the job training program—

(A) Will be the same as the wages and benefits normally paid to other employees participating in the same or a comparable job training program, and

(B) If there are no nonveterans training in the program, will be comparable to wages paid in similar programs in the community in which the employee will be trained.

(iii) Employment of the eligible person under the program—

(A) Will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits), and

(B) Will not be in a job while another person is laid off from the same or substantially equivalent job, or will not be in a job the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its workforce with the intention of hiring an eligible person in the job.

(iv) The employer will not employ in the job training program an eligible person already qualified by training and experience for the job for which the training is to be provided.

(v) The job which is the objective of the job training program involves significant training.

(vi) The training content of the job training program is adequate to accomplish the training objective of the program considering—

(A) The nature of the occupation for which training is to be provided, and

(B) The content of comparable, available training programs which lead to the same occupation.

(vii) Each participating eligible person will be employed full-time while in the job training program.

(viii) The training period of the program will not be longer than the training periods that other employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which the training is provided.

(ix) The training establishment or place of employment will have available, as needed to accomplish the training objective of the program, the following:

(A) Sufficient space,

(B) Equipment,

(C) Instructional material, and

(D) Instructor personnel.

(x) The employer will keep adequate records.

(A) To show the progress made by each eligible person participating in the program, and

(B) To demonstrate compliance by the employer and eligible person with all requirements of law governing the Service Members Occupational Conversion and Training Act.

(xi) The employer, before the eligible person's entry into training, will—

(A) Furnish the eligible person with a copy of the certification described in this paragraph, and

(B) Obtain and retain the eligible person's signed acknowledgment of having received the certification.

(xii) The employer will provide to each participating eligible person for whom a case manager has been assigned by the Department of Labor full opportunity to participate in one personal interview with the case manager during the eligible person's normal work day.

(xiii) The employer will evaluate the eligible person's prior training in the field for which he or she is being trained and will shorten his or her training program appropriately.

(xiv) Whether tools or other work-related materials, or both, are necessary for the eligible person's participation in the program of job training, and if so, a list of those tools and work-related materials which the eligible person and all other trainees in the program, both eligible persons and others, will be required to purchase and for which the employer will reimburse the eligible person.

(xv) The program meets such other criteria which are essential for effective implementation of the Service Members Occupational Conversion and Training Act and as to which VA, after having given notice to the employer, requires the employer's certification.

(4) The employer must submit with the application on a form prescribed by the VA, information concerning:

(i) The total number of hours of participation in the job training program to be offered the eligible person,

(ii) The length of the job training program,

(iii) The starting hourly rate of wages to be paid to a participant in the program,

(iv) The training content of the program, including the name and address of the educational institution, if

any, with which the employer has an agreement to provide all or part of the job training program (supported by a copy of that agreement included with the application);

(v) If all or part of a job training program is provided by an educational institution, a statement that VA will have access to the training records,

(vi) The objective of the program,

(vii) The address of the location where the records described in paragraph (a)(3)(x) of this section will be kept, and

(viii) If the employer desires to be paid monthly, the number of the training establishment's employees.

(5) The certifications required in paragraphs (a)(3)(i) through (xi) shall be considered to be a requirement established under subtitle G of the Service Members Occupational Conversion and Training Act, and for purposes of § 21.4832(c) regarding payment for tools and other work-related materials and paragraphs (a)(3)(i) through (x) shall be considered to be a requirement established under subtitle G of the Service Members Occupational Conversion and Training Act.

(Authority: 106 Stat. 2760, Pub. L. 102–484, secs. 4486(e), 4487(b); 10 U.S.C. 1143 note)

(b) *VA action upon receipt of the application.* (1) Upon receipt of the application, the Director of the VA facility of jurisdiction will approve the job training program if:

(i) The application contains all requisite information and certifications needed to enable the Director to determine whether the proposed job training program meets the approval requirements of the Service Members Occupational Conversion and Training Act.

(ii) The Director finds no basis for conducting an investigation under § 21.4852 that would warrant withholding approval of the employer's proposed program of job training pending the outcome of that investigation.

(2) In determining whether the certifications required in paragraphs (a)(3) and (a)(4) of this section are complete and accurate, the Director of the VA facility of jurisdiction—

(i) Will consider that the provisions have been met and that the certification is accurate if the job training program for which the employer is seeking approval has already been approved for training under § 21.4261 or § 21.4262, or the entire job training program consists of a course or courses offered at an educational institution and approved under § 21.4253 or § 21.4254;

(ii) Will consider any information the Department of Labor or the State Employment Security Agency may have concerning the employer and the job training program;

(iii) Will consider any other evidence which may show whether or not the certification is accurate and whether or not the provisions of § 21.4820(a) are met; and

(iv) May withhold approval pending an investigation.

(3) The Director of the VA facility will notify the employer in writing of the approval or disapproval of the employer's program. If the program is disapproved, the notice will state the reasons therefor and the employer's right to seek review of the decision as provided in paragraph (c) of this section. If no review is sought, the decision of the Director of the VA facility of jurisdiction will be final.

(c) *Review of a decision not to approve a program.* (1) If an employer disagrees with a decision of a Director of a VA facility not to approve the program, the employer, within 60 days after receipt of notice of the decision, may ask that the decision be reviewed by the Director, Education Service.

(2) A review by the Director, Education Service, of a disapproval decision of the Director of the VA field facility will be based upon the evidence of record when the original decision not to approve a program was made. It will not be de novo in nature and no hearing will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented.

(Authority: 38 U.S.C. 512(a))

§ 21.4823 Disapproval of entry into programs having unsatisfactory completion rates.

(a) *Disapproval of payments on behalf of new participants.* The Director of a VA field facility may disapprove entry into an employer's approved job training program under this subpart when the Director finds that the rate of veterans' successful completion of the job training program is disproportionately low as a result of deficiencies in the quality of the job training program.

(Authority: 106 Stat. 2765, Pub. L. 102–484, sec. 4491(a), 10 U.S.C. 1143 note)

(b) *Notice: effective date of disapproval.* An eligible person who has not begun a job training program to which a disapproval under paragraph (a) of this section applies, will be barred from entering that program effective on the date the employer receives the notification provided pursuant to paragraph (e) of this section.

(Authority: 106 Stat. 2764; Pub. L. 101–484, sec. 4490(b); 10 U.S.C. 1143 note)

(c) *Successful completion rate for job training programs.* VA will determine whether the successful completion rate for a job training program is disproportionately low as follows.

(1) If fewer than five eligible persons either successfully completed the particular job training program or terminated that program (voluntarily or involuntarily) during the three-year period immediately preceding the calculation, VA will consider that the completion rate of the job training program is not disproportionately low unless there is strong evidence to the contrary.

(2) If five or more eligible persons either successfully completed the particular job training program or terminated that program, or if the number is less than five and there is compelling evidence of deficiencies in the quality of the program that may have adversely affected the completion rate, VA will—

(i) Calculate a percentage by dividing the number of eligible persons who have successfully completed the job training program during the three-year period immediately preceding the calculation by the number of eligible persons who have either successfully completed or otherwise terminated that program during the three-year period immediately preceding the calculation;

(ii) Calculate a second percentage by dividing the number of eligible persons who have ever successfully completed any job training program approved for veterans' training under the Service Members Occupational Conversion and Training Act by the number of eligible persons who have ever either successfully completed or otherwise terminated such a job training program, and

(iii) Compare the two percentages. If the percentage determined in paragraph (c)(2)(i) of this section is less than one-half the percentage determined in paragraph (c)(2)(ii) of this section, the successful completion rate of the job training program is disproportionately low, and shall be considered with the data described in paragraphs (b) through (d) of this section and the results of any investigation VA or the Department of Labor may conduct in determining whether the disproportionately low completion rate is a result of deficiencies in the quality of the program.

(Authority: 106 Stat. 2764, Pub. L. 102–484, sec. 4490(b), 10 U.S.C. 1143 note)

(d) *Deficiencies in the quality of the job training program.* In determining whether any disproportionately low completion rate of a job training program is the result of deficiencies in the quality of the program, VA will take into account appropriate data, including:

(1) Quarterly data provided by the Secretary of Labor with respect to the number of veterans who:

(i) Receive counseling in connection with training under the Service Members Occupational Conversion and Training Act.''

(ii) Are referred to employers under the Service Members Occupational Conversion and Training Act,

(iii) Participate in job training under the Service Members Occupational Conversion and Training Act, and

(iv) Complete that training or do not complete that training, and the reasons for the noncompletion, and

(2) Data from the compliance surveys of the employer which indicate the number of eligible persons who have undertaken a job training program, the number of such persons who failed to complete it, and the reasons for the noncompletion.

(Authority: 106 Stat. 2764, Pub. L. 102–484, sec. 4490(b); 10 U.S.C. 1143 note)

(e) *Notification.* If, after considering the data described in paragraphs (c) and (d) of this section, the Director of the VA field facility of jurisdiction determines that the completion rate for a job training program is disproportionately low due to deficiencies in the quality of the program, the Director will disapprove further initial entry by eligible persons into the program and shall notify the employer of that disapproval. The notice shall be by certified mail or registered letter, return receipt requested, and shall include:

(1) A statement of the reasons for disapproval, including a summary of the evidence considered,

(2) Notice of the opportunity to submit documentary evidence and to have a hearing before the Director of the VA field facility of jurisdiction or his or her designee, and

(3) Notice of the employer's right to request, within 60 days after receipt of the notice, a review by the Director, Education Service, of the disapproval decision by the Director of the VA field facility of jurisdiction.

(4) A review by the Director, Education Service, of a disapproval decision of the Director of the VA field facility will be based upon the evidence of record when the original decision to disapprove new program entrants was made. It will not be de novo in nature and no hearing will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented.

(Authority: 106 Stat. 2765, Pub. L. 102–484, sec. 4491(b), 10 U.S.C. 1143 note)

(f) *Period of disapproval.* (1) A disapproval of further program entry as described in paragraph (a) of this section shall remain in effect until the Director of the VA field facility of jurisdiction determines that the employer has remedied the program deficiencies which resulted in the disapproval.

(2) Upon reinstatement of approval of program entry, payments will be made on behalf of new participating eligible persons only for training received after the date remedial action was taken, as determined by the Director of the VA field facility.

(Authority: 106 Stat. 2765, Pub. L. 102–484, sec. 4491(b)(3), 10 U.S.C. 1143 note)

§ 21.4824 Withdrawal of approval.

(a) *Approval may be withdrawn.* The Director of a VA field activity may immediately disapprove the further participation by all eligible persons in a job training program which previously has been approved when:

(1) The program ceases to meet any of the requirements of § 21.4820 or § 21.4822.

(2) The Director finds that the employer's certification provided pursuant to § 21.4822(a) was false; or

(3) The employer, or an educational institution with which the employer has contracted to provide all or part of the training, refuses to make available to an authorized representative of the Federal Government those records which the employer (and the educational institution) is required to keep under § 21.4850.

(b) *Notification.* The Director of the VA field facility of jurisdiction shall notify the employer and all eligible persons participating in the program that approval is being withdrawn. The notices shall be by certified mail return receipt requested, and shall include:

(1) A statement of the reasons for the withdrawal of approval, including a summary of the evidence considered;

(2) Notice of the right of the employer or eligible person to submit documentary evidence and have a hearing before the Director of the VA field facility of jurisdiction or his or her designee concerning the withdrawal of program approval;

(3) In the case of an employer notice of the employer's right to request a review by the Director, Education Service, of the disapproval decision by the Director of the VA field facility of jurisdiction. To exercise that right, the employer must request within 60 days either after the date of notice of the initial decision of the Director of the VA field facility of jurisdiction or the date of notice of any confirming decision by that Director following a timely requested hearing or timely submission of new evidence, or both, and

(4) In the case of a notice sent to eligible persons, notice of the right of the eligible person to appeal the decision to the Board of Veterans Appeals and to have a hearing under the same process as is provided in Part 19, Subpart B of this title.

(Authority: 106 Stat. 2761–2763, Pub. L. 102–484, sec. 4486, 4487, 38 U.S.C. 501(a); 10 U.S.C. 1143 note)

(c) *Review of a decision to withdraw approval of a program.* A review by the Director, Education Service, of a disapproval decision of the Director of the VA field facility will be based upon the evidence of record when the original decision to disapprove new program entrants was made. It will not be de novo in nature and no hearing on review will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented, unless an adversely affected eligible person prevails in an appeal of the decision to the Board of Veterans Appeals.

(Authority: 38 U.S.C. 512(a))

§§ 21.4825–21.4829 [Reserved]

Payments

§ 21.4830 Entrance into training.

(a) *Notice of intent to hire before employee's entrance into training.* Before an eligible person enters an approved job training program, the employer shall submit to the VA at the address on the form prescribed by the VA information concerning whether the employer intends to hire the eligible person.

(Authority: 106 Stat. 2764, Pub. L. 102–484, sec. 4488(a); 10 U.S.C. 1143 note)

(b) *Lack of funds may prevent training.* (1) If VA determines that funds are not available to make payments to the employer on behalf of the eligible person, VA may withhold or deny approval of the eligible person's entry into a job training program.

(2) The eligible person may enter the job training program two weeks after the

date of the notice of intent to hire described in paragraph (a)(1) of this section, unless VA notifies the employer, within that two-week period, by certified mail that approval of the eligible person's entry into the job training program must be withheld or denied due to lack of funds. The two-week period shall begin on the date the employer's notice to VA is postmarked.

(Authority: 106 Stat. 2764, Pub. L. 102–484, sec. 4488(a); 10 U.S.C. 1143 note)

§ 21.4831 [Reserved]

§ 21.4832 Payments to employers.

Payments made to employers for training eligible persons and employing them in the respective positions for which they trained shall be made in accordance with the provisions of this section.

(a) *Periodic wage reimbursement payments for training provided the eligible person.* Subject to the certification requirements of paragraph (a)(3) of this section and the limitations and restrictions stated in paragraphs (d) and (e) of this section, VA will make quarterly wage-reimbursement payments to the employer based upon training provided to an eligible person. An employer with fewer than 75 employees when the eligible person enters training may, upon request, receive such payments on a monthly basis.

(1) *Amount of periodic payment.* VA will determine the amount of periodic payment to the employer by multiplying 50 percent of the normal starting hourly wage paid by the employer to the eligible person (without regard to overtime, premium pay or fringe benefits), by the number of hours the veteran worked during the period for which payment is due, withholding 25 percent of this amount to be paid to the employer as an incentive payment as provided in paragraph (b) of this section.

(2) *Periods for which payments may be made.* Payments may be made for an eligible person's training through the last date of training received in the training program but not after completion of the eighteenth month of the training program.

(3) *Certification of training.* VA will issue no payments to an employer for any period of training of an eligible person unless the following certification requirements are met.

(i) Unless VA waives certification, the eligible person must submit, and VA must receive, a certification that such person was employed full-time by the employer in an approved job training program during the applicable training period. VA will waive this certification upon receipt of evidence that the eligible person is deceased, has terminated employment and moved without a forwarding address, or otherwise cannot or will not comply through no fault of the employer.

(ii) VA must receive from the employer on a form prescribed by the VA a certification concerning the following:

(A) Employment of the eligible person during the period in an approved job training program,

(B) Performance and progress of the eligible person during the period were satisfactory,

(C) The number of hours the eligible person worked during the period for which the certification is made, and

(D) For employer's first certification, the normal starting hourly rate of wages paid to the veteran, without regard to overtime or premium pay.

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487, 10 U.S.C. 1143 note)

(b) *Lump sum deferred incentive payment to employers.* VA will make a lump-sum incentive payment to the employer of the total amount withheld from periodic payments made to the employer pursuant to paragraph (a)(1) of this section provided the following conditions are met.

(1) The incentive payment may be made only when VA determines, and both the employer and (except as provided in paragraph (b)(2) of this section) eligible person certify, that the eligible person was employed full-time by that employer in the job for which the training program was designed to provide training or in a related job, and that such employment was for at least four continuous months beginning on the date the eligible person completed training for which periodic payments were made under this subpart.

(2) VA may waive the requirement that the eligible person certify as provided in paragraph (b)(1) of this section if VA finds that the requisite employment occurred and either the eligible person is deceased or otherwise cannot or will not comply through no fault of the employer.

(Authority: 106 Stat. 2782, Pub. L. 101–484, sec. 4487(b)(3); 10 U.S.C. 1143, note)

(1) A certification signed by the employer and the eligible veteran stating that:

(i) The identified tools and other work-related materials are necessary for the eligible person's participation in the job training program;

(ii) The eligible person bought the tools and other work-related materials, and

(iii) The employer reimbursed the eligible person for the cost of the tools and other work-related materials, and

(2) A copy of the receipt or other proof of purchase which the employer used to calculate the amount for which the veteran was reimbursed.

(Authority: 106 Stat. 2762, Pub. L. 102–484, sec. 4487(c), 10 U.S.C. 1143 note)

(d) *Limitations on amount of payments.* (1) In no case will the sum of the periodic payments and the lump-sum incentive payment made to an employer on behalf of an eligible veteran exceed:

(i) $12,000 for a person with a service-connected disability rated as 30 percent or more disabling, or

(ii) $10,000 for all other eligible veterans.

(2) If an employer reduces the wages paid to a trainee for a portion of the training period so that the trainee is paid at a rate less than the certified, normal starting wage rate, VA shall not make periodic payments in excess of 50 percent of the wages (exclusive of overtime and premium pay) paid to the trainee for that portion of the training period less the 25 percent that must be withheld under § 21.4832(a).

(Authority: 106 Stat. 2762, Pub. L. 102–484, sec. 4487(a)(1)(B): 10 U.S.C. 1143 note)

(e) *Restrictions on payments.* (1) VA will not pay an employer:

(i) On behalf of any veteran who initially applies for a job training program after September 30, 1995,

(ii) For any job training program which begins after March 31, 1996,

(iii) For any training given to the veteran before VA certifies the individual is eligible to participate,

(iv) During any period of time for which the veteran receives educational assistance under 38 U.S.C. chs. 30, 31, 32, 35 or 36 or 10 U.S.C. ch. 106;

(v) For any period during which the employer received any assistance on account of the veteran's training or employment, including:

(A) Assistance under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*),

(B) A credit under section 51 of the Internal Revenue Code of 1986, or

(C) Employer's incentive payments under § 21.256 of this part,

(vi) For any hours of training the veteran completes in excess of the hours approved by VA for his or her job training program.

(2) VA will withhold payment to an employer who fails or refuses to maintain records or fails to make them available to authorized representatives of the Federal Government as required by § 21.4850. The withholding will

continue until VA determines that the employer has fully complied with recordkeeping and disclosure requirements.

(Authority: 106 Stat. 2757, Pub. L. 102–484, Subtitle G, 10 U.S.C. 1143 note)

§ 21.4833 [Reserved]

§ 21.4834 Overpayments and forfeits.

(a) *False certification by employer.* Whenever VA finds that an overpayment has been made to an employer on behalf of a veteran as a result of a certification or information contained in the employer's application to VA which was false in any material respect—

(1) The amount of the overpayment shall constitute a liability of the employer to the United States, and

(2) The employer shall forfeit any unpaid amounts withheld from those payments for the purpose of making a lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487(d)(1)(A), 10 U.S.C. 1143 note)

(b) *Noncompliance by employer.* Whenever VA finds that an employer has failed in any substantial respect to comply for a period of time with a requirement of § 21.4820 or § 21.4822 or both (unless the employer's failure is the result of false or incomplete information provided by the eligible person), each amount paid to the employer on behalf of an eligible person for that period shall be considered an overpayment.

(1) The amount of the overpayment shall constitute a liability of the employer to the United States.

(2) The employer shall forfeit any unpaid amounts withheld from those payments for the purpose of making a lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487(d)(1)(B); 10 U.S.C. 1143 note)

(c) *False certification by an individual.* Whenever VA finds that an overpayment has been made to an employer on behalf of an individual as a result of certification by the individual, or as a result of information provided to an employer or contained in an application submitted by the individual to VA which was willfully or negligently false in any material respect—

(1) The amount of the overpayment shall constitute a liability of the individual to the United States, and

(2) The employer shall forfeit any unpaid amounts withheld from those payments for the purpose of making a lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487(d)(2); 10 U.S.C. 1143 note)

(d) *Payment contrary to limitation or restriction.* Whenever VA finds that payment has been made to an employer on behalf of an individual in an amount which exceeds or is otherwise contrary to the limitations set forth in § 21.4832 (d) or (e)—

(1) Such amount shall constitute an overpayment for which the employer shall be liable to the United States,

(2) The employer shall forfeit any unpaid amounts withheld from that overpayment for the purpose of making a lump-sum incentive payment under § 21.4832(b).

(Authority: 106 Stat. 2757, Pub. L. 102–484, Subtitle G, 10 U.S.C. 1143 note)

(e) *Waivers of overpayments.* VA may waive any overpayment established under this section, in whole or in part, as provided by §§ 1.955 through 1.970 of this chapter. Any amount withheld for the purpose of making a lump-sum incentive payment forfeited under this section is not subject to waiver.

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487(d)(4), 10 U.S.C. 1143 note)

(f) *Recovery of overpayments.* (1) Any overpayments referred to in paragraph (a), (b), (c) or (d) of this section may be recovered in the same manner as any other debt due the United States.

(2) To the extent that an individual and employer are found liable to the United States under this section for the same overpayment, they will be held jointly and severally liable.

(Authority: 106 Stat. 2762, Pub. L. 102–484, sec. 4487, 10 U.S.C. 1143 note)

(g) *Disagreements concerning overpayments.* (1) If an employer disagrees with a decision of a Director of a VA facility to hold the employer liable for all or part of an overpayment, the employer, within 60 days after receipt of notice of the decision, may ask that the decision be reviewed by the Director, Education Service.

(2) A review by the Director, Education Service, of an overpayment liability decision of the Director of the VA field facility will be based upon evidence of record when the original decision not to approve a program was made. It will not be *de novo* in nature and no hearing will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented.

(3) If the eligible person is held liable for all or part of an overpayment, he or she has the right of appeal to the Board of Veterans Appeals and to have a hearing under the same process as is provided in Part 19, Subpart B of this title.

(Authority: 38 U.S.C. 511(a))

§§ 21.4835—21.4839 [Reserved]

Counseling

§ 21.4840 Employment counseling services.

(a) *Eligibility.* An eligible person who meets the requirements of § 21.4810 to participate in the Service Members Occupational Conversion and Training Act program may ask VA to provide employment counseling services to assist him or her in selecting a suitable job training program under this subpart.

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487(d)(4), 10 U.S.C. 1143 note, 38 U.S.C. 3697A)

(b) *Purpose.* The purpose of this counseling is to assist the eligible person to select an employment objective likely to provide satisfactory employment opportunities in light of his or her personal circumstances,

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487(d)(4), 10 U.S.C. 1143 note, 38 U.S.C. 3697A)

(c) *Additional counseling services.* To the extent feasible, VA and the Department of Labor may provide an additional program of counseling or other services designed to resolve difficulties that may be encountered by eligible persons during training under this subpart. If provided, the counseling or other services will be similar in nature to:

(1) Outreach and assistance (38 U.S.C. 7723, 7724), readjustment counseling (38 U.S.C. 1712A), and educational and vocational counseling (38 U.S.C. 3696A) offered by VA, and

(2) Disabled veterans' outreach (38 U.S.C. 4103A), employment assistance (38 U.S.C. 4104), and employment counseling, job training counseling, and other transitional assistance (10 U.S.C. 1144) services offered by the Department of Labor.

(Authority: 106 Stat. 2763, Pub. L. 102–484, sec. 4487(d)(4), 10 U.S.C. 1143 note, 38 U.S.C. 1712A, 3797A, 7723, 7724)

§§ 21.4841—21.4843 [Reserved]

§ 21.4844 Failure to cooperate.

VA will take no further action on an eligible person's application for assistance when he or she:

(a) Fails to report for his or her counseling appointment,

(b) Fails to cooperate in the counseling process,

(c) Does not complete counseling to the extent required under paragraph § 21.4840(c).

(Authority: 106 Stat. 2763, Pub. L. 102–16, Pub. L. 102–484)

§§ 21.4845—21.4849 [Reserved]

Administrative

§ 21.4850 Inspection of records.

(a) *Availability of records.* The records and accounts of employers pertaining to eligible persons on behalf of whom assistance shall be paid, as well as other records that VA determines to be necessary to ascertain compliance with the requirements established in §§ 21.4820 through 21.4832 shall be available at reasonable times for examination by authorized representatives of the Federal Government. If the records are maintained by an educational institution training the employee on behalf of the employer, the latter shall be responsible for insuring their availability.

(Authority: 106 Stat. 2765, Pub. L. 102–484, sec. 4491(a), 10 U.S.C. 1143 note)

(b) *Retention of records.* (1) Except as provided in paragraph (b)(2) of this section, an employer must keep the records mentioned in paragraph (a) of this section intact and in good condition for at least three years following:

(i) The last month or quarter for which the employer received a periodic payment on behalf of the eligible person as described in § 21.4832(a), or

(ii) The date on which VA paid the employer a lump-sum incentive payment provided that the employer received such a payment on behalf of the eligible person.

(2) Retention of records for a period longer than that described in paragraph (b)(1) of this section is not required unless the employer receives a written request from the General Accounting Office or VA not later than 30 days before the end of the 3-year period.

(Authority: 106 Stat. 2765, Pub. L. 102–484, sec. 4491(a), 10 U.S.C. 1143 note)

§ 21.4851 [Reserved]

§ 21.4852 Monitoring and investigations.

(a) *Monitoring and investigations.* VA with the assistance of the Department of Labor may determine compliance with the provisions of §§ 21.4820 through 21.4832 by:

(1) Monitoring employers and eligible persons participating in job training programs,

(2) Investigating any matter necessary to determine compliance, and

(3) Requiring the submission of information deemed necessary by the Secretary of Veterans Affairs or by the Secretary of Labor before, during or after training.

(Authority: 106 Stat. 2765, Pub. L. 102–484. sec. 4491(b), (c) and (d), 10 U.S.C. 1143 note)

(b) *Scope of investigations.* VA, with the assistance of the Department of Labor will carry out the monitoring and investigative functions contained in paragraph (a) of this section by:

(1) Examining records (including making certified copies of records),

(2) Questioning employees, and

(3) Entering into any premises or onto any site where:

(i) Any part of the job training program is conducted, or

(ii) Any of the employer's records are kept.

(Authority: 106 Stat. 2765, Pub. L. 102–484, sec. 4491(b), (c) and (d), 10 U.S.C. 1143 note)

§ 21.4853 [Reserved]

§ 21.4854 Delegation of authority to the Under Secretary for Benefits.

Authority is delegated by the Secretary to the Under Secretary for Benefits of VA or his or her designee to enter into such agreements with the Departments of Defense and Labor or either of those, as may be necessary to implement the Service Members Occupational Conversion and Training Act.

(Authority: 38 U.S.C. 512)

§ 21.4855 [Reserved]

§ 21.4856 Delegation of authority to the Veterans Benefits Administration.

In a Memorandum of Agreement among the Departments of Defense, Veterans Affairs, and Labor, the Secretary was designated as the implementing official for the Service Members Occupational Conversion and Training Act. In § 2.101 of this title the Secretary has delegated authority given to the Secretary in the Memorandum to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the jurisdiction of the Veterans Benefits Administration designated by him or her, to make findings and decisions under the Service Members Occupational Conversion and Training Act and the applicable regulation, precedents and instructions relating to programs authorized by §§ 21.4800 through 21.4852 of this part.

(Authority: 38 U.S.C. 512)

[FR Doc. 95–2229 Filed 1–30–95; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Revisions to Weight and Preparation Standards for Barcoded Letter Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This amends the final rule published on December 22, 1994, to detail the rate applicable to pieces that cannot qualify for a Barcoded First-Class rate because of presort. Basically, this amendment allows such pieces to qualify for the Nonpresorted ZIP+4 rate on an exceptional basis.

EFFECTIVE DATE: January 16, 1995.

FOR FURTHER INFORMATION CONTACT: Anthony M. Pajunas, (202) 268–3669.

SUPPLEMENTARY INFORMATION: On December 22, 1994, the Postal Service published in the **Federal Register** (59 FR 65967–65971) a final rule to amend the Domestic Mail Manual (DMM) standards for the physical characteristics of automation-compatible barcoded letter-size mail. For a period of up to 1 year, beginning January 16, 1995, the Postal Service will conduct a test of live barcoded bulk third-class regular rate letter mail weighing between 3.0 and 3.3071 ounces, and barcoded bulk third-class nonprofit rate, First-Class and second-class letter mail weighing between 3.0 and 3.3376 ounces.

The revised DMM standards implemented for this test of ''heavy letter mail'' included that each such mailpiece be part of a mailing that is 100 percent delivery point barcoded; have the barcode in the address block; be in an envelope that has no open windows; and not be bound or have stiff enclosures.

Although Barcoded rates would apply to all pieces in such mailings at second- and third-class rates (level A, B3, and B5 Barcoded second-class rates, and basic, 3-, and 5-digit Barcoded third-class rates), pieces in the residual portion of First-Class mailings (i.e., those that could not qualify for the 3- or 5-digit Barcoded rates because of presort). Accordingly, under the final rule, these First-Class heavy letter mailpieces would not be eligible for another ''basic'' Barcoded rate. (The First-Class nonpresorted Barcoded rates are available only for flats and cards.)

The amendment to the final rule appearing below corrects this oversight by adding language in the DMM that makes it clear that the rate applicable to such pieces is the nonpresorted ZIP+4 rate, the same rate available to other barcoded letter-size First-Class Mail in

similar presort circumstances. For clarity, the revised text of DMM C810.1.5 below replaces the text of DMM C810.1.5 and 1.6 that appeared in the final rule, and amends the reference in DMM C810.2.3 for consistency; the revised text of DMM E147.1.1c also removes an erroneous reference to ZIP+4 barcodes.

This revision does *not* alter the thickness standards for heavy letter mail or other mail at a ZIP+4 or Barcoded rate; does *not* affect the weight or other eligibility criteria for nonpresorted ZIP+4 mail generally; and does *not* extend the availability of the nonpresorted ZIP+4 or any other ZIP+4 rate to other delivery point barcoded pieces weighing more than 3 ounces or non-delivery point barcoded pieces weighing more than 2.5 ounces. The revised rule allows the nonpresorted ZIP+4 rate for pieces weighing more than 3 ounces only if those pieces are delivery point barcoded and part of an otherwise correctly prepared Barcoded rate mailing of heavy letter mail prepared for this test.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as noted below:

C810 Letters and Cards

1.0 GENERAL DIMENSIONS

* * * * *

1.5 Barcoded

The weight of each piece in a Barcoded rate mailing must not exceed 3 ounces, except that until January 14, 1996, the maximum weight is 3.3363 ounces (or 3.3067 ounces if mailed at regular bulk third-class rates) for heavy letter mail (i.e., pieces that meet additional barcoding standards in C840, are prepared in an envelope, and are part of a 100% delivery point barcoded mailing).

2.0 PROHIBITIONS

* * * * *

2.3 Heavy Letter Mail

Heavy letter mail (under 1.5) may not be prepared as a self-mailer or bound or booklet-type mailpiece.

* * * * *

E147 Nonpresorted ZIP+4 Rate

1.0 BASIC STANDARDS

1.1 All Pieces

* * * * *

c. Meet the physical standards in C810, except:

(1) The maximum weight of each piece is 3 ounces if at least 85% of all pieces in the mailing are correctly delivery point barcoded.

(2) The maximum weight of each piece is 3.3376 ounces for pieces in the residual portion of a 3- or 5-digit Barcoded rate mailing of heavy letter mail, as defined in C810.

* * * * *

R100 First-Class Mail

* * * * *

[Revise the Summary of First-Class Rates chart as follows:]

Weight Not Over (ounces)	Nonpresorted—ZIP+4
* * * * *	
4 [ounces]	$0.995 (Weight not to exceed 2.5 ounces except under E147)
* * * * *	

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–2339 Filed 1–30–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–20–1–6786; FRL–5144–7]

Transportation Conformity; Approval of Petition for Exemption from Nitrogen Oxides Provisions, Nonclassifiable Ozone Nonattainment Areas, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a petition from the State of Louisiana requesting that the nonclassifiable ozone nonattainment areas in the State be exempted from the requirement to perform the oxides of nitrogen (NO_x) portion of the build/no-build test required by the new Federal transportation conformity rule. This petition for exemption was submitted on August 5, 1994.

EFFECTIVE DATE: This action will become effective on March 2, 1995.

ADDRESSES: Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the above location and at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, P.O. Box 82135, Baton Rouge, Louisiana 70884–2135.

Anyone wishing to review this petition at the US EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Background

The transportation conformity final rule, entitled ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under title 23 U.S.C. or the Federal Transit Act,'' was published in the **Federal Register** on November 24, 1993 (58 FR 62188). This action was required under Section 176(c)(4) of the Clean Air Act (CAA). The transportation conformity rule requires each ozone nonattainment area and maintenance area to perform a regional analysis of motor vehicle volatile organic compound and NO_X emissions from any planned transportation project. This analysis must demonstrate that the emissions which would result from the proposed transportation system if the transportation plan were implemented are within the total allowable level of

emissions described in the motor vehicle emissions budget.

Until an attainment demonstration or maintenance plan is approved by the EPA, this emissions analysis must pass the build/no-build test. This analysis must demonstrate that the emissions from the planned transportation project, if implemented, would be less than the emissions without the planned transportation project. Thus, the build/no-build test is intended to ensure that the transportation plan contributes to annual emissions reductions consistent with the CAA until such time as the attainment demonstration or maintenance plan is approved.

On June 17, 1994 (59 FR 31238), the EPA published a national interpretation of transportation conformity and 182(f) exemptions entitled ''Transportation Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions'' (General Preamble). This General Preamble clarifies and interprets how ozone nonattainment areas classified as less than marginal, which have air quality monitoring data demonstrating attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, may be exempted from certain NO_X requirements.

As explained in the General Preamble, the EPA believes that a demonstration of attainment made through adequate air quality monitoring data, consistent with 40 CFR part 58 and recorded in EPA's Aerometric Information Retrieval System (AIRS), can qualify an area as a ''clean data area''. Further, the EPA believes these ''clean data areas'' can request an exemption from the NO_X provisions of transportation conformity. The 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after an exemption is granted. If the EPA determines that an exempted area has violated the ozone standard, the 182(f) exemption will be rescinded. Any decision to rescind the NO_X exemption would be based on an evaluation of the air quality data recorded in AIRS. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would be subject to the NO_X provisions of the conformity rule.

On August 5, 1994, the State of Louisiana submitted a petition to the EPA requesting that the parishes of Beauregard, Grant, Lafayette, Lafourche, Jefferson, Orleans, St. Bernard, St. Charles, St. James, and St. Mary be exempted from the requirement to perform the NO_X portion of the build/no-build test required by the new transportation conformity rule. This exemption request for the abovementioned nonclassifiable ozone nonattainment areas is pursuant to the General Preamble for transportation conformity NO_X exemptions.

On November 7, 1994, EPA announced its proposed approval of the NO_X exemption request for the nonclassifiable ozone nonattainment areas in Louisiana (57 FR 55400). In that proposed rulemaking action, EPA described in detail its rationale for approving this NO_X exemption request, considering the specific factual issues presented. Rather than repeating that entire discussion in this document, it is incorporated by reference here. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

Response to Comments

EPA requested public comments on all aspects of the proposed rulemaking action (please reference 59 FR 55400). One adverse comment letter was received from three environmental groups and contained generic comments objecting to the EPA's general policy on section 182(f) exemptions.

Comment

Certain commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct from and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that ''person[s]'' [1] may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) ''at any time'' this must include times when there is no plan revision from the State pending at EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct from and more expeditious than the plan-revision

[1] Section 302(e) of the Act defines the term ''person'' to include States.

[2] The final section 185B report was issued July 30, 1993.

process intended under paragraph (1). Thus, EPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the requirement in paragraph (1) for EPA to grant exemptions only when acting on plan revisions.

The CAA requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedure Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

Comment

Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of [NO_X] would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Comment

Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

Response

With respect to conformity, EPA's conformity rules[3,4] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

Final Action

The EPA has evaluated the State's exemption request for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the NO_X exemption request and monitoring data qualifies the nonclassifiable ozone nonattainment areas of Louisiana as ''clean data areas''. This final action on the State of Louisiana's NO_X exemption petition for its nonclassifiable ozone nonattainment areas is unchanged from the November 7, 1994, proposed approval action. In addition, the EPA has determined that the NO_X exemption request meets the requirements and policy set forth in the General Preamble for NO_X exemptions from the build/no-build test for transportation conformity, and today is approving Louisiana's request for exemption from the NO_X build/no-build test of transportation conformity for the parishes of Beauregard, Grant, Lafayette, Lafourche,

[3] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

[4] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

Jefferson, Orleans, St. Bernard, St. Charles, St. James, and St. Mary in Louisiana. The 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after the exemption has been granted. If the EPA later determines that an above mentioned parish has violated the ozone standard, the 182(f) exemption will be rescinded for that parish. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would then be subject to the NO_X provisions of the conformity rule.

The EPA has reviewed this request for exemption from the NO_X provisions of the Federal transportation conformity rule for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Because an exemption from the Federal transportation conformity rule does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order

The Office of Management and Budget has exempted this action from review under Executive order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: January 13, 1995.

Barbara J. Goetz,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.992 is added to read as follows:

§ 52.992 Area-wide nitrogen oxides exemptions.

(a) The Louisiana Department of Environmental Quality submitted to the EPA on August 5, 1994, a petition requesting that the nonclassifiable ozone nonattainment areas in the State of Louisiana be exempted from the requirement to meet the NO_X provisions of the Federal transportation conformity rule. The exemption request was based on monitoring data which demonstrated that the National Ambient Air Quality Standard for ozone had been attained in this area for the 3 years prior to the petition. The parishes for which the NO_X exemption was requested include: Beauregard, Grant, Lafayette, Lafourche, Jefferson, Orleans, St. Bernard, St. Charles, St. James, and St. Mary. The EPA approved this exemption request on March 2, 1995.

(b) [Reserved].

[FR Doc. 95–2282 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–44–1–6797; FRL–5144–8]

Transportation Conformity; Approval of Petition for Exemption From Nitrogen Oxides Provisions, Victoria County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a petition from the State of Texas requesting that Victoria County, an incomplete data ozone nonattainment area, be exempted from the requirement to perform the oxides of nitrogen (NO_X) portion of the build/no-build test required by the new Federal transportation conformity rule. This petition for exemption was submitted on May 4, 1994.

EFFECTIVE DATE: This action will become effective on March 2, 1995.

ADDRESSES: Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the above location and at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, P.O. Box 13087, Austin, Texas 78711–3087.

Anyone wishing to review this petition at the US EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Background

The transportation conformity final rule, entitled ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act,'' was published in the **Federal Register** on November 24, 1993 (58 FR 62188). This action was required under section 176(c)(4) of the Clean Air Act (CAA) as amended in 1990.

The transportation conformity rule requires each ozone nonattainment area and maintenance area to perform a regional analysis of motor vehicle volatile organic compound and NO_X emissions from any planned transportation project. This analysis must demonstrate that the emissions which would result from the proposed transportation system if the transportation plan were implemented are within the total allowable level of emissions described in the motor vehicle emissions budget.

Until an attainment demonstration or maintenance plan is approved by the EPA, this emissions analysis must pass the build/no-build test. This analysis must demonstrate that the emissions from the planned transportation project, if implemented, would be less than the emissions without the planned transportation project. Thus, the build/no-build test is intended to ensure that the transportation plan contributes to annual emissions reductions consistent with the CAA until such time as the attainment demonstration or maintenance plan is approved.

On June 17, 1994 (59 FR 31238), the EPA published a national interpretation of transportation conformity and section 182(f) exemptions entitled ''Transportation Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions'' (General Preamble). This General Preamble clarifies and interprets how ozone nonattainment areas classified as less than marginal, which have air quality monitoring data demonstrating attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, may be exempted from certain NO_X requirements.

As explained in the General Preamble, the EPA believes that a demonstration of attainment made through adequate air quality monitoring data, consistent with 40 CFR part 58 and recorded in EPA's Aerometric Information Retrieval System (AIRS), can qualify an area as a ''clean data area''. Further, the EPA believes these ''clean data areas'' can request an exemption from the NO_X provisions of the Federal transportation conformity rule. The section 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after an exemption is granted. If the EPA determines that an exempted area has violated the ozone standard, the section 182(f) exemption will be rescinded. Any decision to rescind the NO_X exemption would be based on an evaluation of the air quality data recorded in AIRS. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would be subject to the NO_X provisions of the conformity rule.

On May 4, 1994, the State of Texas submitted a petition to the EPA requesting that the Victoria County incomplete data ozone nonattainment area be exempted from the requirement to perform the NO_X portion of the build/no-build test required by the new transportation conformity rule. This exemption request is pursuant to the recently published General Preamble for transportation conformity NO_X exemptions.

On August 12, 1994, EPA announced its direct final approval of the NO_X exemption request from the State of Texas for Victoria County. In that direct final rulemaking action, EPA described in detail its rationale for approving this NO_X exemption request, considering the specific factual issues presented. Rather than repeating that entire discussion in this document, that discussion is incorporated by reference herein. Thus, the public should review the notice of direct final rulemaking for relevant background on this final rulemaking action.

Response to Comments

EPA requested public comments on all aspects of the direct final rulemaking action (59 FR 41408) and comments were received. Therefore the direct final rulemaking was withdrawn and comments applicable to the Victoria County area were considered and are discussed below.

Comment: Certain commenters noted that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters concluded that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argued that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

Response: Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedures Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within 6 months of the petition's submission.

Further, section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that ''person[s]'' [1] may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) ''at any time'' this must include times when there is no plan revision from the State pending at EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct from and more expeditious than the plan-revision process intended under paragraph (1).

The CAA requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of

[1] Section 302(e) of the Act defines the term ''person'' to include States.

[2] The final section 185B report was issued July 30, 1993.

EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within 6 months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the APA. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

Comment: Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

Response: The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of NO_X would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of NO_X would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Comment: Comments were received regarding exemption of areas from the NO_X requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X. However, the commenters want EPA in actions on NO_X exemptions to explicitly affirm this obligation and also to avoid granting waivers until a budget controlling future NO_X increases is in place.

Response: With respect to conformity, EPA's conformity rules [3,4] provide a NO_X waiver if an area receives a section 182(f) exemption. In its ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform to Federal requirements, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA stated in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity regulations, and the Agency remains bound by their existing terms.

[3] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

[4] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule,'' November 30, 1993 (58 FR 63214).

Final Action

The EPA has evaluated the State's exemption request for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the exemption request and monitoring data qualifies Victoria County, Texas, as a ''clean data area''. This final action on the State of Texas' NO_X exemption petition for Victoria County is unchanged from the August 12, 1994 direct final approval action. In addition, the EPA has determined that the exemption request meets the requirements and policy set forth in the General Preamble for NO_X exemptions from the build/no-build test for transportation conformity, and today is approving Texas' request for exemption from the NO_X build/no-build test of transportation conformity for Victoria County. The section 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after the exemption has been granted. If the EPA later determines that Victoria County has violated the ozone standard, the section 182(f) exemption will be rescinded. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would then be subject to the NO_X provisions of the conformity rule.

The EPA has reviewed this request for exemption from the NO_X provisions of the Federal transportation conformity rule for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see

46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Because an exemption from the Federal transportation conformity rule does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: January 13, 1995.

Barbara J. Goetz,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2308 is amended by adding paragraph (c) to read as follows:

§ 52.2308 Area-wide nitrogen oxides (NO_X) exemptions.

* * * * *

(c) The Texas Natural Resource Conservation Commission submitted to the EPA on May 4, 1994, a petition requesting that the Victoria County incomplete data ozone nonattainment area be exempted from the requirement to meet the NO_X provisions of the Federal transportation conformity rule. The exemption request was based on monitoring data which demonstrated that the National Ambient Air Quality Standard for ozone had been attained in this area for the 35 months prior to the petition, with the understanding that approval of the State's request would be contingent upon the collection of one additional month of data. The required additional month of verified data was submitted later and, together with the data submitted with the State's petition, demonstrated attainment of the NAAQS for 36 consecutive months. The EPA approved this exemption request on March 2, 1995.

[FR Doc. 95–2283 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR PART 52

[WI43–01–6261a; AMS-FRL–5139–1]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Wisconsin

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Wisconsin on November 15, 1993 for the purpose of establishing an Employee Commute Options (ECO) program in the Milwaukee, severe–17, ozone nonattainment area. Wisconsin submitted the SIP to satisfy the provisions of the Clean Air Act (Act), that require that an ECO Program be established for employers with 100 or more employees for the purpose of reducing the number of vehicle trips being made to the worksite during the peak commuting period. The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This final rule is effective April 3, 1995 unless someone submits adverse comments by March 2, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and EPA's technical support documents are available at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: Carlton Nash, Chief, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, (312) 886–6043. Anyone wishing to come to the Region 5 offices should contact John M. Mooney first.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Act will require employers with 100 or more employees in the seven county Milwaukee Severe–17 ozone nonattainment area to participate in a trip reduction program. The concerns that lead to the inclusion of this Employee Commute Options (ECO) provision in the Act are that more people than ever before are driving and they are driving longer distances. The increase in the number of drivers and the increase in the number of vehicle miles traveled (VMT) currently offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly. It is widely accepted that shortly after the year 2000, without limits on increased travel, the increased emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the benefits derived from the fact that each new vehicle pollutes less, resulting in an overall increase in emissions from mobile sources. The ECO provision in the Act outlines the requirements for a program designed to minimize the use of single occupancy vehicles in order to gain emissions reductions beyond those obtained via stricter tailpipe and fuel standards.

Section 182(d)(1)(B) of the Act requires that employers submit their compliance plans to the State 2 years after the SIP revision is submitted to EPA. These employer developed compliance plans are designed to convincingly demonstrate an increase in the average passenger occupancy (APO) rates of employees who commute to work during the peak period by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area. These compliance plans must ''convincingly demonstrate'' that the employers will meet the target no later than 4 years after the SIP is submitted. The target APO must be at least 25 percent higher than the AVO for the nonattainment area.

On November 15, 1993 the State of Wisconsin submitted a SIP revision to

the EPA to satisfy the requirements of section 182(d)(1)(B) of the Act. In order to receive approval, the State submittal must contain each of the following ECO Program elements: (1) The AVO for each nonattainment area; (2) the target APO which is no less than 25 percent above the AVO; (3) an ECO program that includes a process for compliance demonstration; and (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. Pursuant to section 108(f) of the Act, the EPA issued guidance on December 17, 1992 interpreting various aspects of the statutory requirements (Employee Commute Options Guidance, December 1992). A copy of this guidance has been included in this rulemaking docket.

II. Analysis

The State has met the requirements of section 182(d)(1)(B) by submitting a SIP revision that implements all required ECO Program elements as discussed below.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. The State has met this requirement by determining that the AVO for the Milwaukee area, at the time of SIP submittal, was 1.14, based on a home interview survey conducted by the Southeast Wisconsin Regional Planning Commission. The EPA concludes that this survey accurately represents the Milwaukee ozone nonattainment area AVO.

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be at least 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. The State has met this requirement by setting the target APO at 1.40 which is 25 percent above the AVO of 1.14.

3. ECO Program

State or local law must establish ECO Program requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas. In the ECO Program Guidance issued in December 1992 the EPA states that automatic coverage of employers of 100 or more should be included in the law. In addition, States should develop procedures for notifying subject employers regarding the ECO Program requirements.

States and/or local laws must require that initial compliance plans ''convincingly demonstrate'' prospective compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the Act requirement that initial compliance plans ''convincingly demonstrate'' compliance will be met. This demonstration can take on any of four forms or any combination of these.

One option is for the State to provide evidence that State agency resources are available for the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans, and demonstrate that plans that are not convincing will be rejected.

As explained more fully in the EPA's Technical Support Document, the State of Wisconsin has met this requirement by providing evidence in the SIP that agency resources are available to implement the ECO program in an effective manner. Section 144.3712 of the Wisconsin Statutes authorizes the WDNR to administer the ECO program in the Milwaukee area. Administrative and training costs for the program will be provided by the State, as well as through monies received through Congestion Mitigation and Air Quality (CMAQ) provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA). To ensure compliance, State regulations establish requirements for the WDNR to notify employers of the ECO program requirements, as well as prescribing schedules for the submittal of compliance plans by employers. Also contained in Wisconsin's ECO rule is a requirement that employers designate and register at least one employee transportation coordinator for purposes of administering the ECO program at individual worksites. Wisconsin's ECO rule requires that employers submit compliance plans by November 15, 1994 with full compliance with the program requirements by November 15, 1996. The EPA believes that the State's demonstration that adequate resources are available to implement the program is acceptable and sufficient to achieve the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans.

4. Enforcement Procedures

States and local jurisdictions must include in their ECO regulations penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to implement an approved compliance plan according to the compliance plan's implementation schedule. Penalties should be sufficient to provide an adequate incentive for employers to comply and be no less than the expected cost of compliance. Wisconsin's ECO SIP has met this requirement by including in its ECO regulations severe penalties for failure to comply with provisions of the regulation. A violator may be subject to fines of up to $25,000 per day per violation.

III. Final Rulemaking Action

The State of Wisconsin has submitted a SIP revision that includes each of the ECO Program elements required by section 182(d)(1)(B) of the Act and EPA guidance issued pursuant to section 108(f) of the Act. The SIP includes a verifiable estimate of the areawide AVO at the time that the SIP was submitted and a target APO that is at least 25 percent above the areawide AVO. Employers with more than 100 employees are required to submit compliance plans to the State that convincingly demonstrate that the plan will increase the APO per vehicle in commuting trips between home and the worksite during peak travel periods to a level not less than 25 percent above the areawide AVO for all such trips. EPA is, therefore, approving this submittal.

IV. Procedural Background

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on April 3, 1995. However, if the EPA receives adverse comments by March 2, 1995, then the EPA will publish a document that withdraws this action, and will address the comments received in response to the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. Comments will be addressed in the final rule on the proposal. The EPA will not initiate a second comment period on this action.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on

September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen oxide, Ozone, Volatile organic compounds.

Dated: December 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(77) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(77) On November 15, 1993, the State of Wisconsin submitted a revision to the State Implementation Plan (SIP) for the implementation of an employee commute options (ECO) program in the Milwaukee-Racine, severe–17, ozone nonattainment area. This revision included Chapter NR 486 of the Wisconsin Administrative Code, effective October 1, 1993, and Wisconsin Statutes sections 144.3712, enacted on April 30, 1992 by Wisconsin Act 302.

(i) Incorporation by reference.

(A) Chapter NR 486 of the Wisconsin Administrative Code, effective October 1, 1993.

(B) Wisconsin Statutes, section 144.3712, enacted on April 30, 1992 by Wisconsin Act 302.

[FR Doc. 95–2284 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–172; RM–7726, RM–7800, RM–7801]

Radio Broadcasting Services; Cushing and Cleveland, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Texas Classical Radio, Inc., substitutes Channel 246C for Channel 246C1 at Cleveland, Texas, and modifies the construction permit of Station KRTK(FM) to specify operation on Channel 246C. The coordinates for Channel 246C at Cleveland, Texas, are 30–32–06 and 95–01–05. This document also dismisses the petition filed by Cavalier Broadcasting proposing the allotment of Channel 245A to Cushing, Texas, and its counterproposal to allot Channel 245C3 at Cushing, Texas. *See* 56 FR 29450, June 27, 1991. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2173.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91–172, adopted January 19, 1995, and released January 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 246C1 and adding Channel 246C at Cleveland.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–2362 Filed 1–30–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[Federal Acquisition Circular 90–23 Correction]

Federal Acquisition Regulation; Technical Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical correction.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to Federal Acquisition Circular 90–23 published on December 28, 1994, at 59 FR 67010. Miscellaneous typographical, editorial, and technical errors appeared in the following areas: the introductory document, FAR Case 93-609—Section 4c Price Adjustments, FAR Case 91–13—Acquisition of Utility Services, FAR Case 92–36—Walsh-Healey Definitions, and in FAR Case 93–304—Defense Production Act Amendments.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

Corrections

1. At 59 FR 67012, Dec. 28, 1994, first column, in the last sentence of Item XVII ''or'' should read ''of''.

52.241–6 [Corrected]

2. On page 67024, in the first column, in section 52.241–6(b)(2), last line, a ''_____'' should follow ''than''.

3. On page 67038, in the third column, under **SUMMARY**, in the sixth line from the top ''alternative'' should read ''alternate''.

22.602–2 [Corrected]

4. On page 67039, in the first column, under 22.602–2(b), in the tenth line from the bottom of the paragraph ''speciality'' should read ''specialty''.

5. On page 67039, in the third column, under Background, in the second line from the top ''eliminates'' should read ''eliminate''.

52.234–1 [Corrected]

6. On page 67048, in the center column, in the title of the clause at 52.234–1 the date ''Feb. 1995'' should read ''Dec. 1994''.

C. Allen Olson,

Director, Office of Federal Acquisition Policy, General Services Administration.

[FR Doc. 95–2295 Filed 1–30–95; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

48 CFR Part 226

Defense Federal Acquisition Regulation Supplement; Preference for Local Residents

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit contracting officers to consider, as a factor in source selection, the extent to which offerors plan to hire local residents in the performance of contracts that support the closure or alignment of a military installation.

DATES: Effective date: January 26, 1995.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before April 3, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: LTC Edward King, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D315 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: LTC Edward King, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 817 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337) authorizes the Secretary of Defense to give preference to entities that plan to hire local residents, when entering into contracts for services to be performed at a military installation that is affected by closure or alignment under a base closure law. DFARS Subpart 226.71 is amended to permit contracting officers to use this preference in the award of contracts for base closure activities.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to acquisitions that support the closure or realignment of a military installation. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D315 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule as an interim rule without prior opportunity for public comment because it is necessary to authorize contracting officers to use the preference permitted by Section 817 of Pub. L. 103–337. However, comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 226

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 226 is amended as follows:

1. The authority citation for 48 CFR part 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Section 226.7100 is revised to read as follows:

226.7100 Scope of subpart.

This subpart implements Section 2912 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160) and Section 817 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337).

3. Section 226.7104 is added to read as follows:

226.7104 Other considerations.

Contracting officers shall consider including, as a factor in source selection, the extent to which offerors specifically identify and commit, in their proposals, to a plan to hire residents of the vicinity of the military installation that is being closed or realigned.

[FR Doc. 95–2398 Filed 1–30–95; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 60, No. 20
Tuesday, January 31, 1995

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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

General Accounting Office; Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: General Accounting Office.

ACTION: Proposed rule.

SUMMARY: The General Accounting Office (GAO) is proposing to revise its Bid Protest Regulations to implement the Federal Acquisition Streamlining Act of 1994 (FASA) and to conform GAO's current regulation to the practice that has evolved at GAO since April 1991, when GAO last revised part 21. The proposed revision will improve the overall efficiency and effectiveness of the bid protest process at GAO by streamlining the process, by reducing the costs of pursuing protests at GAO for all parties, and by permitting GAO to resolve protests as expeditiously as possible. FASA requires that the implementing regulation be concise and easily understood by vendors and government officials, and the proposed revision reflects this requirement. The proposed revision shortens the regulation, even though several provisions implementing FASA are added.

DATES: Comments must be submitted on or before April 3, 1995.

ADDRESSES: Comments should be addressed to: Michael R. Golden, Assistant General Counsel, General Accounting Office, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Michael R. Golden (Assistant General Counsel) or Linda S. Lebowitz (Senior Attorney), 202–512–9732.

SUPPLEMENTARY INFORMATION: The proposed revision to the General Accounting Office's (GAO) Bid Protest Regulations implements statutory changes contained in the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, 108 Stat. 3243, dated October 13, 1994. The proposed revision is based on GAO's experience with the prior revision to its regulation, including the use of protective orders and hearings, which became effective on April 1, 1991 (56 FR 3759). The proposed revision conforms GAO's current regulation to the practice that has evolved at GAO since April 1991, and will improve the bid protest process at GAO. In revising its regulation, GAO was guided by the statutory mandate in sec. 10002(e) of FASA that regulations implementing FASA be concise and easily understood by vendors and government officials, and by the principle that GAO's bid protest process remain as uncomplicated and informal as possible, consistent with the goal of providing expeditious and meaningful relief to vendors wrongfully excluded from procurements. More specifically, the proposed revision will streamline the process, reduce the costs of pursuing protests at GAO for all parties, and permit GAO to resolve protests as expeditiously as possible. The regulation is shortened overall, even though several new provisions are added in order to implement FASA. Redundancies are eliminated and language changes reflect an effort to make the regulation clearer and more readable.

Explanations of significant revisions to GAO's Bid Protest Regulations are set forth below.

GAO's proposed regulation at 4 CFR 21.1(f), currently at § 21.3(b), requires that if a protester believes that the protest includes confidential information which should be withheld, the protester must advise GAO of this fact on the front page of the protest submission and must file, simultaneously with the filing of its protest with GAO, a redacted copy of the protest which omits the information. GAO does not anticipate that this requirement will impose a significant burden since a protester is currently obligated to identify, ''wherever it appears,'' information in its protest that it believes should be withheld as permitted by law.

Paragraphs (c) and (d) of § 21.3 implement the statutory requirement set forth in sec. 1015 and 1065 of FASA that if any party to a protest filed with GAO so requests, the agency shall produce a protest file. The statutory language of those sections calls for the implementing regulation to be consistent with the regulation regarding the preparation and submission of the so-called ''rule 4 file'' in protests before the General Services Administration Board of Contract Appeals (GSBCA). In light of that direction, and taking into account the somewhat longer period for deciding protests filed with GAO, the proposed regulation provides that when requested, the agency is to prepare and submit a protest file to GAO, the protester, and any intervenors within 20 calendar days after the agency's receipt of the request. (In revising its current regulation, GAO has converted from ''working days'' to ''calendar days'' consistent with the requirements of FASA.)

GAO believes that requiring an agency to produce a protest file, when one is requested, early in the bid protest process will make it easier to carry out the mandate in sec. 1403 of FASA that supplemental protests not delay the issuance of a decision by GAO. Currently, supplemental protests are generally based on information included in the documents contained in the agency report, and must generally be filed within 10 working days of the protester's receipt of the documents. GAO believes that if an agency provides the relevant documents early in the process, supplemental protests will be filed earlier. Consequently, the meaningful protest issues which need to be addressed by GAO will be identified by the parties earlier in the process, thus benefiting all parties in terms of time and costs. Further, GAO believes that early production of the protest file will allow bid protests to be resolved as expeditiously as possible, which will shorten procurement suspensions.

As with the ''rule 4 file,'' the protest file under the proposed regulation will contain only pre-existing documents, rather than documents prepared in response to the protest. As detailed in paragraph (e) of § 21.3, the contracting officer's statement of the relevant facts and a memorandum of law are to be filed within 35 calendar days after the agency receives telephone notice of the protest from GAO.

Section 21.5(h), currently § 21.3(m)(10), removes GAO's consideration of subcontract protests where the subcontract is ''by or for the government''; rather, GAO will consider

protests concerning awards of subcontracts by or for a Federal agency as nonstatutory protests in accordance with § 21.13 where the agency awarding the prime contract has requested in writing that subcontract protests be decided by GAO. In *US West Communications Services, Inc.* v. *United States*, 940 F.2d 622 (Fed. Cir. 1991), the court called into question the GSBCA's review of a prime contractor's award of a subcontract based on the language in the Competition in Contracting Act of 1984, 40 U.S.C. 759(f)(9)(A) (1988), which authorizes the GSBCA to review protests of a solicitation by a Federal agency for bids or proposals for a proposed contract or contract. GAO's statutory language in this regard is basically identical to that of the GSBCA. In the absence of any language in FASA which addresses this matter, GAO believes that it is appropriate to treat protests against awards of subcontracts by or for a Federal agency as nonstatutory protests.

Comments concerning the proposed rule should reference file number B–259187. Comments may be filed by hand delivery or mail at the address in the address line, or comments may be filed by facsimile transmission at 202–512–9749.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Bid protest regulations, Government contracts.

For the reasons set out in the preamble, title 4, chapter I, subchapter B, part 21 of the Code of Federal Regulations is proposed to be revised to read as follows:

1. Part 21 is revised to read as follows:

PART 21—BID PROTEST REGULATIONS

Sec.

21.0 Definitions.
21.1 Filing a protest.
21.2 Time for filing.
21.3 Notice of protest, submission of agency report, and time for filing of comments on report.
21.4 Protective orders.
21.5 Protest issues not for consideration.
21.6 Withholding of award and suspension of contract performance.
21.7 Hearings.
21.8 Remedies.
21.9 Time for decision by GAO.
21.10 Express option.
21.11 Effect of judicial proceedings.
21.12 Distribution of decisions.
21.13 Nonstatutory protests.
21.14 Request for reconsideration.

Authority: 31 U.S.C. 3551–3556.

§ 21.0 Definitions.

(a) *Interested party* means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) *Intervenor* means an awardee if the award has been made or, if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.

(c) *Federal agency* means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives and the Architect of the Capitol and any activities under his direction.

(d) *Contracting agency* means a Federal agency which has awarded or proposes to award a contract under a protested procurement.

(e) *Days* are calendar days. In computing a period of time for the purpose of this part, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the General Accounting Office (GAO), or another Federal agency where a filing is due, is closed for all or part of the last day, the period extends to the next day on which the agency is open.

(f) *Adverse agency action* is any action or inaction by a contracting agency which is prejudicial to the position taken in a protest filed with the agency, including a decision on the merits of a protest; the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid despite a pending protest; or contracting agency acquiescence in continued and substantial contract performance.

(g) A document is *filed* on a particular day when it is received by GAO by 5:30 p.m., eastern time, on that day. A document may be filed by hand delivery or mail; parties wishing to file a document by facsimile transmission or other electronic means must ensure that the necessary equipment is operational at GAO's Procurement Law Control Group and that the entire document is received by 5:30 p.m. on the due date.

§ 21.1 Filing a protest.

(a) An interested party may protest a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services; the cancellation of such a solicitation or other request; an award or proposed award of such a contract; and a termination of such a contract, if the protest alleges that the termination was based on improprieties in the award of the contract.

(b) Protests must be in writing and addressed as follows: General Counsel, General Accounting Office, 441 G Street, NW., Washington, DC 20548, Attention: Procurement Law Control Group.

(c) A protest filed with GAO shall:

(1) Include the name, address, and telephone number of the protester,

(2) Be signed by the protester or its representative,

(3) Identify the contracting agency and the solicitation and/or contract number,

(4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents,

(5) Specifically request a ruling by the Comptroller General of the United States,

(6) State the form of relief requested, and

(7) Request specific documents relevant to the protest grounds.

(d) The protester shall furnish a copy of the protest to the individual or location designated by the contracting agency in the solicitation for receipt of protests, or if there is no designation, to the contracting officer. The designated individual or location (or, if applicable, the contracting officer) must receive a copy of the protest no later than 1 day after the protest is filed with GAO. The protest document must indicate that a copy is being furnished within 1 day to the appropriate individual or location.

(e) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise and logically arranged, and should clearly state legally sufficient grounds of protest. Protests of different procurements should be separately filed.

(f) GAO will not withhold material submitted by a protester from any party outside the government unless it is permitted to do so by law. If the protester believes that the protest contains information which should be withheld, a statement advising of this fact must be on the front page of the submission. This information must be identified wherever it appears, and the protester must file, simultaneously with the filing of its protest with GAO, a redacted copy of the protest which omits the information.

(g) Parties who intend to file documents containing classified information should notify GAO in advance to obtain advice regarding

procedures for filing and handling the information.

(h) A protest may be dismissed for failure to comply with any of the requirements of this section. However, a protest shall not be dismissed for failure to comply with paragraph (d) of this section where the contracting officer has actual knowledge of the basis of protest, or the agency, in the preparation of its report, was not prejudiced by the protester's noncompliance.

§ 21.2 Time for filing.

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed not later than 14 days after the basis of protest is known or should have been known, whichever is earlier.

(3) If a timely agency-level protest was previously filed, any subsequent protest to GAO filed within 14 days of actual or constructive knowledge of initial adverse agency action will be considered, provided the agency-level protest was filed in accordance with paragraphs (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to GAO will be considered timely if filed within the 14-day period provided by this paragraph, even if filed after bid opening or the closing time for receipt of proposals.

(b) Protests untimely on their face may be dismissed. A protester shall include in its protest all information establishing the timeliness of the protest; a protester will not be permitted to introduce for the first time in a request for reconsideration information necessary to establish that the protest was timely.

(c) GAO, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider an untimely protest.

§ 21.3 Notice of protest, submission of agency report, and time for filing of comments on report.

(a) GAO shall notify the contracting agency by telephone within 1 day after the filing of a protest, and shall promptly send a written confirmation to the contracting agency and an acknowledgment to the protester. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a reasonable prospect of receiving an award. The contracting agency shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with GAO. All parties shall furnish copies of any communications to the contracting agency and to other participating parties.

(b) A contracting agency which believes that the protest or specific protest allegations should be dismissed before submission of an agency report should file a request for dismissal as soon as practicable.

(c) If any party to the protest so requests, the contracting agency shall prepare a protest file and provide a copy to GAO within 20 days after the agency's receipt of the request. The contracting agency shall simultaneously furnish a copy of the protest file to the protester and any intervenors. The protest file shall include an index and a copy of all relevant documents including, as appropriate: the protest; the bid or proposal submitted by the protester; the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested; all evaluation documents; the solicitation, including the specifications or portions relevant to the protest; the abstract of bids or offers or relevant portions; and any other relevant documents. The contracting agency shall provide any additional documents requested in the protest or explain why it is not required to produce the documents. The contracting agency may request that the protester produce relevant documents that are not in the agency's possession.

(d) Information exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, may be omitted in the copy of the protest file provided to the parties, unless counsel for a party has been admitted to a protective order issued in the protest, in which case the file shall be provided to counsel in accordance with the protective order.

(e) The contracting agency shall file a report on the protest with GAO within 35 days after the telephone notice of the protest from GAO. The report shall include all relevant documents as set forth in paragraph (c) of this section, except to the extent already produced in the protest file, as well as the contracting officer's statement of the relevant facts and a memorandum of law.

(f) Subject to any protective order issued in the protest, the contracting agency shall simultaneously furnish a copy of the report to the protester and any intervenors. The copy of the report filed with GAO shall list the parties who have been furnished copies of the report and shall identify any documents, or portions of documents, withheld from any party and the reason for the withholding. Where a protester does not have counsel admitted to a protective order and documents are withheld from the protester in accordance with this part, the agency shall provide documents adequate to inform the protester of the basis of the agency's position.

(g) The contracting agency may request an extension of time for the submission of the protest file or agency report. Extensions will be granted sparingly.

(h) The protester may request additional documents when their existence or relevance first becomes evident. Except when authorized by GAO, any request for additional documents must be filed with GAO and the contracting agency not later than 2 days after their existence or relevance is known or should have been known, whichever is earlier. The contracting agency shall provide the requested documents and an index to GAO and the other parties within 5 days or explain why it is not required to produce the documents.

(i) Upon the request of a party, GAO will decide whether the contracting agency must provide any withheld documents and whether this should be done under a protective order. When withheld documents are provided, the protester's comments on the agency report shall be filed within 10 days after its receipt of the documents, unless otherwise specified by GAO.

(j) Comments on the agency report shall be filed with GAO within 14 days after receipt of the report, with a copy provided to the contracting agency and other participating parties. The protest shall be dismissed unless the protester files comments or a written statement requesting that the case be decided on the existing record, or requests an extension of time within the 14-day period. Unless otherwise advised by the

protester, GAO will assume the protester received the agency report by the due date specified in the acknowledgment of protest furnished by GAO. Upon a showing that the specific circumstances of a protest require a period longer than 14 days for the submission of comments, GAO will set a new date for the submission of comments. Extensions will be granted sparingly.

(k) GAO may permit or request the submission of additional statements by the parties and by other parties not participating in the protest as may be necessary for the fair resolution of the protest.

§ 21.4 Protective orders.

(a) At the request of a party or on its own initiative, GAO may issue a protective order controlling the treatment of protected information. Such information may include proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms. The protective order shall establish procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information. Because a protective order serves to facilitate the pursuit of a protest by a protester through counsel, it is, in the first instance, the responsibility of protester's counsel to request that a protective order be issued and to submit timely applications for admission under that order.

(b) If no protective order has been issued, the agency may withhold from the parties those portions of its report which would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for admission under the order by submitting an application to GAO, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decision-making for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. Objections to an applicant's admission shall be raised within 2 days after receipt of the application, although GAO may consider objections raised after that time.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the individual's practice before GAO.

§ 21.5 Protest issues not for consideration.

GAO shall summarily dismiss a protest or specific protest allegations that do not state a valid basis for protest, are untimely (unless considered pursuant to § 21.2(c)), or are not properly before GAO. A protest or specific protest allegations may be dismissed anytime sufficient information is obtained by GAO warranting dismissal. Where an entire protest is dismissed, no agency report shall be filed; where specific protest allegations are dismissed, an agency report shall be filed on the remaining allegations. Among the protest bases which shall be dismissed are the following:

(a) *Contract administration.* The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601–613.

(b) *Small Business Administration issues.*

(1) *Small Business Size Standards and Standard Industrial Classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification may be reviewed solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

(2) *Small Business Certificate of Competency Program.* Any referral made to the Small Business Administration pursuant to sec. 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of competency under that section will not be reviewed by GAO absent a showing of possible bad faith on the part of government officials or a failure to consider vital information bearing on the firm's responsibility. 15 U.S.C. 637(b)(7).

(3) *Procurements under sec. 8(a) of the Small Business Act.* Under that section, since contracts are entered into with the Small Business Administration at the contracting officer's discretion and on such terms as are agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) program is not subject to review absent a showing of possible bad faith on the part of government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(c) *Affirmative determination of responsibility by the contracting officer.* Because the determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed absent a showing of possible bad faith on the part of government officials or that definitive responsibility criteria in the solicitation were not met.

(d) *Procurement protested to the General Services Administration Board of Contract Appeals.* Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a protest to the Board, the same procurement generally may not be the subject of a protest to GAO. 40 U.S.C. 759(f).

(e) Protests not filed either in GAO or the contracting agency within the time limits set forth in § 21.2.

(f) Protests which lack a detailed statement of the legal or factual grounds of protest as required by § 21.1(c)(4), or which fail to clearly state legally sufficient grounds of protest as required by § 21.1(e).

(g) Procurements by agencies other than Federal agencies as defined by sec. 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472. Protests of procurements or proposed procurements by agencies such as the U.S. Postal Service, the Federal Deposit Insurance Corporation, and nonappropriated fund activities are beyond GAO's bid protest jurisdiction as established in 31 U.S.C. 3551–3556.

(h) *Subcontract protests.* GAO will not consider a protest of the award or proposed award of a subcontract except where the agency awarding the prime contract has requested in writing that subcontract protests be decided pursuant to § 21.13.

§ 21.6 Withholding of award and suspension of contract performance.

(a) The following requirements regarding the withholding of award and the suspension of contract performance when a protest is filed with GAO are set forth in 31 U.S.C. 3553 (c) and (d). There is an additional requirement contained in 48 CFR 33.104(d) that the contracting officer give written notice to the protester and other parties of any

decision to proceed with award or to continue contract performance. The requirements are included here for informational purposes.

(b) When the contracting agency receives notice of a protest from GAO prior to award of a contract, it may not award a contract under the protested procurement while the protest is pending unless the head of the procuring activity responsible for award of the contract determines in writing and reports to GAO that urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for GAO's decision. This finding may be made only if the award is otherwise likely to occur within 30 days.

(c) When the contracting agency has awarded the contract, but receives notice of a protest from GAO within 10 days of the date of contract award, or within 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required, the agency shall immediately direct the contractor to cease contract performance and to suspend related activities that may result in additional obligations being incurred by the government under that contract while the protest is pending. The contracting officer responsible for award of the contract may authorize contract performance notwithstanding the pending protest if he or she determines in writing and reports to GAO that:

(1) Performance of the contract is in the government's best interest, or

(2) Urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for GAO's decision.

§ 21.7 Hearings.

(a) At the request of a party or on its own initiative, GAO may conduct a hearing in connection with a protest. The request shall set forth the reasons why a hearing is needed.

(b) Prior to the hearing, GAO may hold a pre-hearing conference to discuss and resolve matters such as the procedures to be followed, the issues to be considered, and the witnesses who will testify.

(c) Hearings generally will be conducted as soon as practicable after receipt by the parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at GAO in Washington, DC, hearings may, at the discretion of GAO, be conducted at other locations.

(d) All parties participating in the protest shall be invited to attend the hearing. Others may be permitted to attend as observers and may participate as allowed by GAO's hearing official. In order to prevent the improper disclosure of protected information at the hearing, GAO's hearing official may restrict attendance during all or part of the proceeding.

(e) Hearings shall normally be recorded and/or transcribed. If a recording and/or transcript is made, any party may obtain copies at its own expense.

(f) If a witness whose attendance has been requested by GAO fails to attend the hearing or fails to answer a relevant question, GAO may draw an inference unfavorable to the party for whom the witness would have testified.

(g) If a hearing is held, no separate comments on the agency report should be submitted unless specifically requested by GAO. All parties may file consolidated comments on the hearing and the agency report with GAO, with copies furnished to the other parties, within 7 days after the hearing was held or as specified by GAO. By the due date, if the protester has not filed comments or a written statement requesting that the case be decided on the existing record, GAO may dismiss the protest.

(h) In post-hearing comments, the parties should cite to specific testimony during the hearing relevant to the disposition of the protest.

§ 21.8 Remedies.

(a) If GAO determines that a solicitation, cancellation of a solicitation, termination of a contract, proposed award, or award does not comply with statute or regulation, it shall recommend that the contracting agency implement any combination of the following remedies:

(1) Refrain from exercising options under the contract;

(2) Terminate the contract;

(3) Recompete the contract;

(4) Issue a new solicitation;

(5) Award a contract consistent with statute and regulation; or

(6) Such other recommendation(s) as GAO determines necessary to promote compliance.

(b) In determining the appropriate recommendation(s), GAO shall, except as specified in paragraph (c) of this section, consider all circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the government, the urgency of the procurement, and the impact of the recommendation(s) on the contracting agency's mission.

(c) If the head of the procuring activity makes the finding referred to in § 21.6(c)(1) that performance of the contract notwithstanding a pending protest is in the government's best interest, GAO shall make its recommendation(s) under paragraph (a) of this section without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(d) If GAO determines that a solicitation, proposed award, or award does not comply with statute or regulation, it may recommend that the contracting agency pay the protester the costs of:

(1) Filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees; and

(2) Bid and proposal preparation.

(e) If the contracting agency decides to take corrective action in response to a protest, GAO may recommend that the agency pay the protester the costs of filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees. The protester shall file any request that GAO recommend that costs be paid within 14 days after being advised that the contracting agency has decided to take corrective action. The protester shall furnish a copy of its request to the contracting agency, which may file a response within 14 days after receipt of the request, with a copy furnished to the protester.

(f)(1) If GAO recommends that the contracting agency pay the protester the costs of filing and pursuing the protest and/or of bid or proposal preparation, the protester and the agency shall attempt to reach agreement on the amount of costs. The protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 90 days after receipt of GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time shall result in forfeiture of the protester's right to recover its costs. GAO may consider an untimely claim for good cause shown.

(2) The contracting agency shall issue a decision on the claim for costs as soon as practicable after the claim is filed. If the protester and the contracting agency cannot reach agreement within a reasonable time, GAO may, upon request of the protester, recommend the amount of costs the agency should pay. In such cases, GAO may also recommend that the contracting agency pay the protester the costs of pursuing the claim for costs before GAO.

(3) The contracting agency shall notify GAO within 60 days after GAO recommends the amount of costs the agency should pay the protester of the action taken by the agency in response to the recommendation.

§ 21.9 Time for decision by GAO.

(a) GAO shall issue a decision on a protest within 125 days after it is filed.

(b) In protests where GAO uses the express option procedures in § 21.10, GAO shall issue a decision on a protest within 65 days after it is filed.

(c) GAO, to the maximum extent practicable, shall resolve a timely supplemental protest adding one or more new grounds to an existing protest, within the time limit established in paragraph (a) of this section for decision on the initial protest. If an amended protest cannot be resolved within that time limit, GAO may resolve the amended protest using the express option procedures in § 21.10.

§ 21.10 Express option.

(a) Any party may request that GAO decide a protest on an ''express option'' expedited schedule.

(b) The expedited schedule will be adopted at the discretion of GAO and only in those cases suitable for resolution within 65 days.

(c) Requests for an expedited schedule shall be in writing and received in GAO no later than 3 days after the protest or supplemental protest is filed. GAO will promptly notify the parties whether the case will be handled on an expedited schedule.

(d) When the express option is used, the following schedule applies instead of those deadlines in § 21.3 and § 21.7:

(1) The contracting agency shall file a complete report with GAO and the parties within 20 days after it receives notice from GAO that the express option will be used.

(2) Comments on the agency report shall be filed with GAO and the other parties within 7 days after receipt of the report.

(3) If a hearing is held, no separate comments on the agency report under paragraph (d)(2) of this section should be submitted unless specifically requested by GAO. Consolidated comments on the agency report and hearing shall be filed within 7 days after the hearing was held or as specified by GAO.

(4) If all parties agree, GAO will resolve protests decided on an expedited schedule by a summary decision.

(5) Where circumstances demonstrate that a case is no longer suitable for resolution on an expedited schedule, GAO shall establish a new schedule for submissions by the parties.

§ 21.11 Effect of judicial proceedings.

(a) A protester must immediately advise GAO of any court proceeding which involves the subject matter of a pending protest and file copies of all relevant court documents.

(b) GAO will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or where the matter involved has been decided on the merits by a court of competent jurisdiction. GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court. In these cases, unless a different schedule is established, the times provided in part 21 for filing the agency report (§ 21.3(e)), filing comments on the report (§ 21.3(j)), holding a hearing and filing comments (§ 21.7), and issuing a decision (§ 21.9) shall apply.

§ 21.12 Distribution of decisions.

(a) Unless it contains protected information, a copy of a decision shall be provided to the protester, any intervenors, the head of the contracting activity responsible for the protested procurement, and the senior procurement executive of each Federal agency involved; a copy shall also be made available to the public. A copy of a decision containing protected information shall be provided only to the contracting agency and to individuals admitted to any protective order issued in the protest. A public version omitting the protected information shall be prepared wherever possible.

(b) Decisions are available from GAO's electronic bulletin board.

§ 21.13 Nonstatutory protests.

(a) GAO will consider protests concerning awards of subcontracts by or for a Federal agency, sales by a Federal agency, or procurements by agencies of the government other than Federal agencies as defined in § 21.0(c) if the agency involved has agreed in writing to have its protests decided by GAO.

(b) The provisions of this part shall apply to nonstatutory protests except for the provisions of § 21.3(c) pertaining to the contracting agency protest file and § 21.8(d) pertaining to recommendations for the payment of costs. The provision for the withholding of award and the suspension of contract performance, 31 U.S.C. 3553 (c) and (d), also does not apply to nonstatutory protests.

§ 21.14 Request for reconsideration.

(a) The protester, any intervenor, and any Federal agency involved in the protest may request reconsideration of a bid protest decision. GAO will not consider a request for reconsideration that does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) A request for reconsideration of a bid protest decision shall be filed, with copies to the parties who participated in the protest, not later than 14 days after the basis for reconsideration is known or should have been known, whichever is earlier.

(c) GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration or is untimely. The filing of a request for reconsideration does not require the withholding of award and the suspension of contract performance under 31 U.S.C. 3553 (c) and (d).

Robert P. Murphy,

General Counsel.

[FR Doc. 95–2226 Filed 1–30–95; 8:45 am]

BILLING CODE 1610–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 94–064–1]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the pseudorabies regulations by adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official pseudorabies tests, which would allow certain pseudorabies vaccinated swine to be moved interstate to destinations other than those currently allowed. Under the current pseudorabies regulations, pseudorabies vaccinated swine that are not from a qualified negative gene-altered vaccinated herd may be moved interstate only for slaughter or to a quarantined herd or quarantined feedlot. This proposed change would allow, under certain conditions, the glycoprotein I enzyme-linked immunosorbent assay approved differential test to be used as an official pseudorabies test to qualify certain

pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the glycoprotein I enzyme-linked immunosorbent assay approved differential test to the list of official pseudorabies tests would also allow its use for the testing of nonvaccinated swine.

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

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 94–064–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Health Staff, Veterinary Services, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January 1995. Telephone: (301) 436–7767 (Hyattsville); (301) 734–7767 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus. The Animal and Plant Health Inspection Service's (APHIS') regulations in 9 CFR part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

For the purposes of interstate movement, the regulations separate swine into four basic categories: (1) Swine infected with or exposed to pseudorabies; (2) pseudorabies vaccinated swine (except swine from qualified negative gene-altered vaccinated herds) not known to be infected with or exposed to pseudorabies; (3) swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies; and (4) swine from qualified negative gene-altered vaccinated herds. Provisions governing the interstate movement of swine from each category are found in §§ 85.5, 85.6, 85.7, and 85.8, respectively.

Swine that have been vaccinated for pseudorabies are further characterized as either official pseudorabies vaccinates or official gene-altered pseudorabies vaccinates. The essential difference between these two categories is the availability of tests that can differentiate between vaccinated and infected swine. Swine vaccinated with an official pseudorabies vaccine produce antibodies to the vaccine that cannot be distinguished by traditional pseudorabies tests from antibodies produced in response to the field strain of the virus that causes pseudorabies infection. However, swine vaccinated with an official gene-altered pseudorabies vaccine may be tested with an approved differential pseudorabies test that can distinguish between antibodies produced in response to the vaccine and antibodies produced in response to the field strain of the virus that causes pseudorabies infection. The two official gene-altered pseudorabies vaccines that are used most often in the United States are vaccines from which a nonessential glycoprotein—either glycoprotein X (gpX) or glycoprotein I (gpI)—has been deleted. Swine vaccinated with one of those glycoprotein-deleted vaccines would not produce antibodies to the deleted glycoprotein unless the swine were infected with the pseudorabies field virus or had been vaccinated with a vaccine containing the glycoprotein antigen.

The regulations contain provisions that allow swine herds to attain qualified negative gene-altered vaccinated herd status. Simply put, such status may be attained by first subjecting a herd of swine not known to be infected with or exposed to pseudorabies to an official pseudorabies test, or, if there are already gene-altered vaccinates in the herd, to an approved differential test. A herd already designated as a qualified pseudorabies negative herd does not require another test as a first step. If all swine in the herd are negative to a test for pseudorabies, or if the herd is a qualified pseudorabies negative herd, all swine in the herd over 6 months of age are then vaccinated with an official gene-altered pseudorabies vaccine. Qualified negative gene-altered vaccinated herd status is maintained by controlling the entry of new swine to the herd, vaccinating young swine in the herd as they reach 6 months of age, and subjecting all swine in the herd over 6 months of age to an approved differential test once per year with negative results. The specific requirements for achieving and maintaining qualified negative gene-altered vaccinated herd status are contained in § 85.1 in the definition of ''qualified negative gene-altered vaccinated herd.''

Under the regulations in § 85.8, swine from a qualified negative gene-altered vaccinated herd are subject to relatively few restrictions on interstate movement. As set forth in § 85.8, swine from a qualified negative gene-altered vaccinated herd may be moved interstate without restriction if they are moved: (1) Directly to a recognized slaughtering establishment; (2) through one or more slaughter markets to a recognized slaughtering establishment; (3) directly to a feedlot, quarantined feedlot, or approved livestock market; or (4) from an approved livestock market to a feedlot, quarantined feedlot, or other approved livestock market. For any other interstate movement, the swine must be accompanied by a certificate containing certain information regarding the interstate movement and the swine being moved.

Individual official gene-altered vaccinates that are not from a qualified negative gene-altered vaccinated herd do not, however, enjoy the same relative freedom from restrictions on interstate movement. Rather, such swine must meet the conditions of § 85.6, ''Interstate movement of pseudorabies vaccinate swine, except swine from qualified negative gene-altered vaccinated herds, not known to be infected with or exposed to pseudorabies.'' The provisions of § 85.6 are more restrictive than those of § 85.8, allowing vaccinated swine to be moved interstate only if: (1) The swine are accompanied by an owner-shipper statement and are moved directly to slaughter, or (2) the swine are accompanied by a permit and moved directly to a quarantined herd or quarantined feedlot.

The differing restrictions on the interstate movement of official gene-altered pseudorabies vaccinates that are from a qualified negative gene-altered vaccinated herd and official gene-altered pseudorabies vaccinates that are not from such a herd were based on the level of confidence that APHIS had in the reliability of the approved differential tests when provisions for the use of approved differential tests and gene-altered vaccines were first added to the regulations in a final rule published in the **Federal Register** on May 9, 1990 (55 FR 19245–19253,

Docket No. 89–211). During the public comment period that preceded the publication of that final rule, several commenters requested that APHIS allow the use of approved differential tests to qualify individual gene-altered vaccinates for interstate movement in the same way as nonvaccinated swine may be qualified for interstate movement with an official pseudorabies serologic test under the regulations in § 85.7. APHIS declined, noting that the HerdCheck anti-pseudorabies gpX enzyme-linked immunosorbent assay (ELISA) test, which was the only approved differential pseudorabies test being conducted in APHIS-approved laboratories at that time, had been recommended as a diagnostic test for herds, and not for individual swine, by the American Association of Veterinary Laboratory Diagnosticians (AAVLD), the United States Animal Health Association (USAHA), and the test's manufacturer because the test was less sensitive than standard serological procedures in detecting pseudorabies virus antibodies.

Following the publication of the May 1990 final rule, APHIS approved several laboratories to conduct the gpI ELISA test, thus making two gene-altered vaccine/test combinations available to swine producers in the United States. The gpI ELISA test is more sensitive than the gpX ELISA test and has become the approved differential test used by the majority of those swine producers who have chosen to vaccinate their swine for pseudorabies.

The AAVLD's Committee on Diagnostic and Interpretative Serology has recognized that the sensitivity and specificity of the gpI ELISA test is equivalent to that of official tests for the diagnosis of pseudorabies. Based on that finding, the committee recommended that APHIS designate the gpI ELISA approved differential test as an official pseudorabies test and allow its use to qualify individual swine vaccinated with the gpI-deleted pseudorabies vaccine (referred to below as gpI vaccinates) for interstate movement.

Therefore, we are proposing to allow, under certain conditions, the use of the gpI ELISA test as an official pseudorabies test to qualify gpI vaccinates that are not from a qualified negative gene-altered vaccinated herd for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. The AAVLD did not change its recommendation regarding other differential pseudorabies tests, so the gpI ELISA test is the only approved differential pseudorabies test included in this proposal. Additionally, we are not proposing to make any changes to the regulations pertaining to swine from qualified negative gene-altered vaccinated herds. Rather, we are proposing to designate the gpI ELISA approved differential test as an official pseudorabies test to allow individual gpI vaccinates to qualify for general interstate movements (i.e., interstate movements to destinations other than slaughter, feedlots, quarantined herds, or quarantined feedlots) under provisions similar to those of § 85.7(c), which allow nonvaccinated swine not known to be infected with or exposed to pseudorabies to qualify for general interstate movements.

For a gpI vaccinate that is not from a qualified negative gene-altered vaccinated herd to be moved interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot, we are proposing to require that the swine be subjected to a gpI ELISA approved differential test, with negative results, within 30 days prior to the interstate movement. Given the sensitivity of the gpI ELISA test and the fact that the regulations require that the test be conducted in a laboratory approved by APHIS, we believe that any gpI vaccinates infected with pseudorabies would be detected as a result of the testing, thus ensuring that pseudorabies-infected swine would not be moved interstate without appropriate controls.

To document the required testing proposed above, and to provide a record regarding the identity, health status, origin, and destination of individual gpI vaccinates (i.e., not from a qualified negative gene-altered vaccinated herd) moving interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot, we are further proposing to require that such gpI vaccinates be accompanied by a certificate during the interstate movement and that the certificate be delivered to the person receiving the swine. The certificate would be issued by an APHIS representative, State representative, or accredited veterinarian prior to the interstate movement.

As set forth in the definition of *certificate* in § 85.1, a *certificate* must state:

- The number and description of the swine to be moved;
- That the swine to be moved are not known to be infected with or exposed to pseudorabies;
- The purpose for which the swine are to be moved;
- The points of origin and destination; and
- The consignor and consignee.

Our proposed amendment would require that, in addition to the information described in § 85.1, the certificate also state:

- The identification required by the regulations in 9 CFR 71.19;
- That each animal to be moved was vaccinated for pseudorabies with the glycoprotein I (gpI) gene-altered pseudorabies vaccine;
- That each animal to be moved was subjected to an approved differential pseudorabies test within 30 days prior to the interstate movement and was found negative;
- The date of the approved differential pseudorabies test; and
- The name of the laboratory that conducted the approved differential pseudorabies test.

The proposed certificate requirement would ensure that there was an official record of the testing and interstate movement of individual gpI vaccinates and would enable an official pseudorabies epidemiologist to trace the movements of the gpI vaccinates forward from their farm of origin or back from their present location should an investigation become necessary.

The definition of *certificate* currently states that a certificate is issued for ''the interstate movement of swine that * * * are not pseudorabies vaccinates, except for official gene-altered pseudorabies vaccinates from a qualified negative gene-altered vaccinated herd.'' Because this proposal contains provisions for the issuance of certificates for the interstate movement of gpI vaccinates that are not from a qualified negative gene-altered vaccinated herd, we would amend the definition of *certificate* to include gpI vaccinates in the scope of the definition.

Adding the gpI ELISA test as an official pseudorabies test would also mean that the gpI ELISA test would be available for testing nonvaccinated swine to determine their pseudorabies status. As noted above, the AAVLD has recognized that the sensitivity and specificity of the gpI ELISA test is equivalent to that of official tests for the diagnosis of pseudorabies. The gpI ELISA test is specific for antibodies to the glycoprotein I present in the pseudorabies virus; nonvaccinated swine, as well as swine vaccinated with a gpI-deleted vaccine, would not produce positive results to the gpI ELISA test unless the swine were infected with pseudorabies. Designating the gpI ELISA test as an official pseudorabies test would enable swine producers to use a single test on both gpI vaccinates and nonvaccinated swine.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would amend the pseudorabies regulations to allow, under certain conditions, swine vaccinated with a gpI-deleted gene-altered pseudorabies vaccine, but that are not from a qualified negative gene-altered vaccinated herd, to be moved interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot. This proposed rule would also allow the use of the gpI ELISA test to determine the pseudorabies status of nonvaccinated swine.

In December of 1993, there were 235,840 swine operations in the United States with a total inventory of about 56.8 million head. The value of the total swine inventory was estimated to be about $4.3 billion (Agricultural Statistics Board, National Agricultural Statistics Service, U.S. Department of Agriculture, ''Hogs and Pigs,'' December 29, 1993). We believe that about 99 percent of all swine operations in the United States would be considered small entities.

We estimate that there are approximately 25,000 domestic swine herds that contain vaccinated animals. Of those herds, there are only about 250 qualified negative gene-altered vaccinated herds. The provisions of this proposed rule pertaining to gpI vaccinates would have an economic impact only on the owners of gpI vaccinates that are not part of a qualified negative gene-altered herd. There are currently no provisions for the interstate movement of gpI vaccinates that are not part of a qualified negative gene-altered herd to destinations other than slaughter, quarantined herds, or quarantined feedlots, so this proposed rule would have the effect of opening up new markets for the owners of such swine. Testing costs would be incurred only when an owner chose to move gpI vaccinates interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot, since pseudorabies vaccinated swine do not require a test prior to interstate movement for slaughter or to a quarantined herd or quarantined feedlot. We expect that swine owners would accept the costs of testing with the gpI ELISA test if they felt the economic opportunities afforded by the new markets balanced or outweighed the costs associated with the interstate movement.

The provisions of this proposed rule that would allow the use of the gpI ELISA test to determine the pseudorabies status of nonvaccinated swine are not expected to have a significant economic impact on the owners of nonvaccinated swine. Although the gpI ELISA test costs from $0.50 to $1.00 more per test than the official serologic tests currently used to determine the pseudorabies status of nonvaccinated swine, its use to test nonvaccinated swine would be optional. It is likely, therefore, that most owners of nonvaccinated swine would continue using less expensive official pseudorabies tests until the cost of the gpI ELISA test became comparable to that of other official tests.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would 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 proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required 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 proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 would be revised to read as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, in the definition of *certificate*, the first sentence would be amended by adding the words ''vaccinated with a glycoprotein I (gpI) deleted gene-altered pseudorabies vaccine or'' immediately after the words ''gene-altered pseudorabies vaccinates''.

3. In § 85.1, in the definition of *official pseudorabies test*, in the second sentence, item 4 would be amended by adding the words ''other than the glycoprotein I (gpI) ELISA test'' immediately after the word ''tests''.

4. In § 85.6, a new paragraph (c) would be added to read as set forth below:

§ 85.6 Interstate movement of pseudorabies vaccinate swine, except swine from qualified negative gene-altered herds, not known to be infected with or exposed to pseudorabies.

* * * * *

(c) *General movements.* Swine vaccinated for pseudorabies with a glycoprotein I (gpI) deleted gene-altered pseudorabies vaccine and not known to be infected with or exposed to pseudorabies, but that are not from a qualified negative gene-altered vaccinated herd, may be moved interstate to destinations other than those set forth in paragraphs (a) and (b) of this section only if:

(1) The swine are accompanied by a certificate and such certificate is delivered to the consignee; and

(2) The certificate, in addition to the information described in § 85.1, states: (i) The identification required by § 71.19 of this chapter; (ii) that each animal to be moved was vaccinated for pseudorabies with a gpI-deleted gene-altered pseudorabies vaccine; (iii) that each animal to be moved was subjected to a gpI enzyme-linked immunosorbent assay (ELISA) approved differential pseudorabies test no more than 30 days prior to the interstate movement and was found negative; (iv) the date of the gpI ELISA approved differential pseudorabies test; and (v) the name of

the laboratory that conducted the gpI ELISA approved differential pseudorabies test.

Done in Washington, DC, this 25th day of January 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–2315 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Three Cleaning Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking; extending comment period for dishwashers.

SUMMARY: The purpose of today's notice is to extend the comment period for dishwashers from January 30, 1995 to April 17, 1995, for persons to comment on the Department's Advance Notice of Proposed Rulemaking concerning energy conservation standards for three cleaning products.

DATES: Written comments in response to this document must be received by April 17, 1995.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Efficiency Standards for Consumer Products,'' (Docket No. EE–RM–94–403), Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574.

Copies of the public comments received may be read at the Department's Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585,(202) 586–8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585,(202) 586–9507

SUPPLEMENTARY INFORMATION: The Department published an Advance Notice of Proposed Rulemaking for Energy Conservation Standards for Three Cleaning Products. (59 FR 56423, November 14, 1994).

In its letter of December 2, 1994, to the Department, the Association of Home Appliance Manufacturers (AHAM), on behalf of its members and the American Council for Energy Efficient Economy, the Natural Resources Defense Council, and the New York State Energy Office, requested an extension of the deadline for written comments for dishwashers from January 30, 1995 to April 17, 1995. AHAM stated it and other interested persons need additional time to respond adequately to the issues raised in the advance notice.

In addition, AHAM stated it and a group of environmental organizations, public utilities, and state and local energy and water conservation offices are engaged in discussions to develop a joint recommendation to the Department regarding standard levels for dishwashers. AHAM and the other organizations need the additional time to collect engineering, energy, and cost data. These data will be used in developing dishwasher standard levels to be recommended to the Department for adoption as part of this rulemaking. The substance and possible results of these discussions may significantly affect the nature of the comments on the advance notice.

The Department encourages these discussions between AHAM, its members and non-industry persons. Based on these representations, the Department is extending the written comment period to April 17, 1995.

Issued in Washington, D.C., January 26, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–2333 Filed 1–26–95; 2:25 pm]

BILLING CODE 6450–01–P

10 CFR Part 430

Energy Conservation Program for Consumer Products; Energy Efficiency Standards for Fluorescent Lamp Ballasts, Television Sets, and Electric Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Rulemaking determination.

SUMMARY: On March 4, 1994, the Department proposed standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, fluorescent lamp ballasts and television sets. This notification discusses the Department of Energy's decision to proceed with separate rulemakings for fluorescent lamp ballasts, televisions, and heat pump water heaters. For all three products, the Department will publish revised notices of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT:

Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–1689

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

1. Background

As directed by the National Energy Conservation Policy Act, P.L. 95–619, the Department published an advance notice of proposed rulemaking for the eight products. 55 FR 39624, September 28, 1990. On March 4, 1994, the Department published a notice of proposed rulemaking. 59 FR 10464, March 4, 1994.

2. Discussion

The Department received over 8,000 comments on the proposed rule, including comments from manufacturers, consumers, members of Congress, retailers, broadcasters, national trade associations, national energy advocates, utilities and other Federal agencies. The Department is presently reviewing and evaluating the comments. DOE believes the record is sufficient for room air conditioners, gas and oil-fired water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens and

pool heaters to proceed to a final rule and will use the data and useful information contained in the comments in developing that rulemaking. However, based on the Department's review of the comments on the proposed standards for fluorescent lamp ballasts, television sets and electric water heaters, the Department has concluded that a number of significant issues exist which require additional data and/or analysis to address. The Department believes that because of the resulting changes to the data and analyses underlying the proposed standards for these products, it would be appropriate to publish revised notices of proposed rulemaking. If the results of the analysis do not support a change in the standards, then the Department will propose that the levels in the Act remain unchanged or, regarding television sets, the Department may propose that standards are not justified.

(a) Fluorescent lamp ballasts. Based on the comments in the record, the Department has determined that revised data from a larger sample of fluorescent lamp ballast types is needed. Data from sources identified in the record, data from manufacturers, and data from other independent sources will be used in the reanalysis.

(b) Televisions. Based on the comments in the record, the Department has determined that new data from television sets with current features and from a larger sample of television manufacturers is needed. The Department is planning to test television sets to develop such data. These new data, together with data and other information obtained from the comments submitted on the proposed standard, will be used to reanalyze whether efficiency standards are warranted for television sets and, if so, at what level.

(c) Electric water heaters. The Department received comments on a wide range of issues regarding the proposed standard for electric water heaters, including the Department's estimates of average household hot water use, the costs of heat pump water heaters and the extent to which the proposed standard would result in fuel switching. In addition, the comments addressed the impacts of standards on consumers, including low income households, households with small electric water heaters installed in confined spaces, and those with large water heaters which take advantage of reduced off-peak electric utility rates. The Department agrees that these issues need to be reassessed. DOE will gather additional data on the costs and other impacts of the standards and will explore options for reducing or eliminating possible adverse impacts, including the possible establishment of distinct classes of electric waster heaters. Because fully addressing these issues may require substantial changes in the analysis of the impacts of water heater standards, the Department will issue a new proposed rule.

Issued in Washington, D.C., January 25, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–2348 Filed 1–30–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI43–01–6261b; FRL–5139–2]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision request submitted by the State of Wisconsin on November 15, 1993 for the purpose of establishing an Employee Commute Options Program (ECO Program) in the Milwaukee Severe–17, ozone nonattainment area. Wisconsin submitted the SIP revision to satisfy the statutory mandate that an ECO Program be established for employers in severe and extreme ozone nonattainment areas with 100 or more employees. Compliance plans developed by these employers must be designed to convincingly demonstrate an increase in the average passenger occupancy of vehicles used by their employees who commute to work during the peak period by no less than 25 percent above the average vehicle occupancy of the nonattainment area. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision request without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to its proposed rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. A second comment period on this action will not be initiated. Parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before March 2, 1995.

ADDRESSES: Written comments should be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, (312) 886–6043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen oxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–2285 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[KY–80–6666; FRL–5147–6]

Control Strategy: Ozone (O_3); Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a request for an exemption from the oxides of nitrogen (NO_x) reasonably available control technology (RACT) requirement of the Clean Air Act as amended in 1990 (CAA) for the Kentucky portion of the Huntington-Ashland, moderate ozone O_3 nonattainment area. The exemption request, submitted by the Commonwealth of Kentucky through

the Department of Environmental Protection, is based upon the most recent three years of ambient air monitoring data, which demonstrate that additional reductions of NO_x would not contribute to the attainment of the National Ambient Air Quality Standard (NAAQS) for O_3 in the area. The CAA requires states with designated nonattainment areas of the NAAQS for O_3, and classified as moderate nonattainment and above, to adopt RACT rules for major stationary sources of NO_x. The CAA provides further that the NO_x requirements do not apply to these areas outside an O_3 transport region if EPA determines that additional reductions of NO_x would not contribute to attainment of the NAAQS for O_3 in the area.

DATES: To be consideered comments must be received by March 2, 1995.

ADDRESSES: Written comments should be addressed to: Kimberly Bingham, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch; Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, Georgia 30365.

A copy of the exemption request is available for inspection at the following location (it is recommended that you contact Kimberly Bingham at (404) 347–3555 extension 4195 before visiting the Region 4 office):

United States Environmental Protection Agency; Air, Pesticides, and Toxics Management Division, Air Programs Branch, Regulatory Planning and Development Section, Stationary Source Planning Unit, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department for Environmental Protection Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Stationary Sources Planning Unit, Regulatory Planning and Development Section; Air Programs Branch, Air Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

The air quality planning requirements for the reduction of NO_x emissions are set out in section 182(f) of the CAA. Section 182(f) of the CAA requires states with areas designated nonattainment for O_3 and classified as moderate and above to impose the same control requirements for major stationary sources of NO_x as apply to major stationary sources of volatile organic compounds (VOCs). Section 182(f) provides further that these NO_x requirements do not apply to areas outside an O_3 transport region if EPA determines that additional reductions of NO_x would not contribute to attainment in such areas. In an area that did not implement the section 182(f) NO_x requirements, but did attain the O_3 standard as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in the EPA's–Aerometric Information Retrieval system (AIRS)), it is clear that the additional NO_x reductions required by section 182(f) would not contribute to attainment of the NAAQS.

The criteria established for the evaluation of an exemption request from the section 182(f) requirements are set forth in an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled ''Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria,'' and an EPA guidance document entitled ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' dated December 1993, from EPA, Office of Air Quality Planning and Standards, Air Quality Management Division.

On November 12, 1993, the Commonwealth of Kentucky submitted to EPA Region 4 a request to redesignate the Kentucky portion of the Huntington-Ashland moderate O_3 nonattainment area to attainment. The redesignation request is currently under review and will be addressed in a separate rulemaking. On August 16, 1994, the Commonwealth requested that the Kentucky portion of the Huntington-Ashland area be exempt from the NO_x RACT requirement in section 182(f) of the CAA. The section 182(f) exemption also relieves the area of all NO_x requirements of the CAA such as New Source Review, Conformity, and Inspection/ Maintenance. The exemption request is based upon ambient air monitoring data from 1991, 1992, and 1993, which demonstrate that the NAAQS for O_3 has been attained in the area without additional reductions of NO_x (a violation of the ozone NAAQS occurs when the average exceedance for any O_3 monitoring site in a three year period is greater than 1.0).

Only one O_3 exceedance was recorded in the Huntington-Ashland area for the period from 1991 to 1993: Monitor 21–019–0015–0.129 ppm (1993). Thus, there has been no violation of the NAAQS in the area during this period and the area has maintained the standard through 1994.

EPA has reviewed the ambient air monitoring data for O_3 (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) submitted by the Commonwealth of Kentucky in support of the exemption request and has determined that a violation of the O_3 NAAQS has not occurred in the Huntington-Ashland, Kentucky portion area for the relevant three year period. Because the Kentucky portion of the Huntington-Ashland area is meeting the O_3 NAAQS, this exemption request for the area meets the applicable requirements contained in the EPA policy and guidance documents referenced above.

Continuation of the section 182(f) exemption granted herein is contingent upon continued monitoring and continued maintenance of the O_3 NAAQS for the entire Huntington-Ashland area. If a violation of the O_3 NAAQS is monitored in the Kentucky portion of the Huntington-Ashland area, EPA will provide notice in the **Federal Register**. A determination that the NO_x exemption no longer applies would mean that the NO_x RACT provision (see 58 FR 63214 and 58 FR 62188) would immediately be applicable to the affected area. Although the NO_x RACT requirements would be applicable, some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirements time to purchase, install, and operate any required controls. Accordingly, the Commonwealth may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that NO_x RACT requirements are necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months.

Proposed Action

EPA is proposing approval of Kentucky's request to exempt the Kentucky portion of the Huntington-Ashland area moderate O_3 nonattainment area from the section 182(f) NO_x RACT requirement. This proposed approval is based upon the evidence provided by Kentucky and the Commonwealth's compliance with the requirements outlined in the applicable EPA guidance. If a violation of the O_3 NAAQS occurs in the Kentucky portion of the Huntington-Ashland area, the exemption from the NO_x RACT requirement of section 182(f) of the CAA in the applicable area shall no longer apply.

This action is not a SIP revision and is not subject to the requirements of section 110 of the CAA. The authority to approve or disapprove exemptions

from NO_x requirements under section 182 of the CAA was delegated to the Regional Administrator from the Administrator in a memo dated July 6, 1994, from Jonathan Cannon, Assistant Administrator, to the Administrator, titled, ''Proposed Delegation of Authority: 'Exemptions from Nitrogen Oxide Requirements Under Clean Air Act Section 182(f) and Related Provisions of the Transportation and General Conformity Rules'—Decision Memorandum.''

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This rule approves an exemption from a CAA requirement. Therefore, I certify that it does not have a significant impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 12, 1995.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 95–2351 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 70

[AD-FRL–5147–7]

Clean Air Act Proposed Approval of Operating Permits Program; Lincoln–Lancaster County Health Department; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes approval of the Operating Permits Program submitted by the Lincoln-Lancaster County Health Department (LLCHD) (Nebraska) for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by March 2, 1995.

ADDRESSES: Comments should be addressed to Christopher D. Hess at the Region VII address.

Copies of the LLCHD submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours by contacting: Christopher D. Hess, USEPA, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess (913) 551–7213.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act (''the Act'') as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act which outlines criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of Submission by Local Authority

1. Introduction

What follows are brief explanations indicating how the submittal meets the requirements of part 70. The reader may consult the Technical Support Document (TSD) for a more detailed explanation of these topics.

2. Support Materials

a. Governor's letter. The designated representative of the Governor of Nebraska has requested approval on behalf of the LLCHD as a local permitting agency. LLCHD has also requested approval in its submittal cover letter. Lincoln-Lancaster proposes to administer title V in its two counties.

b. Regulations. The basic regulatory framework for the operating permit program is the ''1993 Lincoln-Lancaster County Air Pollution Control Program,'' version 1.2, as amended May 1994. These rules essentially adopt the state's ''Title 129—Nebraska Air Quality Regulations,'' which includes the title V requirements for the state. LLCHD rules use a different numbering system than the state's but is essentially the same in content. These rules were approved by the Lincoln City Council and by the Lancaster County Board of Supervisors. LLCHD has also incorporated by reference the Nebraska Environmental Protection Act and Nebraska statutes into its program. The submittal includes a discussion of the public review and hearing process which the local agency followed in adopting the rules.

The submittal currently contains two provisions which would restrict operation of the program. However, LLCHD has agreed to make modifications to both of these provisions in order to receive full approval of the program. The reader is directed to the applicability provisions section of this notice (II.A.2.e.) for discussion of the first item (applicable requirements definition), and (II.A.2.h.) for the second item (Title I modifications).

c. Attorney General's legal opinion. The opinion of the County Attorney contains the elements required by 40 CFR 70.4(b)(3) and states there is adequate authority to meet all of the title V and part 70 requirements.

3. Implementation

a. Program description. A comprehensive plan for implementing the title V program was included in the submittal. This plan includes program authority, agency organization, and staffing. Approximately 80 sources have been identified that will be required to submit a title V permit application within LLCHD jurisdiction.

LLCHD has also identified adequate procedures for its permit application and review process, along with inspection and enforcement provisions. The EPA has determined the program description meets the requirements of 40 CFR 70.4(b)(1). An implementation agreement was not included in LLCHD's

submittal, but the EPA is encouraging its development in anticipation of program approval.

The presumptive minimum plus consumer price index (CPI) will be used for the operating permit fee. This will be discussed further under the fee demonstration section (II., 3.). Like the state, LLCHD will maintain a Class II program for minor, non-title V sources.

b. Program implementation. A permit registry is being established to ensure issuing one-third of all permits in the first year of the program. This registry also includes a provision to review permit applications within nine months of receipt for those sources of hazardous air pollutants participating in the early reduction program under section 112(i)(5) of the Clean Air Act.

In terms of initial permit applications, LLCHD outlines adequate procedures to satisfy part 70 requirements. The application process includes affected state and EPA review. LLCHD's procedures and guidance are designed to ensure that a permit is issued within 18 months of application.

LLCHD has established criteria for monitoring source compliance which include compliance inspections, citizen complaint responses, follow-up inspections, and permit application review. LLCHD will physically inspect each title V source at least once per year. Surveillance through monitoring will also be conducted to ensure compliance.

c. Personnel. LLCHD provided a workload analysis for each program category of title V activity to include permitting, compliance and enforcement, planning, monitoring, small business assistance, and communications to determine the amount of personnel needed. EPA's analysis suggests that LLCHD's estimate appears adequate for implementing the title V program.

d. Data management. All permit application information will be submitted to the state which will, in turn, make that information available to the EPA. The proposed permits will be made available for EPA review. LLCHD requires the retention of permit information by the source for five years in Article 2, section 8, (D)(2)(b). LLCHD has also committed to maintaining records for five years in its program description.

e. Applicability provisions. LLCHD provides for permitting of all major sources, affected sources, sources that opt to apply for a permit, and all sources subject to sections 111 or 112 standards (new source performance standards and standards for hazardous air pollutants).

LLCHD exempts sources that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act. This exemption is allowed by § 70.3(b)(1) until the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources.

(1) Applicable requirements. On the one hand, LLCHD's rules require all applicable requirements to be included in the permit. This includes requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but which have future effective dates. Additionally, the director may insert EPA promulgated requirements into permits before LLCHD has adopted the standard.

However, the EPA has determined that the items enumerated in Article 1, section 2 (3–10) in the definition of ''applicable requirements'' undermine the ability to incorporate all applicable requirements. As currently written, a rule must be promulgated by EPA *and* adopted by LLCHD to be considered an applicable requirement.

As an example of this concern, item (4) of the applicable requirement definition states, ''Any standard or other requirement established pursuant to Section 112 of the Act *and* regulations adopted in Section 27 of these Regulations and Standards relating to hazardous air pollutants listed in Appendix II.'' The practical effect of this definition, as an example, is that a source could claim it need not identify certain hazardous air pollutant standards in its application, for inclusion in the permit, if the requirement is not both promulgated under section 112 of the Act and in section 27 of the Lincoln-Lancaster regulations.

LLCHD has committed to modify the definition of applicable requirements in accordance with EPA guidance to receive program approval. The state of Nebraska has already initiated action to correct this deficiency. The Nebraska Environmental Quality Council adopted regulatory changes on December 2, 1994, which are included in the docket for this proposed rulemaking for the LLCHD program. Once LLCHD adopts the revisions made by the Council on December 2, including those described in II.A.2.h. also, the EPA intends to take final action to fully approve the program.

(2) Variances. Both the state's and LLCHD's rules allow sources to petition the permitting authority for a variance. Importantly, both rules clearly state that no variance will be granted that sanctions any violation of state or Federal statutes or regulations. Based on these provisions, the submittal is approvable with respect to variances.

f. Permit content. LLCHD's regulations require title V permits to include part 70 terms and conditions for all applicable requirements in Article 2, section 7 (C)(1). These rules also stipulate that the duration of the permit (five years) will be specified in the permit. LLCHD has also provided for the inclusion of enhanced monitoring in permits.

LLCHD's regulations do require the permit to contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act as required by § 70.6(a)(4). The regulations also meet the requirements of § 70.6(a)(5) (severability), § 70.6(a)(6) (permit provisions), § 70.6(a)(7) (fees), and § 70.6(a)(8) (emissions trading). Part 70 also requires terms and conditions for reasonably anticipated operating scenarios to be included in the permit. LLCHD's rules require that the terms and conditions of each alternative scenario meet all the requirements of part 70. Section 70.6(a)(10) requires the permit to contain terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases at the facility. LLCHD's regulations fulfill this requirement.

Part 70 also has federally enforceable requirements for the terms and conditions in a part 70 permit at § 70.6(b), compliance requirements at § 70.6(c), and emergency provisions at § 70.6(g). LLCHD's regulations comply with these requirements.

LLCHD's program provides for general permits in Article 2, section 9. In section 9(B), the director will identify criteria by which sources may qualify for the general permit as required by § 70.6(d)(1).

The permitting program can also have provisions for permitting temporary sources and for permit shields. LLCHD's permitting program has both of these options and meets the requirements of part 70. LLCHD's program provides for operational flexibility and closely follows EPA's requirements.

The program does make provision to exempt the listing of insignificant activities in permit applications. The state has developed this list, which will be approved in December 1994 and then adopted by LLCHD.

g. Permit forms. LLCHD addresses permit application requirements in Article 2, sections 5 and 7 of its regulations. Within its rules adequate procedures are outlined for the following: duty to apply, complete

applications, confidential information, correcting a permit application, standard forms, and compliance certification. A detailed analysis of how the submittal meets these part 70 requirements is included in the TSD.

h. Permit issuance. LLCHD regulations satisfy both the complete and timely component of section 503 of the Act and 40 CFR 70.5(a). Sources are required to submit permit applications within 12 months after becoming subject to the permit program, or on or before some earlier date established under the LLCHD operating permit registry. Source permit applications must conform to the standard LLCHD application form, and must contain information sufficient to allow LLCHD to determine all applicable requirements with respect to the applicant. An application will be deemed complete within 60 days of receipt unless LLCHD finds them to be incomplete. LLCHD regulations only require notification of the source if the application is incomplete.

LLCHD regulations also require that final action be taken on complete applications within 18 months of submittal of a complete application, except for initial permit applications which are subject to the three-year transition plan set forth by the Clean Air Act Amendments of 1990.

LLCHD regulations also require compliance with public participation procedures, notification to affected states, compliance with all applicable requirements, and allow for a 45-day period for EPA objection.

The regulations provide for priority on applications for construction or modification under an EPA-approved preconstruction review program. The operating permit regulations do not affect the requirement that any source have a preconstruction permit under an EPA-approved preconstruction review program. The program also provides that permits being renewed are subject to the same procedural requirements, including those for public participation and affected state and EPA review that apply to initial permit issuance. The operating permit program provides for administrative amendments which meet the requirements of the Federal rule.

Permit modification processing procedures are equivalent to Federal requirements as they provide for the same degree of permitting authority, EPA, and affected state review and public participation.

The program satisfies all but one of the Federal minor permit modification procedures. The Federal permit rule requires that a title I modification not be processed as a minor permit modification. The LLCHD rules (see section 15(C)(1)(e)) require that the activity not be a modification which requires a construction permit under section 17; this section is titled ''Construction Permits-When Required.'' Thus, LLCHD is required to include a reference in section 15(C)(1)(e) referring to section 19, ''Prevention of Significant Deterioration,'' and section 18, ''New Source Performance Standards,'' since activities under these chapters could be considered title I modifications.

The origin of the LLCHD rule is in title 129 of the state rule. The state has proposed rule changes for adoption in December 1994 to correct this deficiency. As with all other rules adopted by the state, LLCHD will incorporate this change approximately two months afterward and therefore fulfill all minor permit modification requirements. This change, along with the modification of ''applicable requirement,'' will be required before the EPA will grant approval for the program.

The program provides for promptly sending to EPA any notice that LLCHD refuses to accept all recommendations of an affected state regarding a proposed minor permit modification. In addition, the program provides that the permitting authority may approve, but may not issue, a final permit modification until after EPA's 45-day review period or until the EPA has notified the permitting authority that the EPA will not object to issuance, whichever is first.

The LLCHD program provides for minor permit modification group processing which meets the Federal criteria. Specifically, the program provides that any application for group processing must meet permit application requirements similar to those outlined in § 70.7(e)(3), and also provides for notifying the EPA and affected states of the requested permit modification within five working days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level.

Significant modification procedures are defined in a manner that parallels Federal provisions. The submittal's program description commits to completion of review of the majority of significant permit modifications within nine months after receipt of a complete application.

(1) Permit reopenings. LLCHD provides that a permit is to be reopened and revised when additional applicable requirements become applicable to a major source with a remaining permit term of three or more years, and that such a reopening is to be completed within 18 months after promulgation of the applicable requirement. In addition, the proceedings to reopen a permit will follow the same procedures that apply to initial issuance, will affect only those parts of the permit for which cause to reopen exists, and will ensure reopenings are made as expeditiously as practicable. The rule provides that at least 30 days' advance notice must be given to the permittee for reopenings and that notice will be given of the intent to reopen the permit.

(2) Off-permit revisions. LLCHD has elected to not allow off-permit activities.

i. Compliance tracking and enforcement. The requirement for proposed compliance tracking and enforcement reporting has been met by the LLCHD. This reporting will be accomplished by providing enforcement information to the state monthly for subsequent monthly entry into the Aerometric Information Retrieval System. The proposed enforcement program will consist of source inspection, surveillance, response to complaints, permit application review, and enforcement responses. Proposed enforcement authorities mirror the state's and meet the requirements of § 70.11. These responses include permit modification, permit revocation, stipulation, administrative orders, injunctive relief, civil/criminal referral, and referral to the EPA.

j. Public participation, EPA and affected States review. LLCHD's submittal ensures that all permit applications are available to the public. All requirements are included to ensure that each concerned citizen will be aware of proposed and final permit actions. This includes the commitment to keep a record of proceedings that will allow citizens to object to a permit up to 60 days after the EPA review period.

LLCHD has adopted rules that ensure mutual review by affected states and the EPA. LLCHD will not issue a permit when it is objected to in accordance with § 70.8(c).

4. Fee Demonstration

LLCHD has elected to collect the presumptive minimum plus CPI (currently $30.07) in accordance with part 70 to cover direct and indirect costs of developing and administering its program.

The submittal states that a specific title V fund, with individual billing codes for this program, will be created. Article 2, section 29 of the LLCHD regulations directs all moneys collected from the permit fees to be made payable to LLCHD and to be credited to the Air Pollution Control Fund.

Part 70 also requires permitting authorities to submit periodic accounting reports to EPA. Upon further guidance by EPA, LLCHD will be requested to submit these reports.

LLCHD's submittal included a list of sources and the amount of fees that it expects to collect in the first year from each source as part of its fee demonstration ($379,122). LLCHD's year-to-year estimates of resources by major activities adequately satisfies the four-year projection.

5. Provisions Implementing the Requirements of Other Titles of the Act

a. Acid rain. The legal requirements for an approval under the title V operating permits program for a title IV program were cited in EPA guidance distributed on May 21, 1993, entitled ''Title V—Title IV Interface Guidance for States.'' The LLCHD has met the five major criteria of this guidance which include legal authority, regulatory authority, forms, regulatory revisions, and a commitment to acid rain deadlines. The LLCHD has adopted by reference 40 CFR part 72.

b. Section 112. The specific title V program approval criteria with respect to section 112 provisions are enumerated in a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated April 13, 1993. LLCHD has met these criteria as described in the following topics:

(1) Section 112(d), (f), and (h).–EPA emissions standards. In accordance with part 70, LLCHD will not issue any permit (or permit revision addressing any emissions unit subject to a newly promulgated section 112 standard) unless it would ensure compliance with all applicable section 112 standards. Additionally, part 70 permits will be reopened which have three or more years remaining before their expiration date to incorporate any newly promulgated standard (section 70.7 (f)(1)(i)).

(2) General provisions. The Seitz memorandum notes that the implementation of all current National Emission Standard for Hazardous Air Pollutants (NESHAP) standards and future maximum achievable control technology (MACT) (and residual risk) standards includes the implementation of any ''general provisions'' that EPA develops for these standards. Initial title V approval must ensure that states will carry out these provisions as in effect at the time of any permit issuance or revisions. EPA adopted the 40 CFR part 63, subpart A General Provisions on February 28, 1994. Neither the state nor Lincoln-Lancaster has had an opportunity to adopt these provisions to date. However, the intention is to adopt all applicable requirements as noted in the general program description. EPA thus considers this requirement to be met.

(3) Section 112 (g)–Case-by-Case MACT for modified/constructed and reconstructed major toxic sources. The agency proposes to require best available control technology for new and modified sources of air toxics. In the absence of any EPA guidance/regulations defining case-by-case MACT procedures and methods for determining agency equivalency of Federal requirements at the time of agency program submittal, the agency's submission should be adequate for the interim. LLCHD's intent is to adopt Federal air toxic regulations expeditiously.

(4) Section 112 (i)(5)–early reductions. LLCHD has adequate provisions for implementation of this program by adopting by reference 40 CFR part 63, subpart D, early reduction compliance extension rules, promulgated in the **Federal Register** on December 29, 1992. To date, no source in the agency area has made a commitment to participate in the early reductions program. The agency provides for incorporating alternative emission limits into permits in section 8, paragraph (B)(3).

(5) Section 112(j)–case-by-case MACT hammer. It is the agency's intent to make case-by-case MACT determinations and to issue permits to subject sources in accordance with the section 112(j) requirements. Section 7(B)(2) requires newly subject sources to file a permit application within 12 months of first becoming operational or otherwise subject to the title V program. Section 7(B)(3) requires sources subject to section 28 (MACT) to submit a permit application within 12 months of becoming operational. The agency would make its case-by-case MACT determination after receipt of the permit application and prior to permit issuance.

(6) Section 112(l)–State air toxics programs. The EPA intends to delegate authority for existing section 112 standards under the authority of section 112(l) concurrent with approval of the title V program. It is expected that the agency will request delegation of future 112 standards/rules in accordance with the adoption-by-reference procedures in 40 CFR part 63, subpart E, § 63.91. Since the agency has already adopted by reference the section 112(i) early reduction rule (Section 27), EPA anticipates delegating this authority concurrent with title V approval.

(7) Section 112(r)–accidental release plans. The agency has provided for the section 112(r) requirements in its rules in section 8(K). The permit of a source subject to the requirements of section 112(r) will contain a requirement to register the plan; verification of plan preparation and submittal to the state (NDEQ), the state Emergency Response Commission, and any local emergency planning committee; and will require an annual certification in accordance with section 7(B), that the risk management plan is being properly implemented.

The permit application requires a schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance: section 7, paragraph (F)(2). The permit requirement for a compliance schedule is listed in section 8, paragraph (L)(3).

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant approval to the operating permits program submitted by the LLCHD on November 12, 1993, and modified on June 15, 1994. Prior to final action, LLCHD must: (1) Render a modification of the definition ''applicable requirement,'' and (2) modify the provisions related to title I modifications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the LLCHD program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of LLCHD's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of LLCHD's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties a means to identify and locate documents for participating in the rulemaking process; and

2. To serve as the record in case of judicial review. The EPA will consider any comments received by March 2, 1995.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; and

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain the OMB clearance for collection of information from 10 or more non-Federal respondents.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Interim approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal operating permits program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning operating permits programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2). If the interim approval is converted to a disapproval, it will not affect any existing LLCHD requirements applicable to small entities. Federal disapproval of the submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing LLCHD requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 70

Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 6, 1995.

William Rice,

Acting Regional Administrator.

[FR Doc. 95–2335 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–12, RM–8559]

Radio Broadcasting Services; Hudson, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Phil Parr proposing the allotment of Channel 242A to Hudson, Texas, as the community's first local aural transmission service. Channel 242A can be allotted to Hudson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242A at Hudson are 31–23–50 and 94–46–15.

DATES: Comments must be filed on or before March 20, 1995, and reply comments on or before April 4, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Phil Parr, 1604 Southwood, Lufkin, Texas 75905 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–12, adopted January 18, 1995, and released January 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–2364 Filed 1–30–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95-13, RM–8566]

Radio Broadcasting Services; Tower Hill, Illinois

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Randal J. Miller, requesting the allotment of Channel 252A to Tower Hill, Illinois, as that community's first local transmission service. Channel 252A can be allotted to Tower Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 9 kilometers (5.6 miles) south. The coordinates for Channel 252A at Tower Hill are North Latitude 39–18–27 and West Longitude 88–59–22.

DATES: Comments must be filed on or before March 20, 1995, and reply comments on or before April 4, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randal J. Miller, 111 West Main Cross, P.O. Box 169, Taylorville, Illinois 62568 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95-13, adopted January 18, 1995, and released January 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–2363 Filed 1–30–95; 8:45 am]

BILLING CODE 6712–01–F

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL–5147–4]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the EPA Acquisition Regulation (EPAAR) coverage on cost-plus-award fee (CPAF) contracts. The proposed rule is necessary to update and clarify EPA policy regarding CPAF contracts, and to give Contracting Officers greater flexibility in tailoring award fee plans to individual contracts.

DATES: Written comments on this proposed rule must be received on or before March 2, 1995.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW, Washington, DC 20460, Attn: Louise Senzel (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule replaces sections 1516.404–270 through 1516.404–274 and deletes 1516.404–275 through 1516.404–2710 of the EPAAR. EPA has determined that codification of the Agency's procedures for the award fee process is unnecessary since these procedures are internal to EPA. Consequently, EPA will include these internal procedures in an Agency Directive. Internal procedures are those which encompass any aspect of preparing, establishing, modifying, and administering the award fee plan. The revised EPAAR will only state the Agency's general policy and objectives in using award fee contracts.

Award fee may be earned only when the contractor's performance is rated above satisfactory or excellent. No award fee may be earned if performance is rated satisfactory or unsatisfactory. This approach to cost-plus-award-fee contracts is designed to motivate contractors to achieve excellent performance and to improve cost-plus-award-fee contracting at EPA.

Section 1516.405 is revised and § 1552.216–75 is added to address base and award fee limitations in accordance with the FAR. Section 1552.216–70 is revised to clarify EPA's policy on the payment of fee under CPAF contracts.

B. Executive Order 12866

This is not a major rule as defined in Executive Order 12866; therefore, no review is required by the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The proposed rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act

The proposed rule will not have an impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. since it does not impose any new requirements on contractors, large or small. The EPA certifies that this rule will not impact small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 1516 and 1552

Government procurement.

For the reasons set out in the preamble, parts 1516 and 1552 of title 48 of the Code of Federal Regulations are proposed to be amended as set forth below:

1. The authority citation for parts 1516 and 1552 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1516—TYPES OF CONTRACTS

2. Subpart 1516.4 is amended by revising sections 1516.404–270 through 1516.404–274 to read as follows and by removing sections 1516.404–275 through 1516.404–2710.

1516.404–270 Scope.

This subsection establishes the EPA policy for cost-plus-award-fee (CPAF) type contracts.

1516.404–271 Applicability.

Contracting Officers shall consider all contract actions conforming to the limitations of FAR 16.404–2(c) as candidates for award as a CPAF contract.

1516.404–272 Definitions.

(a) *Performance Evaluation Board (PEB).* Group of Government officials responsible for assessing the quality of

contract performance and recommending the appropriate fee.

(b) *Fee Determination Official.* Individual responsible for reviewing the recommendations of the PEB and making the final determination of the amount of award fee to be awarded to the contractor.

1516.404–273 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed ''above satisfactory'' or ''excellent'' for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

1516.404–274 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (c) of 1516.404–273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the Procurement Policy Branch in the Office of Acquisition Management.

3. Section 1516.405 is revised to read as follows:

1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216–70, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216–75, Base Fee and Award Fee Proposal (XXX 1994), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages in accordance with FAR 15.903(d).

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1552.216–70 is revised to read as follows:

1552.216–70 Award fee.

As prescribed in 1516.405(a), insert the following clause:

AWARD FEE (XXX 1994)

(a) The Government shall pay the contractor a base fee, if any, and such additional fee as may be earned, as provided in the award fee plan incorporated into the Schedule.

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO) and are not subject to appeal under the Disputes clause.

(c) The Government may unilaterally change the award fee plan at any time, via contract modification, at least thirty (30) calendar days prior to the beginning of the applicable evaluation period. Changes issued in a unilateral modification are not subject to equitable adjustments, consideration, or any other renegotiation of the contract.

(End of Clause)

5. Section 1552.216–75 is added to read as follows:

1552.216–75 Base fee and award fee proposal

As prescribed in 1516.405(b), insert the following clause:

BASE FEE AND AWARD FEE PROPOSAL (XXX 1994)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee within the maximum fee limitation of _____% as stated in FAR 15.903(d). Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than _____% of the total estimated cost, excluding fee. The combined percentage of base and award fee does not exceed _____% of the total estimated cost, excluding fee.

(End of Clause)

Dated: January 6, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–2334 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM–199; Notice No. 95–4]

RIN 2137–AB35

Enforcement of Motor Carrier Financial Responsibility; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: RSPA is withdrawing an advance notice of proposed rulemaking (ANPRM) issued under Docket HM–199, Enforcement of Motor Carrier Financial Responsibility. The ANPRM solicited comments on the merits of a petition requesting DOT to promulgate a regulation to require each person, offering a hazardous material for transportation in a cargo tank, to obtain proof of financial responsibility from the carrier. This notice removes this action from the regulatory agenda, because there is sufficient evidence that carriers are already complying with financial responsibility requirements in the Federal motor carrier safety regulations.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: In 1986, RSPA received a petition for rulemaking (P–0093) from the National Tank Truck Carriers, Inc. (NTTC) requesting amendment of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to require each person who offers a hazardous material for transportation by highway in a cargo tank to obtain documentary proof that the motor carrier possesses the minimum level of financial responsibility currently prescribed by 49 CFR part 387. Since 1980, all motor carriers have been required to provide financial responsibility in varying amounts and forms, usually by insurance and/or bonding. Federal Highway Administration (FHWA) regulations require all carriers to have appropriate evidence of financial responsibility available for public inspection at their principal place of business (49 CFR 387.31). The Interstate Commerce Commission (ICC) issued conforming regulations applicable to for-hire carriers of property which required use of a form to be maintained within the carrier's public docket at ICC (49 CFR 1043.7). These actions provided methods for carriers to document the status of their financial responsibility. However, NTTC believed that a shipper should have knowledge of financial responsibility at the time it offered its shipment. NTTC also referred to the lack of adequate enforcement staff to effectively determine carrier compliance. According to NTTC, a major benefit of the requested change in

the regulations would be the creation of a ready mechanism for a shipper to verify a carrier's compliance, without expenditure of any government resources.

ANPRM. On May 20, 1987, RSPA published an ANPRM, HM–199 [52 FR 19116], soliciting comments on a number of questions relating to the merits of the petition from NTTC, and whether DOT should proceed with rulemaking.

Comments to the ANPRM. Currently, there is no provision in the HMR requiring shippers to obtain proof from motor carriers that the financial responsibility requirements in 49 CFR part 397 are being met. A number of commenters to the ANPRM asserted that public safety would be enhanced by the shipper obtaining proof of carrier financial responsibility. Several commenters pointed out that some carriers are underinsured and that DOT can not effectively audit all carriers. Commenters opposed to the petition argued that it would require shippers to perform an unwarranted enforcement function. Some stated that verification of the appropriate level of carrier insurance would be difficult for small shippers. They maintained that the proposal would increase personnel training and operating costs and impose a recordkeeping burden, while doing nothing to ensure compliance or strengthen enforcement. One commenter concluded that the proposal fails to address carrier underinsurance and that it would involve increased enforcement against shippers and widen shipper liability.

RSPA believes that the concerns in the petition are sufficiently addressed by the following: (1) the existing certification and enforcement practices of the ICC and FHWA; (2) expansion of state motor carrier inspection programs; (3) improvements in the hazardous materials insurance market; and (4) development of new motor carrier registration and permitting requirements. Common and contract carriers entering hazardous materials service must show evidence of the appropriate financial responsibility levels, specified in part 387, to obtain operating authority from the ICC. In turn, proof of adequate financial responsibility is an essential function of FHWA's compliance review process, specified in part 385, involving on-site investigation of carrier operations. There is strong evidence that, for the most part, carriers are complying with part 387 requirements, and that non-compliance is not so widespread as to constitute a serious safety problem. For these reasons, RSPA believes that no action is required on this rulemaking action and NTTC's petition is denied.

In consideration of the foregoing, Docket HM–199 is hereby terminated.

Issued in Washington, DC on January 25, 1995, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–2286 Filed 1–30–95; 8:45 am]

BILLING CODE 4910–60–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1180

[Ex Parte No. 282 (Sub-No. 19)]

New Procedures in Rail Acquisitions, Mergers and Consolidations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its regulations in order to establish more timely procedures for major and significant rail acquisitions, mergers and consolidations. The proposed rules will also shorten the timeframes for minor transactions where appropriate.

DATES: Written comments must be filed with the Commission by March 2, 1995.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 282 (Sub-No. 19), Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In response to criticisms that this agency's consideration of applications by railroads to acquire other carriers or to merge or consolidate with each other is too slow, we have reviewed our existing procedures for major and significant transactions,[1] our practices in implementing them, and the applicable statutory provisions.[2] We have done so to determine whether these applications can be processed more quickly while preserving the opportunity for: (1) affected persons and the public at large to participate effectively in the process; (2) reasoned consideration of the arguments for and against an application; and (3) consideration of competing applications, proposed conditions, and amendments offered by the applicants to meet objections to proposed transactions.

Typically, we receive a proposed schedule from an applicant in a major or significant transaction, publish the schedule in the **Federal Register**, modify it based upon consideration of comments we receive, and adopt it. Most recently, for example, the applicants in *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company,* Finance Docket No. 32549, proposed a procedural schedule calling for the Commission to issue a decision in 430 days. We sought comments on the proposed schedule and adopted one calling for the issuance of a decision in 535 days.

We have not always crafted a time line based on schedules proposed by the parties to transactions but that has generally been the practice in recent years. We applied that practice in establishing a schedule and then deciding the application of Rio Grande Industries to acquire the Southern Pacific Transportation Company (SPTC) in 185 days. In that case, *Rio Grande Industries, et al.—Control—SPTC et al.,* 4 I.C.C.2d 834 (1988) (*Rio Grande-SP*), the Commission processed an application that involved a competing application filed by Kansas City Southern Industries (KCSI), several requested conditions and a number of embraced abandonments, leases, trackage rights requests, requests for authority to control and other related transactions. We afforded an opportunity for all interested persons to comment on the application and the inconsistent application of KCSI and to propose conditions. We gave the applicants an opportunity to reply to all comments on the application, to respond to the inconsistent application, and to propose any modifications to the merger in response to the comments filed.

We believe that the *Rio Grande-SP* case offers a useful model of a timely but fair process for rail mergers and consolidation proceedings. We propose

[1] A major transaction involves control or merger of two or more class I railroads. 49 CFR 1180.2(a). A significant transaction is defined at 49 CFR 1180.2(b).

[2] Minor transactions are defined at 49 CFR 1180.2(c). Although we believe that our current rules provide for timely handling of this type of transaction, we do propose including minor transactions under many of our proposed changes to enhance the consistency of our rules and to improve further our ability to handle minor transactions in a timely and efficient manner.

that process for consideration here. With that case in mind, the schedule we propose to adopt in all applications for merger and consolidation under 49 U.S.C. 11343–11345 is set out in Appendix A to this Notice. The proposed modifications to Parts 1105 and 1180 are set out below. The proposed schedule calls for the issuance of a decision by the agency in both major and significant transactions 180 days after an application is filed. In addition we propose to shorten the prefiling notification period from a minimum of 3 months for major transactions to 2 months, which we propose to apply to both major and significant transactions.

In considering the *Rio Grande-SP* proceeding as a model, it is important to note that the case was unique in one respect. There we asserted jurisdiction not only pursuant to our authority to consider mergers but also because the sale represented an effort by Santa Fe Southern Pacific Corporation (SFSP), as the beneficial owner of the SPTC, to comply with our orders directing it to divest itself of SPTC following our denial of SFSP's application to acquire control of the carrier.

We do not believe that factor precludes us from processing other applications for major and significant mergers and consolidations in a similar fashion. The issues that arose in that case are similar to those that would arise in any major merger. The only relevance of our divestiture jurisdiction in *Rio Grande-SP* is that we cited it as one of the bases for departing from the statutory procedures of 49 U.S.C. 11345 in order to establish a more expedited schedule than that set out in the statute and in our regulations at 49 CFR 1180. But that is not the only basis for our authority to depart from our procedures.

In proposing to modify the statutory schedule, we find authority in the exemption provisions of 49 U.S.C. 10505. We propose not only to modify our regulations at 49 CFR 1180.4 but also to grant an exemption for all major and significant acquisition, merger and consolidation proceedings from the procedural requirements of 49 U.S.C. 11344 and 11345, and in their stead adopt the schedule set out in Appendix A and the procedures set out below.[3]

We rely upon the criteria to exempt transactions set out at 49 U.S.C. 10505:

> [T]he Commission shall exempt . . . a transaction . . . when the Commission finds that the application of a provision of this subtitle—
>
> (1) is not necessary to carry out the transportation policy of section 10101a of this title; and
>
> (2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power.

The rail transportation policy (RTP) would be fostered by establishing a more timely procedure for these proceedings. Specifically, 49 U.S.C. 10101a(2) states that it is the policy of the United States Government ". . . to require fair and expeditious regulatory decisions when regulation is required. . . ."

We believe that the procedures we are modifying are of limited scope within the meaning of 49 U.S.C. 10505. Most of the statutory standards are deadlines that require actions to be taken within a certain period of time. Adopting more expedited procedures does not contravene those provisions. The chief effects of the proposed schedule on the procedures established in 49 U.S.C. 11345 are that written comments on the application would be due in 30 rather than 45 days, that the U.S. Department of Transportation and the U.S. Department of Justice would be subject to the same schedule as other Federal agencies and other parties, and that inconsistent applications would have to be filed in 75 days rather than 90 days. These are not major departures from the statutory procedures.

The new procedure would also represent a departure from our existing regulations, which we may modify without invoking 49 U.S.C. 10505. The existing regulations call for the completion of the evidentiary record within 24 months of accepting the application in major transactions and for the completion of the record within 180 days in significant transactions. To the extent that the statute sets maximum time limits of 24 months and 180 days, we may of course shorten those deadlines by rule. The proposed schedule calls for the completion of the record in 125 days of acceptance of an application. The proposed schedule gives the Commission 40 days to issue a decision after the close of the written record and 30 days after oral argument, if the Commission schedules an oral argument. That compares with the existing standards that provide that a final decision will be issued within 180 days after the conclusion of the evidentiary proceeding in a major transaction and within 90 days after completion of the evidentiary phase in a significant transaction.

A vital element in carrying out the proposed procedures is strict compliance with the Commission's environmental rules at 49 CFR Part 1105. These rules ensure compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, the Coastal Zone Management Act, and other environmental statutes.

Section 1105.6(b)(4) provides that environmental assessments will normally be prepared in those mergers, consolidations, or acquisitions of control under 49 U.S.C. 11343 that involve significant changes in operation or rail line abandonments and constructions. Mergers that do not involve abandonments and constructions or major operational changes are generally exempt from environmental review. However, if a merger is likely to significantly affect the environment, NEPA requires that the Commission prepare an environmental impact statement. As a result, we will not be able to apply the proposed schedule to these mergers, and will establish an alternate schedule that will permit compliance with NEPA without creating undue delay.

To expedite the NEPA environmental review process, we are requiring that applicants consult with the Commission's Section of Environmental Analysis (SEA) with, or prior to, the filings of their prefiling notices for all mergers involving the preparation of environmental documentation. In the case of mergers requiring an environmental assessment, we are requiring that the applicant submit, with its application, a preliminary draft environmental assessment (PDEA). We encourage the use of independent third party contractors in preparing the PDEA. This document shall be based on consultations with SEA and the various agencies set forth in 49 CFR 1105.7(b) of our environmental rules. SEA will use the PDEA in preparing a draft environmental assessment for public comment.

An equally vital element in enabling the parties and the Commission to adhere to a more timely schedule is the avoidance of protracted disputes involving discovery. Under our proposed procedures any applicant must establish a depository or other facility for making documents supporting the application available promptly to all interested parties subject to the appropriate protective orders. Immediately upon each evidentiary

[3] The schedule set out in Appendix A will not apply to minor transactions. We are able to process those transactions more expeditiously using a more simplified schedule geared to the specific transaction. We will continue to establish procedural schedules for those transactions on a case-by-case basis. Our exemption, however, will extend to minor transactions for procedures set out below where applicable, except as noted below.

filing, the filing party shall place all relevant documents in the depository.

The new schedule is designed to provide a timely decision on whether a proposed acquisition, merger, or consolidation comports with sections 11343 and 11344. The Commission will also decide directly related applications, e.g., grants of trackage rights, leases, and similar transactions. We admonish applicants to structure their transactions so as to permit efficient processing of the application. If protests or other factors require that such applications or petitions be given more extensive consideration, they will be addressed in separate decisions that may be issued after the decision on the acquisition, merger, or consolidation.

The only pending major consolidation proceeding where the record has not yet been developed is the *BN-Santa Fe* case. Because it is currently pending, we will serve a copy of this notice on all the parties on the service list in Finance Docket No. 32549. By this notice, we seek comments as to whether that case should be governed by the schedule originally adopted or the schedule proposed herein.[4]

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

This action will have no significant effect on a substantial number of small entities. The revised rules should result in fewer required filings by parties in each of these proceedings and to that extent our action should benefit small entities.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: January 25, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1105 and 1180 are proposed to be amended as set forth below:

[4] The procedural schedule adopted in Finance Docket No. 32549 was suspended pending the outcome of the Santa Fe Pacific Corporation's shareholders' vote, which is scheduled to occur on February 7, 1995.

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

1. The authority citation for part 1105 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10901, 10903–10906, and 11343; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 5 U.S.C. 553 and 559.

2. Section 1105.7 is proposed to be amended by adding a sentence to the end of paragraph (a) to read as follows:

§1105.7 Environmental reports.

(a) * * * An applicant for a rail acquisition, merger, or consolidation submitted under 49 CFR 1180.4 must consult with the Section of Environmental Analysis at the time of, or prior to, filing its notice, and must submit with, or prior to, its application a Preliminary Draft Environmental Assessment as described in § 1105.13.

* * * * *

§ 1105.10 [Amended]

3. Section 1105.10, paragraph (b), is proposed to be amended by adding to the end of the first sentence after ''1105.8'' the words ''and a Preliminary Draft Environmental Assessment submitted by an applicant pursuant to § 1105.13''.

4. A new § 1105.13 is added to read as follows:

§ 1105.13 Preliminary Draft Environmental Assessment.

An applicant for a rail acquisition, merger, or consolidation submitted under 49 CFR 1180.4 must submit at the time of, or prior to, its application, a Preliminary Draft Environmental Assessment (PDEA) for transactions requiring an Environmental Assessment under § 1105.6(b)(4). The PDEA must contain the information required in § 1105.7 and § 1105.8 and must be served on the parties designated in § 1105.7(b). The PDEA must be based on consultations with the Section of Environmental Analysis (SEA) and the agencies specified in § 1105.7(b). We encourage the use of third-party consultants in preparing the PDEA. SEA will use the PDEA in preparing a draft Environmental Assessment.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

5. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

6. Section 1180.4 is amended as follows:

a. Paragraph (a)(4) is revised.

b. Paragraph (b)(1)introductory text, the first sentence is revised and a new sentence is added after the first sentence.

c. Paragraph (b)(2) introductory text, the words ''30 days'' are revised to read ''15 days''.

d. Paragraphs (c)(2)(v) through (c)(2)(vii) are redesignated as paragraphs (c)(2)(vi) through (c)(2)(viii) and a new paragraph (c)(2)(v) is added.

e. Paragraphs (c)(7)(i) and (c)(7)(ii), the words ''30 days'' are revised to read ''15 days''.

f. Paragraph (d)(1)(i) is revised.

g. In paragraphs (d)(1)(iii)(H) and (d)(1)(iii)(I)(*3*), the first two words ''An initial'' are removed and the word ''A'' is added in their place.

h. Paragraph (d)(2) is removed.

i. Paragraph (d)(3) is removed.

j. Paragraph (d)(4) is redesignated as paragraph (d)(2) and redesignated paragraphs (d)(2)(i) and (d)(2)(iv) are revised.

k. Paragraph (e)(2) is revised.

l. Paragraph (e)(3) is revised.

7. The additions and revisions read as follows:

§ 1180.4 Procedures.

(a) * * *

(4) The Commission shall issue a list of all parties to the proceeding within 40 days of the application's acceptance.

(b) * * *

(1) Between 2 to 4 months prior to the proposed filing of an application in a major or significant transaction, applicants shall file a notice with the Commission. The applicant shall initiate consultations with the Section of Environmental Analysis upon, or prior to, the filing of this notice. * * *

* * * * *

(c) * * *

(2) * * *

(v) For transactions requiring an environmental assessment (EA) under 49 CFR 1105.6(b)(4), the applicant shall submit to the Commission a Preliminary Draft Environmental Assessment (PDEA) as described in 49 CFR 1105.13.

* * * * *

(d) * * *

(1) * * *

(i) Time to file. Written comments and proposed conditions must be filed no later than 30 days after an application's acceptance.

* * * * *

(2) * * *

(i) All responsive applications shall be filed 60 days after acceptance of the primary application. No responsive

applications shall be permitted to minor transactions.

* * * * *

(iv) Any petitions for waiver, clarification, extension of time, or for leave to file an incomplete application, or to rebut the presumption of a significant transaction, must be filed at least 30 days in advance of the filing of the responsive application.

* * * * *

(e) * * *

(2) The evidentiary proceeding will be completed in 125 days after the primary application is accepted for a major or a significant transaction and in 105 days for a minor transaction.

(3) A final decision on the primary application and all consolidated cases will be issued in 40 days after the conclusion of the evidentiary record.

* * * * *

Note: This appendix will not be published in the CFR.

Appendix A—Proposed Schedule for Major Rail Acquisition, Merger and Consolidation Applications Under the Interstate Commission Act

Discovery begins immediately.

D	Date Application filed.
D+15	Notice of the application published in the **Federal Register**.
D+20	Discovery conference on application held.
D+45	Comments and protests due on the application; requested conditions due; description of anticipated inconsistent and responsive applications due.
D+50	Discovery conference on comments, protests and conditions held.
D+75	Inconsistent and responsive applications due. Response to comments, protests, conditions and rebuttal in support of primary application due.
D+80	Discovery conference on inconsistent applications held.
D+90	Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
D+105	Response to inconsistent and responsive applications due. Rebuttal in support of comments, protests, and conditions to the primary application due.
D+115	Rebuttal in support of inconsistent and responsive applications due.
D+125	Briefs due, all parties.
D+140	Oral Argument (at Commission's discretion).
D+150	Voting Conference (at Commission's discretion).
D+180	Date for service of decision.

[FR Doc. 95–2288 Filed 1–30–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Comment Period on Proposed Determination of Critical Habitat for Lost River Sucker and Shortnose Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that a public hearing will be held on the proposed determination of critical habitat for Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*). In addition, the Service has extended the comment period. All parties are invited to submit comments on this proposal.

DATES: The public hearing will be held from 2 to 4 p.m. and 6 to 8 p.m. on March 7, 1995, in Klamath Falls, Oregon. The comment period, which originally was to close on January 30, 1995, now closes on March 17, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Oregon Institute of Technology, College Union Auditorium, 3201 Campus Drive, Klamath Falls, Oregon. Comments and materials should be submitted to the U.S. Fish and Wildlife Service, Portland Field Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Rollie White (See **ADDRESSES** section) at (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Background

The Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*) are large, long-lived fishes endemic to the Upper Klamath River Basin of Oregon and California. Listed as endangered pursuant to the Endangered Species Act of 1973 (Act) on July 18, 1988 (52 FR 32145), the Service proposed to designate a total of approximately 182,400 hectares (456,000 acres) of stream, river, lake, and shoreline areas as critical habitat for the shortnose sucker, and approximately 170,000 hectares (424,000 acres) of stream, river, lake, and shoreline areas as critical habitat for the Lost River Sucker on December 1, 1994 (59 FR 61744).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 et seq.) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. Public hearing requests were received from a number of requesters. As a result, the Service has scheduled a public hearing on March 7, 1995, at the Oregon Institute of Technology, College Union Auditorium in Klamath Falls, Oregon. Anyone wishing to make statements for the record should bring a written copy of their statements to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places on limits on the length of written comments or materials presented at the hearing or mailed to the Service.

The comment period on the proposal was to close on January 30, 1995. To accommodate the hearing, the Service extends the public comment period. Written comments may now be submitted until March 17, 1995, to the Service in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: January 25, 1995.

Thomas J. Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 95–2277 Filed 1–30–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 20
Tuesday, January 31, 1995

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

Office of the Secretary

Stewardship Incentive Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable from Income Under Section 126 of the Internal Revenue Code

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that certain Federal cost-share payments made to individuals under the Stewardship Incentive Program (SIP) are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, and providing a habitat for wildlife. This determination is made in accordance with Section 126(b) of the Internal Revenue Code and permits recipients of these cost-share payments to exclude them from gross income for Federal income tax purposes to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Director, Cooperative Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 205–1389.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain cost-sharing payments made to persons under certain small watershed programs administered by the Secretary of Agriculture which are determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in Section 126(a) (1) through (8) may be excluded from the recipients's gross income for Federal income tax purposes if certain determinations are made. One such determination if a determination by the Secretary of Agriculture that payments are made ''primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.'' To make a ''primary purpose'' determination, the Secretary evaluates a cost-share conservation program based on criteria set forth at 7 CFR Part 14. Following a determination by the Secretary of Agriculture, the Secretary of the Treasury must then determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Stewardship Incentive Program is a cost-sharing conservation program administered by the Department of Agriculture under the authority of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101–624, 104 Stat. 3359, 3521 (codified at 16 U.S.C. 2103b). The Commissioner of the Internal Revenue Service issued Revenue Ruling 94–27 on April 11, 1994, which sets forth his determination that the Stewardship Incentive Program is substantially similar to the type of program described in Section 126(a)(1) through (8), so that Section 126 improvements made in connection with small watershed and under the Stewardship Incentive Program are within the scope of Section 126(a)(9).

The Stewardship Incentive Program provides cost-share assistance to private nonindustrial landowners to implement approved forestry practices on their forest land. The conservation objectives of the program are referred to specifically in House Conference Report No. 101–916 which provides the practices must include (1) management of forests for conservation purposes; (2) substainable timber production; (3) protection and management of wetlands; (4) management of native vegetation; (5) agroforestry; (6) forest management for energy conservation purposes; (7) management for fish and wildlife; (8) management for recreation; and (9) other activities approved by the Secretary.

This program is administered by the Forest Service, Department of Agriculture, through state forestry agencies nationwide. Each state forester, in consultation with the State Forest Stewardship Committee, determines cost-share levels, practice priorities, and minimum acreage requirements. The Consolidation Farm Service Agency, Department of Agriculture, provides administrative assistance by accepting applications and arranging for disbursement of payments. Technical responsibilities for SIP practices may be assigned to other agencies and resource professionals through memoranda for understanding and cooperative agreements. The program regulations are set forth at 36 CFR part 230, State and Private Forestry Assistance; Stewardship Incentive Program, Interim Rule.

The overall goal of the Stewardship Incentive Program is to enhance forest management on private lands through a long term commitment to stewardship. Under this program, eligible landowners may receive up to 75 percent cost-sharing to install approved practices to: establish and manage forests for conservation and timber production; protect forested wetlands and riparian areas; improve water quality and soil productivity; enhance fish and wildlife habitat; and establish windbreaks. The cost-share payments may not exceed $10,000 per owner per fiscal year. Eligible landowners must agree to follow a Forest Stewardship Management Plan developed by a professional resource manager in accordance with the landowner's goals. Landowners are required to maintain and protect SIP funded practices for a minimum of 10 years.

Program objectives are achieved through the development and implementation of a forest stewardship management plan approved by a professional resource manager for an eligible landowner. To obtain approval, the plan must include forest management practices that ensure both forest productivity and environmental protection of the lands to be treated under the management plan. Program objectives are further achieved through the installation of approved multi-resource management activities aimed at enhancing management of nonindustrial private forest lands for economic, environmental and social benefits.

Having carefully examined the authorizing legislation, regulations, and operating procedures for the Stewardship Incentive Program using

the criteria set forth at 7 CFR part 14, the Secretary of Agriculture has concluded that the cost-share payments for implementing approved practices under this program are made to eligible persons primarily for the purposes of conserving soil and water resources, protecting or restoring the environment, improving forests, and providing a habitat for wildlife.

Determination

As required by section 126(b) of the Internal Revenue Code, the authorizing legislation, regulations, and operating procedures regarding the Stewardship Incentive Program have been examined in accordance with the criteria set out at 7 CFR part 14. Based on this examination, I hereby determine that those cost-share payments made for planning and installing approved practices under this program are primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, and providing a habitat for wildlife. Subject to further determination by the Secretary of the Treasury, that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by these payments, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes, all or part of the cost-share payments made under said program to the extent allowed by the Internal Revenue Service.

Dated: January 24, 1995.

Richard Rominger,

Acting Secretary of Agriculture.

[FR Doc. 95–2356 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–11–M

Economic Research Service

National Agricultural Cost of Production Standards Review Board: Meeting Notice

The National Agricultural Cost of Production Standards Review Board will meet on February 13–14, 1995, in the Economic Research Service Building, 1301 New York Avenue NW., Washington, D.C.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. The first session of the meeting will be 8:00 a.m.–12:00 noon on February 13, 1995. Subsequent sessions will be held from 1:30 p.m.–5:00 p.m. on February 13, and 8:00 a.m.–12 noon on February 14.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted before or after the meeting to Richard Long, Acting Director, ARED-ERS-USDA, Room 314, 1301 New York Avenue NW., Washington D.C. 20005–4888.

This meeting is authorized by 7 USC 4104, as amended. For further information, contact Jim Ryan at (202) 219–0796.

Kenneth L. Deavers,

Acting Administrator.

[FR Doc. 95–2349 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–18–M

Grain Inspection, Packers and Stockyards Administration

Opportunity to Comment on the Applicant for the Champaign (IN) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in the geographic area currently assigned to Champaign-Danville Grain Inspection Departments, Inc. (Champaign).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by February 28, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 2, 1994, **Federal Register** (59 FR 61868), GIPSA asked persons interested in providing official services in the geographic area assigned to Champaign to submit an application for designation. Champaign, the only applicant, applied for designation to provide official inspection services in the entire area currently assigned to them.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning Champaign. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of Champaign. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

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

Dated: January 23, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–2319 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–EN–F

Designation for the Frankfort (IN) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Frankfort Grain Inspection, Inc. (Frankfort), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: March 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M Hart, telephone 202–720–8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 1, 1994, **Federal Register** (59 FR 45258), GIPSA asked persons interested in providing official services in the geographic area assigned to Frankfort to submit an application for designation. Applications were due by September 30, 1994.

Frankfort, the only applicant, applied for designation in the entire area they are currently assigned.

GIPSA requested comments on the applicant in the October 31, 1994, **Federal Register** (59 FR 54427). Comments were due by November 30, 1994. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Frankfort is able to provide official services in the geographic area for which they applied. Effective March 1, 1995, and ending February 28, 1998, Frankfort is designated to provide official inspection and Class X and Class Y weighing services in the geographic area specified in the September 1, 1994, **Federal Register**.

Interested persons may obtain official services by contacting Frankfort at 317–654–4602.

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

Dated: January 23, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–2320 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Eastern Iowa (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), will end July 31, 1995, according to the Act, and GIPSA is asking persons interested in providing official services in the Eastern Iowa area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before February 28, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Eastern Iowa, main office located in Davenport, Iowa, to provide official inspection services under the Act on August 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end no later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Eastern Iowa ends on July 31, 1995.

The geographic area presently assigned to Eastern Iowa, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

The southern area: Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The northern area: Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines;

Bounded on the East by the eastern Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

Exceptions to Eastern Iowa's assigned geographic area are the following export port locations inside Eastern Iowa's area which have been and will continue to be serviced by FGIS: Cargill Elevator; Continental ''B'' Elevator; Continental ''C'' Elevator; Countrymark Cooperative, Inc.; and Rialto Elevator, all in Chicago, Illinois.

Interested persons, including Eastern Iowa, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Eastern Iowa area is for the period beginning August 1, 1995, and ending no later than July 31, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

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

Dated: January 23, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–2317 Filed 1–30–95; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administation (EDA).

Title: Construction Grant Proposal and Construction Grant Application.

Form Number(s): ED–101P and ED–101A.

Agency Approval Number: 0610–0011.

Type of Request: Revision of a currently approved collection.

Burden: 20,816 hours.

Number of Respondents: 523.

Avg Hours Per Response: 88 hours.

Needs and Uses: EDA uses the information collected in the Construction Grant Proposal to make a preliminary evaluation of a proposed project before an applicant is invited to submit a Construction Grant Application. The information collected in the Application is necessary for EDA to determine if applicants meet statutory and program requirements.

Affected Public: State, local and tribal governemnts, and not–for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 25, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–2280 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of the Census

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009

AGENCY: Bureau of the Census, Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Public Law 94–409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009. The meeting will convene on Friday, February 10, 1995, at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C.

The Advisory Committee is composed of a Chair, twenty-five member organizations, and nine ex officio members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 8:30 a.m. and adjourn at 5:00 p.m. on Friday, February 10, 1995.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Department of Commerce, Bureau of the Census, Room 2066, Federal Building 3, Washington, D.C. 20233. Telephone: (301) 457–2095.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes discussions on the Final Report of the Committee, as well as any other items that the Chair and Advisory Committee members deem appropriate for this meeting. The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Knight on (301) 457–2095.

Dated: January 26, 1995.

Martha Farnsworth Riche,

Director Bureau of the Census.

[FR Doc. 95–2455 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[A–588–038]

Bicycle Speedometers From Japan; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a domestic producer, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers one manufacturer/exporter of this merchandise sold in the United States for the period November 1, 1992 through October 31, 1993. We preliminarily find that a margin of 3.62 percent exists for the manufacturer/exporter, Cat Eye, Co., Ltd.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1972, the Department of Treasury published in the **Federal Register** (37 FR 24826) an antidumping finding on bicycle speedometers from Japan. On November 15, 1993, a domestic manufacturer, Avocet, Inc. (Avocet), in accordance with 19 CFR 353.22(a), requested that the Department conduct an administrative review. Avocet is an interested party as defined in section 771(9)(C) of the Tariff Act of 1930, as amended (the Tariff Act). We published a notice of initiation of the antidumping duty administrative review on December 17, 1993 (58 FR 1993). The Department is now conducting this

administrative review in accordance with section 751 of the Tariff Act.

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 9029.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cat Eye Co., Ltd. (Cat Eye), a manufacturer/exporter of bicycle speedometers during the period November 1, 1992 through October 31, 1993.

United States Price

The Department used purchase price, as defined in section 772 of the Tariff Act, to calculate USP. Purchase price was based on the f.o.b., packed price from the producer to an unrelated Japanese trading company for sale to the United States under the name ''Specialized'', or to the first unrelated purchaser in the United States. We made adjustments where applicable, for foreign inland freight, and brokerage and handling charges. No other adjustments were claimed or allowed.

Foreign Market Value

For its FMV calculation, the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers. We made adjustments, where applicable, for post-sale inland freight, quantity rebates, and differences in credit, direct advertising, and packing costs. In addition, we made a difference-in-merchandise adjustment, where appropriate, based on differences in the variable costs of manufacture. No other adjustments were claimed or allowed.

In our calculations we utilized annual weight-averaged FMVs for purposes of comparison as in antifriction bearings from Japan. See Antifriction Bearings from Japan, et al.; Final Results of Administrative Review, 58 FR 39729 (July 26, 1993).

Preliminary Results of the Review

As a result of our comparison of USP to FMV, we preliminarily determine that the margin for Cat Eye is 3.62 percent for the period November 1, 1992 through October 31, 1993.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or on the first workday thereafter. Case briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any comments submitted or made during a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning the respondent directly to Customs.

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 publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the ''new shipper'' rate established in the first administrative review, as discussed below.

On May 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original ''all others'' rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the ''all others'' rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the ''new shipper'' rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the ''all others'' rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the ''all others'' rate from the Treasury LTFV investigation, the ''all others'' rate for the purposes of the review will be 26.44 percent, the ''new shipper'' rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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 has occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: January 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2352 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–DS–P

(A–570–834)

Notice of Postponement of Final Antidumping Duty Determination: Disposable Pocket Lighters From the People's Republic of China

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

EFFECTIVE DATE: January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–0167 or 482–1276, respectively.

Case History

Since our preliminary determination in this investigation on December 5, 1994 (59 FR 64191, December 13, 1994), the following events have occurred.

On December 9 and 19, 1994, counsel for Cli-Claque Company, Ltd. (''Cli-Claque'') and counsel for Gao Yao (HK) Hua Fa Industrial Co., Ltd. (''Gao Yao''), China National Overseas Trading Corporation (''COTCO'') and Guangdong Light Industrial Products Import & Export Corporation (''GLIP''), respectively, requested a postponement of 60 days of the final determination in this investigation due to the complex nature of this investigation, the need for additional time to gather records and information for verification, and the scheduling conflicts resulting from respondents' observance of Chinese New Year.

On December 16, 1994, PolyCity Industrial, Ltd. (''PolyCity'') filed its objection to a full extension of the final determination, stating it believes that its margin will decrease dramatically in the Department's final determination and that a postponement disadvantages it by delaying proceedings. PolyCity had previously requested an extension until March 8, 1995.

Postponement of Final Antidumping Determination

Under Section 735(a)(2) of the Tariff Act of 1930, as amended, (''the Act'') (19 U.S.C. 1673(a)(2)), and section 353.20(b) of the Department's regulations (19 CFR 353.20(b)), if, subsequent to an affirmative preliminary determination, the Department receives a request for postponement of the final determination from the producers or resellers of a significant proportion of subject merchandise, the Department will postpone the final determination absent compelling reasons for denial.

Cli-Claque, COTCO, Gao Yao and GLIP collectively account for a significant portion of sales to the United States of merchandise under investigation and have preliminarily been found to constitute independent companies entitled to rates separate from the country-wide rate for PRC manufacturers, producers and/or exporters of the subject merchandise. Although PolyCity, which also has preliminarily been found to be an independent company entitled to a separate rate, has objected to a full postponement, given the complicated nature of this investigation, and to ensure a complete and thorough verification of all responses, we are postponing our final determination until no later than April 27, 1995.

Scope of the Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gauge pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Suspension of Liquidation

On January 4, 1995, we published in the **Federal Register** (60 FR 436) our preliminary affirmative determination of critical circumstances with regard to imports of subject merchandise from Cli-Claque and COTCO, and with respect to manufacturers, producers and/or exporters that have not established their independence from central government control and to which the PRC country-wide rate will apply. Therefore, we have directed the U.S. Customs Service to suspend liquidation of any unliquidated entries of disposable pocket lighters exported from the PRC by the above-mentioned companies (*i.e.*, any exporter of subject merchandise other than Gao Yao, GLIP and PolyCity) that are entered or withdrawn from warehouse for consumption on or after September 14, 1994, which is 90 days prior to the date of publication of our preliminary determination in this proceeding. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as published in our preliminary determination for this investigation. This suspension of liquidation will remain in effect until further notice.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary no later than March 27, 1995, and rebuttal briefs no later than April 3, 1995. A hearing will be held on April 10, 1995, at 9:00 am at the U.S. Department of Commerce in Room 1412. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than April 27, 1995, 135 days after the date of publication of our preliminary affirmative determination of sales at less than fair value.

This notice is published pursuant to section 735(a) of the Act and 19 CFR 353.20(b)(2).

Dated: January 20, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2353 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–DS–P

C–333–502

Determination Not To Revoke Countervailing Duty Order; Deformed Steel Concrete Reinforcing Bar From Peru

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

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order on deformed steel concrete reinforcing bar (rebar) from Peru.

EFFECTIVE DATE: January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Melanie Brown, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1994, the Department published in the **Federal Register** (59 FR 54436) its intent to revoke the countervailing duty order on deformed steel concrete reinforcing bar (rebar) from Peru (50 FR 48819; November 27, 1985). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation and no interested party requests an

administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received an objection from a domestic interested party to our intent to revoke this countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: January 25, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–2355 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Orders

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

ACTION: Notice of intent to revoke countervailing duty orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty orders listed below. Domestic interested parties who object to revocation of any of these orders must submit their comments in writing not later than the last day of February 1995.

EFFECTIVE DATE: January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Melanie Brown, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty orders listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in §§ sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke these orders pursuant to this notice, and no interested party (as defined in § 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders are no longer of interest to interested parties and proceed with the revocations. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing Duty Orders	
Peru: Cotton Sheeting and Sateen (C–331–001).	02/01/83 48 FR 4501
Thailand: Malleable Iron Pipe Fittings (C–549–803).	02/10/89 54 FR 6439

Opportunity to Object

Not later than the last day of February 1995, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under §§ 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: January 25, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–2354 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 941256–4356]

National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for public comments.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) has received a request from the American National Standards Institute (ANSI) to have its Accreditation Program for Certification Programs and the ANSI/RAB American National Accreditation Program for Registrars of Quality Systems recognized under the NIST National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program for specified European Union (EU) Directives and Mexican regulations relating to securing Mexican Certification Mark (NOM) certificates.

DATES: Comments on this request must be received by March 2, 1995.

ADDRESSES: Comments should be submitted in writing to Mr. Robert L. Gladhill, Program Manager, NVCASE, National Institute of Standards and Technology, Building 417, Room 107, Gaithersburg, MD 20899 or by telefax at 301–963–2971.

FOR FURTHER INFORMATION CONTACT: Either Mr. John L. Donaldson, Chief, Standards Code and Information, or Robert L. Gladhill, NVCASE Program Manager, in writing at NIST, 417/107, Gaithersburg, MD 20899, by telephone at 301–975–4029 or by telefax at 301–963–2871.

SUPPLEMENTARY INFORMATION: NIST received a letter from ANSI, dated May 10, 1994 requesting general recognition under the NVCASE program. Under the procedures at 15 CFR Part 286, NIST may grant recognition to organizations only for performing specific activities covered under a specific mandatory foreign regulatory requirement(s). The ANSI letter was acknowledged by NIST in a letter dated July 12, 1994. In that letter ANSI was requested to submit additional information identifying the pertinent regulatory requirements for which it desires to gain recognition as competent to satisfy conformity assessment requirements.

NIST received a second letter from ANSI, dated October 21, 1994, which provided a list of general European Union Directives and a reference to Mexican NOMs. The two letters are reproduced below.

May 10, 1994

John Donaldson,

Chief, Standards Code and Information, National Institute of Standards & Technology, Building 101, Rm. A629, Gaithersburg, MD 20899

Re: Reference Docket No. 920363–4058, Establishment of the National Voluntary Conformity Assessment System Evaluation Program

Dear John: Congratulations on completing and publishing (59 FR 19129, April 22, 1994) the Final Rule establishing the National

Voluntary Conformity Assessment System Evaluation (NVCASE) Program. ANSI believes NVCASE has potential to promote U.S. products' access to foreign markets when foreign governments insist on U.S. government assurance that U.S. conformity assessment organizations are competent to satisfy the foreign regulatory requirements. NIST recognition of ANSI's accreditation service for certification programs and the ANSI-RAB American National Accreditation Program for Registrars of Quality Systems could, for example, help in the situation where the European Commission requests a government assurance of the competence of conformity assessment organizations who desire to participate in government to government Mutual Recognition Agreements. The ANSI and ANSI-RAB national accreditation programs are based on the same technical criteria that generally appear in the European directives relating to competence of notified bodies appointed by Member States.

ANSI, RAB and the private sector have invested heavily in establishing the ANSI and ANSI-RAB accreditation programs to respond to marketplace needs. The essence of both accreditation programs is an initial and on-going assessment of the competence of a conformity assessment activity to international criteria in order to promote U.S. national and global marketplace acceptance of the work of the accredited conformity assessment activities. Through bilateral, regional and international discussions with counterpart national accreditation practices and an internationally-based system for global acceptance of product certifications and quality system registrations. NVCASE recognition will nicely complement these on-going private sector initiatives when a foreign government insists on U.S. government involvement in the process.

There, please consider this as a formal request under Section 286,7 for *recognition* of the ANSI Accreditation Program for Certification and the ANSI-RAB American National Accreditation Program for Registrars of Quality Systems. If NVCASE is not yet accepting applications for recognition, then please consider this a notice of intention to seek such recognition, and please send whatever forms are necessary as soon as they are available. Please let us know the fees to be submitted under Section 286.7(a)(2). Also, can you estimate the remaining balance to secure recognition?

Please send as soon as possible the ''documented generic requirements to be applied in evaluations related to accreditation and recognition within the scope of the program,'' mentioned in Section 286.5. Sections 286.5 and 286.6 state that ''generic requirements are developed with public input, and ''input is also sought from workshops.'' To the extent that such generic requirements are still in development, ANSI and RAB offer whatever assistance you may find helpful in organizing workshops or other means to facilitate ''public input.''

We were very pleased to see the discussion in the preamble relating to the purpose of NVCASE to limit NVCASE to only those procedures necessary to meet foreign governments' requirements (Section 286.1). NVCASE ''recognition'' procedures should not exceed that required by the foreign government. As a generalization, the criteria for competence of European notified bodies as contained in the European directives are the same criteria used in the ANSI and ANSI-RAB accreditation programs. There may be only small variations needed in our accreditation programs depending upon any unique competence criteria identified in a particular European directive. The European directives place the obligation on Member States to name only ''competent'' notified bodies. The Member States often (though this is not a requirement) depend upon their relevant national accreditation system for an independent assessment of that competence. We see NVCASE essentially creating a similar relationship between our accreditation programs and the U.S. government. Based on our interactions with European national accreditation organizations through the European Accreditation of Certification (EAC) and International Accreditation Forum (IAF) we have learned that the national accreditation organizations' relationships with their respective governments are best described as cooperative or collaborative. In some cases the accreditation body is an agency of government. In other cases it is a quasi non-governmental organization whose recommendations result in a government accreditation. In some cases it is a private sector organization whose accreditations are unilaterally considered by government in appointments of notified bodies. In all cases of which we are aware, the accreditation program derives (or derived during its initial stages) significant public sector funding. Thus, we request that you give strong consideration in the NVCASE procedures applicable to recognizing such accreditation programs as ours to the cooperative and facilitate relationships that exist between the European national accreditation programs and their corresponding governments. Our European accreditation counterparts are not faced with a ''regulatory'' relationship with their governments, but instead one in which the governments just utilize (to a greater or lesser extent in any particular Member State) the results of the accreditation in their appointment of notified bodies.

We in the United States could undermine our competitive position internationally rather than advance it if the NVCASE recognition procedures for our accreditation programs generated significant additional costs for our national accreditation programs that will have to be born by the accredited organizations and their U.S. industrial clients. Our accreditation peers in Europe have received government subsidies for the equivalent accreditation service. Significant extra costs for NVCASE recognition would just exacerbate this competitive issue for U.S. conformity assessment programs.

ANSI and RAB intend to offer the ANSI and the ANSI–RAB accreditation programs as a generic mechanism that could be used as the competence demonstrating component in any particular government to government negotiation of Mutual Recognition Agreements. Thus, we were grateful to note that the NVCASE programs would only operate at the accreditation level if (among several conditions) there is no satisfactory accreditation alternative available and the private sector has declined to make acceptable accreditation available (Section 286.2(2)). Our programs are striving to fill this need for an acceptable private sector accreditation mechanism and we envision few, if any situations that could not be addressed by our programs. For NVCASE to offer an accreditation program competing with our private sector efforts would be inappropriate and inconsistent with the concepts in OMB Circular A76 relating to government use of commercially available services.

ANSI and RAB look forward to a close and cooperative working relationship with NIST in pursuing our common objective of assisting U.S. suppliers in meeting foreign technical regulatory requirements on a cost effective basis.

Sincerely,

George T. Willingmyre, P.E.,

Vice President, Washington Operations.

cc: S. Mazza
ANSI Board Committee on Conformity Assessment
G. Lofgren, RAB

October 21, 1994.

John Donaldson,

Chief, Standards Code and Information, National Institute of Standards & Technology, Building 101, Room A–629, Gaithersburg, MD 20899

Dear John: This is an addendum to our May 10 formal application for recognition of the ANSI Accreditation Program for Certification Programs and the ANSI–RAB American National Accreditation Program for Registrars of Quality Systems under the National Voluntary Conformity Assessment System Evaluation (NVCASE) program. Our original application is included for reference as Appendix A.

You indicated in your July 12 letter (Appendix B) that we should identify the foreign regulations for which our accreditation programs seek recognition. Based upon interest from currently accredited quality system registrars and product certification programs and industry sectors with high priority for on-going government to government mutual recognition agreement negotiations, the list of European Directives and foreign regulations is provided at Appendix C. Please note that our accreditation programs are designed to mirror the national accreditation programs in Europe and Mexico which use generic criteria to establish the competence of quality system registration or product certification programs no matter what the industry sector. Thus we would expect that NVCASE recognition granted for one program area could be easily extended to other areas without major extra effort or cost.

You also noted that International Guides relevant to competence of quality system registration and product certification accreditation programs are not yet final. Because of the importance of moving forward quickly in the interest of continued American competitiveness, ANSI recommends

utilization of the relevant DRAFT guides in the interim period before the ISO Guides are published.

ANSI and the Registrar Accreditation Board look forward to taking the next steps in the NVCASE recognition process as soon as possible.

Sincerely,

George T. Willingmyre, P.E.,

Vice President, Washington Operations.

cc: S. Mazza
ANSI Board Committee on Conformity Assessment
G. Lofgren

Appendix A—May 10, 1994 Letter.

Appendix B—NIST Reply—Acknowledgement.

Appendix C

European Directives and Regulation of the government of Mexico for which the American National Accreditation Program for Registrars of Quality Systems seeks recognition under the National Voluntary Conformity Assessment System Evaluation (NVCASE) program

- Active Implantable Medical Devices
- Medical Devices
- Telecommunications Terminal Equipment
- Gas Appliances
- Simple Pressure Vessels
- Machinery
- Mexican Regulation relating to securing the NOM certificates published in the Official Journal of Mexico June 14, 1994

European Directives for which the ANSI Accreditation Program for Certification Programs seeks recognition under the National Voluntary Conformity Assessment System Evaluation (NVCASE) program.

- Recreational Craft
- Personal Protective Equipment
- Gas Appliances
- Lawnmower Noise

Interested persons should submit comments in writing to the above address. Contingent upon comments received, NIST will schedule public workshops to define general and specific criteria for each of the programs requested. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Commerce Department Records and Inspection facility, room 6020, Hoover Building, Washington, DC 20230.

Date: January 24, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–2327 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 941255–4355]

National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for public comments.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) has received a request from the American Association for Laboratory Accreditation (A2LA) to have its Laboratory Accreditation Program recognized under the NIST National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program for specified European Union (EU) Directives for electromagnetic compatibility.

DATES: Comments on this request must be received by 30 days March 2, 1995.

ADDRESSES: Comments should be submitted in writing to Mr. Robert L. Gladhill, Program Manager, NVCASE, National Institute of Standards and Technology, Building 417, Room 107, Gaithersburg, MD 20899 or by telefax at 301–963–2871.

FOR FURTHER INFORMATION CONTACT: Either Mr. John L. Donaldson, Chief, Standards Code and Information, or Robert L. Gladhill, NVCASE Program Manager, in writing at NIST, 417/107, Gaithersburg, MD 20899, by telephone at 301–975–4029 or by telefax at 301–963–2871.

SUPPLEMENTARY INFORMATION: The NVCASE procedures at 15 CFR Part 286 require NIST to seek public consultation when it receives requests for evaluation. This notice therefore is a solicitation for comments on the A2LA request which follows:

September 9, 1994.

Mr. John L. Donaldson,

Chief, Standards Code and Information Program, National Institute of Standards and Technology (NIST), Gaithersburg, MD 20899

Dear Mr. Donaldson, The American Association for Laboratory Accreditation (A2LA) hereby applies to NIST to be evaluated so as to be recognized as a competently conducted conformation assessment activity according to the rules and regulations published in the **Federal Register**, *Vol. 59, No. 78,* on April 22, 1994.

This request is for the evaluation of the A2LA laboratory accreditation program in response to [(iii * * * specific U.S. industrial or technical need, relative to a mandatory foreign technical requirement].

The industrial or technical need covered is for recognition to accredit laboratories for testing electromagnetic compatibility under 89/336/EEC and telecommunications terminal equipment under 91/263/EEC.

We already have accredited laboratories for some tests in this area but wish to be in compliance with the EEC requirements which will be necessary to meet the developing Mutual Recognition Agreement requirements being developed between the U.S. and the EU. We look forward to hearing from you shortly, giving us more explicit instructions on how we might proceed.

Sincerely,

John W. Locke,

President.

cc: Charles Ludolph, DOC

Interested persons should submit comments in writing to the above address. Contingent upon the comments received, NIST will schedule public workshops to define general and specific criteria for the requested program. All comments submitted in response to this notice will become part of the public record and will be available for inspection and copying at the Commerce Department Records and Inspection facility, room 6020, Hoover Building, Washington, DC 20230.

Dated: January 24, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–2328 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket Number 950106006–5006–01; Notice 2]

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety

standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 USC 272.

Dated: January 25, 1995.

Samuel Kramer,

Associate Director.

NFPA No.	Title	Proposal closing date
NFPA 1–1992	Fire Prevention Code	3/3/95
NFPA 13–1994	Installation of Sprinkler Systems	1/20/95
NFPA 13D–1994	Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes	1/20/95
NFPA 13R–1994	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height	1/20/95
NFPA 20–1993	Installation of Centrifugal Fire Pumps	1/20/95
NFPA 31–1992	Oil-burning Equipment	1/20/95
NFPA 32–1990	Drycleaning Plants	1/20/95
NFPA 36–1993	Solvent Extraction Plants	8/1/95
NFPA 45–1991	Fire Protection for Laboratories Using Chemicals	1/20/95
NFPA 51–1992	Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes	5/19/95
NFPA 54–1992	National Fuel Gas Code	1/20/95
NFPA 68–1994	Venting of Deflagrations	7/21/95
NFPA 69–1992	Explosion Prevention Systems	7/21/95
NFPA 72–1993	National Fire Alarm Code	1/5/95
NFPA 73–1994	Residential Electrical Maintenance Code for One- and Two-Family Dwellings	1/5/95
NFPA 80A–1993	Protection of Buildings from Exterior Fire Exposures	1/20/95
NFPA 90A–1993	Air Conditioning and Ventilating Systems	1/20/95
NFPA 90B–1993	Warm Air Heating and Air Conditioning Systems	1/20/95
NFPA 92A–1993	Smoke-Control Systems	1/20/95
NFPA 97–1992	Chimneys, Vents, and Heat-Producing Appliances	1/20/95
NFPA 101–1994	Safety to Life from Fire in Buildings and Structures	4/7/95
NFPA 170–1994	Fire Safety Symbols	1/18/95
NFPA 204M–1991	Smoke and Heat Venting	1/20/95
NFPA 211–1992	Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	1/20/95
NFPA 214–1992	Water-Cooling Towers	1/17/95
NFPA 241–1993	Safeguarding Construction, Alteration, and Demolition Operations	1/20/95
NFPA 299–1991	Protection of Life and Property from Wildfire	1/20/95
NFPA 321–1991	Classification of Flammable and Combustible Liquids	1/20/95
NFPA 385–1990	Tank Vehicles for Flammable and Combustible Liquids	1/20/95
NFPA 386–1990	Portable Shipping Tanks for Flammable and Combustible Liquids	1/20/95
NFPA 395–1993	Flammable and Combustible Liquids at Farms and Isolated Sites	1/20/95
NFPA 402M–1991	Aircraft Rescue and Fire Fighting Operations	2/20/95
NFPA 424M–1991	Airport/Community Emergency Planning	2/20/95
NFPA 482–1987	Zirconium	1/18/95
NFPA 497A–1992	Classification of Class I Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/20/95
NFPA 497B–1991	Classification of Class II Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/20/95
NFPA 497M–1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/20/95
NFPA 505–1992	Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operation	1/20/95
NFPA 555–P*	Methods for Decreasing the Probability of Flashover	1/20/95
NFPA 704–1990	Identification of the Fire Hazards of Materials	1/20/95
NFPA 750–P*	Water Mist Fire Suppression Systems	1/20/95
NFPA 911–1991	Protection of Museums and Museum Collections	1/20/95
NFPA 1001–1992	Fire Fighter Professional Qualifications	1/20/95
NFPA 1041–1992	Fire Service Instructor Professional Qualifications	1/20/95
NFPA 1061–P*	Public Safety Dispatchers Professional Qualifications	1/20/95
NFPA 1126–1992	Use of Pyrotechnics before a Proximate Audience	1/20/95
NFPA 1141–1990	Fire Protection in Planned Building Groups	1/20/95
NFPA 1582–1992	Medical Requirements for Fire Fighters	1/20/95
NFPA 1914–1991	Testing Fire Department Aerial Devices	1/20/95
NFPA 8504–1993	Atmospheric Fluidized-Bed Boiler Operation	1/18/95

P*—Proposed NEW drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 95–2326 Filed 1–30–95; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 950106005–5005–01, Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees. The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1995 Fall Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty-one Reports are published in the 1995 Fall Meeting Report on Proposals and will be available on January 27, 1995. Comments received on or before April 7, 1995 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1995 Fall Report on Proposals are available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Report on Proposals.

Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 7, 1995, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Report on Comments by September 22, 1995, prior to the Fall Meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 13–15, 1995 in Chicago, Illinois by NFPA members.

Authority: 15 USC 272.

Dated: January 25, 1995.

Samuel Kramer,

Associate Director.

1995 FALL MEETING, TECHNICAL COMMITTEE REPORTS

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc No.	Title	Action
14	Installation of Standpipe and Hose Systems	P
22	Water Tanks for Private Fire Protection	P
46	Storage of Forest Products	P
50	Bulk Oxygen Systems at Consumer Sites	P
51A	Acetylene Cylinder Charging Plants	P
57	LNG Vehicle Fuel	N
59A	Liquefied Natural Gas (LNG)	P
81	Fur Storage, Fumigation and Cleaning	W
99	Health Care Facilities	P
99B	Hypobaric Facilities	P
110	Emergency and Standby Power Systems	P
111	Stored Electrical Energy Emergency and Standby Power Systems	P
121	Self-Propelled and Mobile Surface Mining Equipment	R
140	Motion Picture and Television Industry Facilities	N
231E	Storage of Baled Cotton	P
231F	Storage of Roll Paper	P
255	Surface Burning Characteristics of Building Materials	P
257	Fire Tests of Window Assemblies	C
268	Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source	N
269	Toxic Potency Data for Use in Fire Hazard Modeling	N
501C	Recreational Vehicles	P
501D	Recreational Vehicle Parks and Campgrounds	P
600	Industrial Fire Brigades	P
601	Guard Service in Fire Loss Prevention	C
850	Electric Generating Plants	P
851	Hydroelectric Generating Plants	P
913	Protection of Historic Structures and Sites	W

1995 FALL MEETING, TECHNICAL COMMITTEE REPORTS—Continued

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc No.	Title	Action
1401	Fire Service Training Reports and Records	C
1404	Fire Department Self-Contained Breathing Apparatus Program	C
1405	Land-Based Fire Fighters Who Respond to Marine Vessel Fires	P
2001	Clean Agent Fire Extinguishing Systems	P

[FR Doc. 95–2325 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket Number 950106007–5007–01]

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comments and participation in standards development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, operations, and processes. These standards are used by both private industry and by governmental agencies. All interested persons should contact in writing the appropriate source as listed for further information. Currently the following standardization efforts are being conducted:

General Committee on Pipelines

1129 Pipeline Integrity Standards
1130 Computational Pipeline Monitoring

FOR FURTHER INFORMATION CONTACT: M.H. Matheson, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

General Committee on Marketing

Pollution Prevention Wholesale

Pollution Prevention Retail
1500 Storage and Handling of Aviation Fuels at Airports
1529 Aviation Fueling Hose
1581 Specifications and Qualifications Procedures for Aviation Jet Fuel/Sparators
1584 Four-inch Aviation Hydrant System
1604 Removal & Disposal of Used Underground Storage Tanks
1615 Installation of Underground Petroleum Storage Tanks
1628 A guide to the Assessment and Remediation of Underground Petroleum Releases
1632 Cathodic Protection of Underground Storage Tanks and Piping Systems
1637 Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals

FOR FURTHER INFORMATON CONTACT: Gary Carroll, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

General Committee on Refining

Technical Data Book, Petroleum Refining

500 Classification of Locations for Electrical Installations at Petroleum Facilities
510 Pressure Vessel Inspection Code
521 Guide For Pressure-Relieving & Depressurizing Systems
526 Flanged Steel Safety Relief Valves
530 Calculation of Heater Tube Thickness in Petroleum Refineries
541 Form-Wound Squirrel-Cage Induction Motors—250 HP and Larger
553 Control Valve Applications
554 Process Instrumentation and Control
556 Fired Heaters and Steam Generators
571 Conditions Causing Deterioration or Failure
575 Inspection of Atmospheric and Low-Pressure Storage Tanks
577 Weld Inspection
591 User Acceptance of Refinery Valves
594 Water and Wafer-Lug Check Valves
600 Steel Gate Valves—Flanged and Butt-Welding Ends
608 Metal Ball Valves—Flanged and Butt-Welding Ends
614 Lubrication, Shaft-Sealing and Control-Oil Systems for Special Applications
616 Gas Turbines for Refinery Services
619 Rotary-Type Positive Displacement Compressors for General Refinery Services
620 Design and Construction of Large, Welded, Low-Pressure Storage Tanks
631 Measurement of Noise From Air Cooled Heat Exchange
650 Welded, Steel Tanks for Oil Storage
653 Tank Inspection, Repair, Alt. & Reconstruction
662 Plate-Type Heat Exchangers
672 Packaged, Integrally Geared Centrifugal Air Compressors for General Refinery Service
673 Special Purpose Fans
674 Positive Displacement Pumps—Reciprocating
677 General Purpose Gear Units for Refinery Service
685 Sealless Centrifugal Pumps
686 Installation of Mechanical Equipment
2508 Design and Construction Ethane & Ethylene Installations.

FOR FURTHER INFORMATION CONTACT: Ron Chittim, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

Safety and Fire Protection Subcommittee

752 Management of Hazards Associated with Locations of Process Plant Buildings
2001 Fire Protection in Refineries
2009 Safe Welding and Cutting Practices in Refineries, Gasoline Plants, and Petrochemical Plants
2220A (tent.) Manager's Guide to Implementing a Contractor Safety Program.
2023 Guide for Safe Storage and Handling of Heated Petroleum Derived Asphalt Products and Crude Oil Residue
2026 Safe Descent onto Floating Roofs of Tanks in Petroleum Service
2027 Ignition Hazards Involved in Abrasive Blasting of Atmospheric Hydrocarbon Tanks in Service

2030 Guidelines for Application of Water Spray Systems for Fire Protection in Petroleum Industry
2217A Guidelines for Work in Inert Confined Spaces in the Petroleum Industry
2219 Safety Operating Guidelines for Vacuum Trucks in Petroleum Service
2350 Overfill Protection for Petroleum Storage Tanks
2510A Fire Protection Considerations for the Design and Operation of Liquefied Petroleum (LPG) Storage Facilities.

FOR FURTHER INFORMATION CONTACT: Andrew Jaques/Ken Leonard, Health and Environmental Affairs, Safety and Fire Protection, American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005.

Committee on Petroleum Measurement

Chapter 4.2—Conventioal Pipe Provers
Chapter 4.3—Small Volume Provers
Chapter 4.4—Tank Provers
Chapter 4.5—Master-Meter Provers
Chapter 4.6—Pulse Interpolation
Chapter 5.1—General Consideration for Measurement by Meters
Chapter 5.3—Measurement of Liquid Hydrocarbons by Turbine Meters
Chapter 5.4—Accessory Equipment for Liquid Meters
Chapter 10.4—Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure)
MPMS Chapter 12.2 (Parts 1–5)—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors
MPMS Chapter 12.3—Volumetric Shrinkage Resulting From Blending Light Hydrocarbons with Crude Oils
MPMS Chapter 14.3 Part 2—Specification and Installation Requirements for Orifice Plates, Meter Tubes and Associated Fittings
MPMS Chapter 21.2—Liquid Flow Measurements Using Electronic Metering Systems
MPMS Chapter 19.2—Evaporation Loss From Internal and External Floating Roof Storage Tanks
Testing Protocol for Roof Seals and Fittings—Internal and External Floating Roof Tanks.

FOR FURTHER INFORMATION CONTACT: J.C. Beckstrom/Steve Chamberlain, Exploration & Production Department, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

General Committee on Exploration and Production Oilfield Equipment and Material standards

1B Oil Field V-Belting
2A Planning, Designing and Constructing Fixed Offshore Platforms
2T Planning, Designing and Constructing Tension Leg Platforms
4F Drilling and Well Servicing Structures
5A2 Thread Compounds for Casing, Tubing, and Line Pipe
5A5 Field Inspection of New Casing, Tubing, and Plain End Drill Pipe
5B Threading, Gaging, and Thread Inspection of Casing, Tubing, and Line Pipe Threads
5C6 Welding Connectors to Pipe (under development)
5CT Casing and Tubing (U.S. Customary Units)
5CT Casing and Tubing (Metric Units)
5D Drill Pipe
5L Line Pipe
5LC CRA Line Pipe
5LD CRA Clad or Lined Steel Pipe
5L9 Unprimed External Fusion Bonded Epoxy Coating of Line Pipe (under development)
5T1 Imperfection Terminology
6A Valves and Wellhead Equipment
6A1 Ring Groove Measurement (under development)
6AV1 Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service (under development)
6D Pipeline Valves (Steel Gate, Plug, Ball and Check Valves)
7 Rotary Drilling Equipment
7A1 Testing of Thread Compound for Rotary Shouldered Connections
7G Drill Stem Design and Operating Limits
7K Rotary Drill Stem Elements
7L Procedures for Inspection, Maintenance, Repair and Remanufacture of Drilling Equipment
8A Drilling and Production Hoisting Equipment
8B Procedures for Inspection, Maintenance, Repair, and Remanufacture of Hoisting Equipment
8C Drilling and Production Hoisting Equipment (PSL 1 and PSL 2)
9B Application, Care, and Use of Wire Rope for Oil Field Services
10B Cement Testing (under development)
11AX Subsurface Sucker Rod Pumps and Fittings
11E Pumping Units
11S Operation, Maintenance and Troubleshooting of Electric Submersible Pump Installations
11S3 Electric Submersible Pump Installations
11S4 Sizing and Selection of Electric Submersible Pump Installations
500 Classification of Locations for Electrical Installations at Petroleum Facilities
xxx Oilfield Packers (under development)
xxx Inspection and Maintenance of Production Piping (under development)
13B–1 Standard Procedure for Field Testing Water-Based Drilling Fluids
13B–2 Standard Procedure for Field Testing Oil-Based Drilling Fluids
13C Drilling Fluid Processing Equipment (under development)
13I Standard Procedure for Laboratory Testing Drilling Fluids
13J Testing Heavy Brines
14F Design and Installation of Electrical Systems for Offshore Production Platforms
15HR High Pressure Fiberglass Line Pipe
15LE Polyethylene Line Pipe (PE)
15LR Low Pressure Fiberglass Line Pipe
15TR Fiberglass Tubing (under development)
16A Specification for Drill Through Equipment
16C Specification for Choke and Kill Systems
16F Marine Drilling Riser Equipment (under development)
16R Design, Rating and Testing Marine Drilling Riser Couplings (under development)
xxx Temperature Effects of Non-Metallics in Drill Through Equipment (under development)
17D Subsea Wellhead and Christmas Tree Equipment
17F Subsea Control Systems (under development)
17H ROV Interfaces with Subsea Equipment (under development)
17I Installation of Subsea Control Umbilicals (under development)

Drilling and Production Practices

27 Determining Permeability of Porous Media (to be combined with API 40)
31 Standard Format for Electromagnetic Logs
33 Standard Calibration & Format for Gamma Ray & Neutron Logs
34 Standard Format for Hydrocarbon Mud Logs
40 Core Analysis Procedures (to be combined with API 27)
43 Evaluation of Well Perforator Systems
44 Sampling Petroleum Reservoir Fluids
45 Analysis of Oilfield Waters
49 Drilling & Drill Stem Testing of Wells Containing Hydrogen Sulfide
50 Protection of the Environment for Gas Processing Plant Operations
51 Protection of the Environment for Production Operations
52 Protection of the Environment for Drilling Operations
53 Blowout Prevention Equipment Systems for Drilling Wells

66 Exploration and Production Data Digital Interchange
D12A API Well Number & Standard State, County, Offshore Area Codes
81 Model Form of Offshore Operating Agreement
xx Well Servicing/Workover Operations Involving Hydrogen Sulfide (under development)
xx Rheology of Cross Linked Fracturing Fluids (under development)
xx Evaluation of Cartridge Filters (E&P Operations) (under development)
xx Cargo Handling at Offshore Facilities (under development)
xx Long Term Conductivity Testing of Proppants (under development)

ADDRESSES: Exploration & Production, American Petroleum Institute, 700 North Pearl, Suite 1840 (LB 382), Dallas, TX 75201–2845.

FOR FURTHER INFORMATION: Contact the following persons for information on indicated standards at the above address:

Jim Greer—API 6, 16 and 17 series standards
Chuck Liles—API Drilling and Production Practices
Mike Loudermilk—API 1B, 11, 12 and 14 series
Randy McGill—API 5 and 15 series
Jennifer Six—API 4, 7, 8, 9, 10 and 13 series
Mike Spanhel—API 2 series

Authority: 15 U.S.C. 272.

Dated: January 25, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–2329 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 012095D]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 941 (P524A).

SUMMARY: Notice is hereby given that the University of Hawaii at Manoa, College of Social Sciences (Drs. Louis M. Herman and Adam A. Pack, Principal Investigators), Hawaii Hall 105, Honolulu, HI 96822, has been issued a permit to take (harass) 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 offices:

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 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: On November 25, 1994, notice was published in the **Federal Register** (59 FR 60611) that the above-named applicant had submitted a request for a scientific research permit to take (harass) humpback whales (*Megaptera novaeangliae*) over a 5-year period, during observational and photo-identification studies in the waters of the North Pacific, primarily in the Hawaiian Islands area. The requested permit has been issued, under the authority of the Endangered Species Act (ESA) 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 ESA, 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 ESA.

Authorization for the subject taking by Level B harassment has also been granted under the General Authorization provision of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 24, 1995.

P.A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–2275 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012495A]

Marine Mammals

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

ACTION: Issuance of modification to permit no. 738 (P77#51).

SUMMARY: Notice is hereby given that on January 23, 1995, permit no. 738, issued to Southeast Fisheries Science Center, NMFS, NOAA, 75 Virginia Beach Drive, Miami, FL 33149, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2532.

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of 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 provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Section A.1. authorizes the holder to conduct bottlenose dolphin research ''throughout the NMFS Southeast Region.'' This section was revised to clarify that the areas of take in the southeast region consist of the North Atlantic (south from the Virginia/North Carolina border), Gulf of Mexico, Caribbean, U.S. territorial seas and international waters.

Dated: January 23, 1995.

P.A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–2276 Filed 1–30–95; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 950120020–5020–01; I.D. 121594D]

RIN 0648–AG75

West Coast Salmon Fisheries; Northwest Emergency Assistance Program; Revisions

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

ACTION: Revisions to program for financial assistance.

SUMMARY: NMFS revises the definition of ''loss'' and the eligibility criteria for the habitat restoration and data collection jobs programs under the Northwest Emergency Assistance

Program (NEAP), so that a greater number of fishermen may qualify. The intent of NEAP is to provide assistance to those commercial fishermen who have recently participated in the salmon fisheries, who were substantially reliant on West Coast salmon resources for their income, and who suffered an uninsured loss as a result of a significant reduction in income because of the resource disaster.

EFFECTIVE DATE: January 25, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, (301) 713–2358, or Stephen Freese, (206) 526–6113.

SUPPLEMENTARY INFORMATION:

Background

The NEAP that was described in the following earlier notices: Notice of program for financial assistance (59 FR 51419, October 11, 1994); notice of proposed program (59 FR 46224, September 7, 1994); and advance notice of proposed rulemaking (59 FR 28838, June 3, 1994).

Changes to the Program

Upon review of public comments and discussions with the industry and state agencies, additional changes are being made that will increase the eligible pool of fishermen and potentially the amount of financial assistance each eligible fisherman may receive. These changes, as described below, will also greatly reduce the administrative burden in implementing the program and the information reporting burden placed upon fishermen.

Changes to the Definition of ''Loss''

''Loss'' was previously defined through a multi-step process that included a subtraction of the applicant's highest annual West Coast salmon income of the period 1992 through 1994 from the applicant's highest West Coast annual salmon income for the period 1986 through 1990 (see 59 FR 51419, October 11, 1994). The definition of ''loss'' is now revised to allow the subtraction of the applicant's lowest annual West Coast salmon income of the period 1992 through 1994 from the highest annual West Coast salmon income of the period 1986 through 1991, in order to more fully capture the impact of the disaster.

A review of available landing statistics on fisheries associated with the NEAP (fisheries associated with northern California, Oregon, and Washington) supports this change. Based on comparative catches through September of each year and Washington ex-vessel prices, total commercial non-charter revenues for salmon fisheries associated with the NEAP program may be down collectively by at least 25 percent from 1993. (Charterboat harvest data for 1994 are unavailable at this time). However, there were more significant declines in the following components of the West Coast salmon fishery: Ocean troll coho (74,000 fish harvested in 1993; 0 fish in 1994); ocean troll chinook—above Point Arena (156,000 fish harvested in 1993; 39,000 fish in 1994); Columbia River net chinook (50,800 in 1993; 34,300 fish in 1994 with non-tribal falling from 31,000 fish harvested in 1993 to 5,800 fish in 1994); and Columbia River net coho catches (37,000 in 1993; 7,000 fish in 1994 with non-tribal falling from 36,000 fish in 1993 to 6,000 fish in 1994). Commercial non-charter 1994 Puget Sound landings of chinook and coho are up significantly over those of 1993 because of fisheries that target hatchery stocks. However, the total 1994 Puget Sound marine net harvest of these fisheries (hatchery and non-hatchery) are less than 50 percent of their 1988–92 averages. Salmon fisheries for chum, pink and sockeye are all down from 1993 levels. It would appear that for many applicants, 1994 will be the lowest year, and consequently, it is expected that the loss calculations for many fishermen will be greater under this revision.

The revised definition of ''loss'' also expands the applicant's base year selection to include 1991. This will increase the eligible pool of applicants and increase for some applicants their calculated loss. For example, based on data provided by the Pacific States Marine Fisheries Commission to the Pacific Fishery Management Council, approximately 325 commercial non-tribal vessels harvested salmon during 1991 that did not harvest any salmon during the years 1986 through 1990; furthermore, 1991 was the highest year for almost 7 percent of all such vessels harvesting salmon during 1986–1991.

Charterboat operators may not keep sufficient records that would allow them to determine the proportion of fishing income that is derived from salmon. If such operators can provide evidence such as a state salmon permit and/or letters of endorsement from a charterboat association or charterboat booking association that indicate that salmon was a major component of earnings, then total income from all operations may be substituted as estimates of commercial fishing income, which is defined under this program to be salmon income from West Coast harvests. In support of this substitution, the Northwest Marine Recreational Baseline Study prepared for NMFS by Natural Resources Consultants, Inc., states that ''By the late 1980's through the 1990 season, the average Westport charter office made 65% to 70% of its income through salmon fishing, 25% to 35% from bottom fishing, and 0% to 5% from whale and bird watching trips.''

Changes to the Eligibility Criteria for the Habitat Restoration and Data Collection Jobs Programs

In recognition that the criteria only allow access to the right to work for hourly wages, several steps of the multi-step eligibility determination are simplified to reduce the reporting burden on the fishermen and the potential for appeals and to make program administration easier and more flexible. This notice abolishes those components of the program requiring each applicant to have: Earned at least 50 percent of gross income from salmon fishing; earned commercial fishery income in 1991, 1992, 1993, or 1994; and suffered a decline in commercial fishery income of at least 50 percent. The purpose of these requirements was to target the assistance to those fishermen most dependent on salmon and most recently involved in fishing. Given recent trends in fish harvests, it would be difficult for some fishermen to indicate earning fishing income in these years. Some fishermen chose not to fish because fishing was either unprofitable or prohibited because of conditions associated with the fishery resource disaster. To ensure program beneficiaries have a certain degree of income dependence upon the fishery, a new criterion is added: Applicants must show that they must have earned at least $5,000 in commercial fishing income in their chosen base year. This criterion is based on data on 12,000 commercial non-charter non-tribal vessels that fished during 1986 to 1993. Approximately 50 percent of these vessels had a maximum annual revenue during the period 1986–91 of $5,000 or less. This criterion is intended to maintain the focus of the program on fishermen who depend on salmon for income. Virtually all of the fishing vessels that earned at least $5,000 in any one year from 1986 to 1991 showed a loss. Because income tax records for 1994 should be available, the criteria that if single, the applicant's 1993 gross income must have been less than $25,000 and, if married, the income of the applicant and his/her spouse must have been less than $50,000 is modified to allow the choice of 1993 or 1994 for determining gross income.

Clarification of Participation in the Habitat Restoration and Data Collection Jobs Programs

Although included in the notice of proposed program for financial assistance (see 59 FR 46226, September 7, 1994) the policy that ''persons receiving a permit buyout are not eligible for the jobs program'' was omitted from the notice of program for financial assistance (59 FR 51419, October 11, 1994) due to oversight. Therefore, in response to questions from the Washington Department of Fisheries and others, the intended policy is now established. Persons receiving a permit buyout are not eligible for the jobs program.

The following revised description of loss and eligibility criteria incorporates the changes described above.

Revised Definition of Loss

Loss is defined as a loss of income not subject to Federal or state compensation and determined by a multi-step procedure, as follows:

1. The applicant (commercial fisherman) selects a base year from the years 1986 through 1991.

2. For comparison to the base year, the applicant determines his/her commercial fishery income from 1992, 1993, or 1994, and selects whichever year commercial fisheries income was the lowest. This is the comparison year. If the applicant had no commercial fishery income during the years 1992 to 1994 but can show evidence of being a current member of the salmon industry, commercial fisheries income is assumed to be zero for the years 1992 to 1994. Applicants who did not sell their permits but allowed permits to lapse via non-renewal, and still consider themselves members of the commercial salmon fishing community, must provide supporting evidence to the administrative intermediary or its representatives. Such evidence can be written endorsement by any commercial fishing association, tribal government, fish marketing association, or charterboat association. If the fisherman does not belong to any association, written endorsements by three currently (1993) commercially permitted or licensed members of the industry must be provided. These written endorsements must include the endorser's name, address, phone number, and appropriate permit and license numbers. Crew members, in similar situations, can provide such evidence via written endorsement by their last employer. In these instances where no commercial fishing income was earned from 1992 through 1994, should the applicant provide the necessary proof, the comparison year fishing income is assumed to be zero.

3. If the amount of the applicant's commercial fishery income, as selected in step 2 above, is less than the applicant's commercial fishery income from the base year, then a loss has occurred. The amount of the annual loss is the difference between the applicant's base year commercial fishery income and that from the comparison year selected in step 2 above. (If charterboat captains or crew do not have adequate records to determine the specific amount of commercial fishing income, i.e., the amount of revenue earned from West Coast salmon fishing, the administrative intermediary is given the discretion to allow total fishing income from all species of fish to be substituted for commercial fishery income in these calculations.)

4. The amount of the annual loss calculated in step 3 above is multiplied by three to determine the applicant's total loss for the disaster period.

Revised Eligibility Criteria for the Habitat Restoration and Data Collection Jobs Programs

For purposes of the habitat restoration and data collection jobs programs under NEAP, job applicants must meet all of the following eligibility criteria to receive assistance:

1. The applicant must not have received a permit buyout under the Vessel Permit Buyout Program.

2. The applicant must show an uninsured loss.

3. The applicant must have earned at least $5,000 in commercial fishing income in the base year selected in determining loss.

4. If single, the applicant's 1993 or 1994 gross income must have been less than $25,000. If married, the applicant's 1993 or 1994 gross combined income of the applicant and his/her spouse must have been less than $50,000.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

This action revises definitions and eligibility criteria for a financial assistance program that will contain collection-of-information requirements subject to the Paperwork Reduction Act. The necessary information collection forms and specific reporting requirements have not been fully identified at this time, and will be developed in conjunction with the intermediaries administering the program, and submitted to OMB for approval prior to implementation.

Authority: 16 U.S.C. 4107(d)

Dated: January 25, 1995.

Nancy Foster, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–2271 Filed 1–25–95; 5:01 pm]

BILLING CODE 3510–22–F

COMMISSION ON IMMIGRATION REFORM

Commission Roundtables in Puerto Rico

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of Commission Roundtables.

This notice announces two roundtables to be held by the U.S. Commission on Immigration Reform in San Juan, Puerto Rico on February 9–10, 1995. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. An interim report, *U.S. Immigration Policy: Restoring Credibility,* was issued on September 30, 1994; the final report is due in 1997.

Roundtable participants will include the Commissioners, local and federal government officials, researchers, local businessmen, and other experts. The first roundtable will examine the economic and social impacts of immigration on Puerto Rico. The Commission seeks to gain a greater understanding of the effects of immigrants, legal and illegal, on the Commonwealth's labor market, social services, and relations between various ethnic groups.

The second roundtable will focus on the illegal movements of various groups of migrants into and through Puerto Rico, as well as enforcement efforts by local and government officials.

Date: February 9, 1995.

Time: 9:00 AM–12:00 PM (Economic and Social Impacts).

Address: Department of State, Conference Room, Old San Juan, Puerto Rico 00901, 809–723–4343.

Date: February 10, 1995.

Time: 9:00 AM–12:00 PM (Illegal Movements Into and Through Puerto Rico)

Address: Condado Plaza Hotel, 999 Ashford Avenue—Garden Room, Condado, San Juan, Puerto Rico 00907, (809) 721–1000.

For Further Information Contact: Paul Donnelly (202) 673–5348.

Dated: January 25, 1995.

Susan Martin,

Executive Director.

[FR Doc. 95–2361 Filed 1–30–95; 8:45 am]

BILLING CODE 6820–97–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Learn and Serve America: K–12, Availability of Funds

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service announces the availability of $4,596,000 to support grants for new Learn and Serve America: K–12 School-Based and Community-Based programs. Grantmaking entities, and Indian Tribes and U.S. Territories are eligible to apply for school-based programs. For Community-Based programs, Grantmaking entities and States, through State Commissions, Alternative Administrative Entities, and Transitional Entities, are eligible to apply.

DATES: All applications must be received by 3:30 p.m., Eastern Standard Time, March 21, 1995, to be eligible.

ADDRESSES: Applications should be submitted to Ann Singhakowinta at the Corporation for National Service, Room 9619–A, 1201 New York Ave. N.W., Washington, D.C., 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: Ann Singhakowinta, Phone: (202) 606–5000 ext. 136; Fax: (202) 565–2787.

SUPPLEMENTARY INFORMATION: The Learn and Serve America: K–12 program was created to help fund school-based and community-based service learning programs. The Learn and Serve America: K–12 program aims to increase the opportunities of school-age youth and allow them to develop their own capabilities through service learning. In fiscal year 1995, a total of $37,500,000 will be available through different grant cycles to support new and continuing Learn and Serve America: K–12 programs. Grantees that currently receive funding through the Learn and Serve America: K–12 program, including State Education Agencies (SEAs), Local Education Agencies (LEAs), State Commissions, Grantmaking Entities, and Indian Tribes and U.S. Territories, are eligible to apply for renewal grants. Grantees applying for renewal grants are asked to contact their program officer at the Corporation. Additionally, a separate notice of funding availability for competitive grants for SEAs, and Indian Tribes and U.S. Territories will be announced in the Spring of 1995.

This notice announces the availability of funds for new grants for Grantmaking Entities, State Commissions, and Indian Tribes and U.S. Territories for School-Based and Community-Based programs.

I. School-Based Programs

Approximately $2.7 million is available on a competitive basis to support new grants to Grantmaking Entities. To be eligible for an award under this program, a Grantmaking entity must be a public or private non-profit organization experienced in service-learning, that has been in existence at least one year prior to submitting its application, which must assist school-based service-learning programs in more that one state. Grantmaking entities must make subgrants for the implementation, operation, or expansion of all service-learning or adult volunteer programs to be conducted using this Corporation assistance. Applicants should use the 1995 Grantmaking Entity: School-Based Programs Application.

For Indian Tribes and U.S. Territories, approximately $296,000 is available on a competitive basis to support new grants. These grants may be used for planning and capacity-building activities, and for implementing, operating, or expanding service-learning programs or adult volunteer programs. Applicants should use the 1995 Indian Tribes and U.S. Territories: School-Based Programs Application.

II. Community-Based Programs

Approximately $1.6 million is available on a competitive basis to support new grants to Grantmaking Entities and to States, through State Commissions, Alternative Administrative Entities, and Transitional Entities. Grants for community-based programs may be used to implement, operate, expand, or replicate community-based service-learning programs that engage school-age youth in providing meaningful educational, public safety, human or environmental service. Participants must be between the ages of 5 and 17, inclusive and may include out-of-school youth. Applicants should use the 1995 State Commissions and Grantmaking Entities: Community-Based Programs Application.

Authority: 42 U.S.C. 12501 et seq.

Dated: January 25, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 95–2360 Filed 1–30–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 7, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the

attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: January 26, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Integrated Postsecondary Education Data System (IPEDS)
Frequency: On occasion
Affected Public: Businesses or other for-profit; and not-for-profit institutions
Reporting Burden:
Responses: 10,620
Burden Hour: 106,806
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: IPEDS provides information on postsecondary education regarding its providers, enrollment, completions, finances, salaries of full-time instructional staff, numbers of staff, and information on libraries. Data will be used to create sampling frames for other surveys, to conduct institutional research, and to carry out mandates for Census, Office for Civil Rights, EEOC and the Department of Education. Copies of this instrument can be obtained by calling (202) 219–1442.

Additional Information: Clearance for this information collection is requested by February 7, 1995. An expedited review is requested in order to meet the schedule to begin the process to print the instrument by early February. Without this expedited review, the schedule for mailing out the instrument would not be met.

[FR Doc. 95–2358 Filed 1–30–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 17, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, *e.g.*, expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: January 26, 1995.

Glorida Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Application for Grants Under the Dwight D. Eisenhower Regional Mathematics and Science Education Consortia Program
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden:
Responses: 50
Burden Hours: 1,200
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational agencies (SEAs) to apply for funding under the Dwight D. Eisenhower Regional Mathematics and Science Education Consortia Program. The Department will use the information to make grant awards.

Additional Information: Clearance for this information collection is requested for February 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Educational Research and Improvement

Type of Review Expedited
Title: Application for Grants Under the National Institute on Early Childhood: 21st Century Community Learning Centers Program
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 300
Burden Hours: 7,200
Recordkeeing burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State Educational agencies (SEAs) to apply for funding under the National Institute on Early Childhood 21st Century Community Learning Centers Program. The Department will use the information to make grant awards.

Additional Information: An expedited review is being requested for February 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–2357 Filed 1–30–95; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Filing the ''Institutional Application and Agreement for Participation in the Work-Colleges Program.''

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an eligible institution to apply for participation in the Work-Colleges program and to apply for funding under that program for the 1995–96 award year (July 1, 1995 through June 30, 1996) by submitting to the Secretary an ''Institutional Application and Agreement for Participation in the Work-Colleges Program.''

The Work-Colleges program along with the Federal Work-Study program and the Job Location and Development program are known collectively as the Federal Work-Study programs. The Work-Colleges program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

CLOSING DATE: To participate in the Work-Colleges program and to apply for funds for that program for the 1995–96 award year, an eligible institution must mail or hand-deliver its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' on or before March 3, 1995. The Department will not accept the form by facsimile transmission. The form must be submitted to the Campus-Based Programs Financial Management Division at one of the addresses indicated below.

ADDRESSES: *Applications and Agreements Delivered by Mail.* An institutional application and agreement delivered by mail must be addressed to Carolyn Short, Fund Control Branch, Campus-Based Programs Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4621, Regional Office Building 3, 600 Independence Avenue, SW., Washington, DC 20202–5452. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an institutional application and agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use certified or at least first class mail. Institutions that submit an institutional application and agreement after the closing date of March 3, 1995 will not be considered for participation or funding under the Work-Colleges program for award year 1995–96.

Applications and Agreements Delivered by Hand. An institutional application and agreement delivered by hand must be taken to Carolyn Short, Financial Management Specialist, Fund Control Branch, Campus-Based Programs Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4621, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20407. Hand-delivered institutional applications and agreements will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An institutional application and agreement for the 1995–96 award year that is delivered by hand will not be accepted after 4:30 p.m. on March 3, 1995.

SUPPLEMENTARY INFORMATION: Under the Work-Colleges program, the Secretary allocates funds when available for that program to eligible institutions. The Secretary will not allocate funds under the Work-Colleges program for award year 1995–96 to any eligible institution unless the institution files its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' by the closing date.

To apply for participation and funding under the Work-Colleges program, an institution must satisfy the definition of ''work-college'' in section 448(e) of the HEA. The term ''work-college'' under the HEA means an eligible institution that (1) is a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires all resident students who reside on campus to participate in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

Applicable Regulations

The following regulations apply to the Work-Colleges program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Work-Study Programs, 34 CFR Part 675.

(3) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(4) New Restrictions on Lobbying, 34 CFR Part 82.

(5) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(6) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: Carolyn Short, Financial Management Specialist, Fund Control Branch, Campus-Based Programs Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4621, Regional Office Building 3, 600 Independence Avenue, S.W., Washington, D.C. 20202–5452, Telephone (202) 708–7741. 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.

(**Authority:** 42 U.S.C. 2756(b)).

(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program)

Dated: January 25, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–2359 Filed 1–30–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Adivsory Committee on Human Radiation Experiments

ACTION: Notice of Open Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

DATE AND TIME: March 2, 1995, 9:00 a.m.– 5:30 p.m.

PLACE: Radisson Summit Hill, 401 Summit Hill Drive, Knoxville, TN.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory

Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax: (202) 254–9828.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Thursday, March 2, 1995

9:00 a.m. Call to Order and Opening Remarks

9:15 a.m. Public Comment

12:30 p.m. Lunch

1:30 p.m. Public Comment (continues)

5:30 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make an oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 26, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–2345 Filed 1–30–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Human Radiation Experiments

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770), notice is given of a meeting of the Advisory Committee on Human Radiation Experiments.

DATE AND TIME:

February 15, 1995, 1:00 a.m.–5:00 p.m.
February 16, 1995, 9:00 a.m.–5:00 p.m.
February 17, 1995, 8:00 a.m.–4:15 p.m.

PLACE: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax:(202) 254–9828.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Wednesday, February 15, 1995

1:00 p.m. Call to order and Opening Remarks
1:10 p.m. Public Comment
3:15 p.m. Discussion, Committee Strategy and Direction
5:00 p.m. Meeting Adjourned

Thursday, February 16, 1995

9:00 a.m. Opening Remarks
9:10 a.m. Discussion, Committee Strategy and Direction
12:15 p.m. Lunch
1:30 p.m. Discussion, Committee Strategy and Direction (continue)
5:00 p.m. Meeting Adjourned

Friday, February 17, 1995

8:00 a.m. Opening Remarks
8:05 a.m. Discussion, Committee Strategy and Direction
12:15 p.m. Lunch
1:30 p.m. Discussion, Committee Strategy and Direction (continue)
4:15 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a 5-minute oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least 5 business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on January 26, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–2346 Filed 1–30–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. CP93–613–000, CP93–613–001, CP93–673–000, CP93–673–001, (not consolidated)]

Northwest Pipeline Corp.; Notice of Availability of the Environmental Assessment for the Proposed Northwest Expansion Projects

January 25, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Northwest Pipeline Corporation (Northwest) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed Northwest Expansion Projects including:

- Construction of 46.6 miles of new pipeline loop on Northwest's existing system and 8.3 miles of new pipeline lateral;
- Installation of approximately 14,820 horsepower of additional compression at four existing compressor stations; and
- Construction of 4 new meter stations and the upgrading and/or installation of crossover taps proposed at 11 existing meter stations.

Northwest proposes to construct these facilities to transport an additional 164,175 thousand cubic feet per day of natural gas for delivery to various customers in Washington, Oregon, and Idaho.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E. Room 3104, Washington, D.C. 20426, (202) 208–1371.

Copies of this EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Lauren O'Donnell, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7312, PR–11.1, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208–0325.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP93–613–001 and CP93–673–001, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than February 24, 1995 to ensure consideration before a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Lauren O'Donnell, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Ms. Lauren O'Donnell, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2259 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–100–000 et al.]

Dakota Gasification Co., et al.; Notice of Informal Settlement Conference

January 25, 1995.

In the matter of; Dakota Gasification Company successor-in-interest to the Department of Energy), Docket No. RP93–100–000; Natural Gas Pipeline Company of America, Docket Nos. RP94–208–000, RP94–87–008, RP94–122–006, RP94–169–006, RP94–195–005, RP94–249–004, RP94–260–004, RP94–305–002, and RP94–364–001; Tennessee Gas Pipeline Company, Docket Nos. RP94–222–000, RP93–151–015, RP94–39–006, RP94–202–000, and RP94–309–003; Transcontinental Gas Pipe Line Corporation, Docket Nos. RP94–298–000, and TM94–14–29–000; ANR Pipeline Company, Docket Nos. RP94–347–000, RP94–150–000, RP94–266–000, and RP94–384–000.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, February 2, 1995, at 2:00 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, D.C. for purpose of exploring the possible settlement of the issues in Docket Nos. RP94–298–000, *et al.* concerning Transcontinental Gas Pipe Line Corporation (Transco). The settlement discussions will be limited to issues arising on the Transco system.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1994).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Kathleen Dias at (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2260 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–133–000]

East Tennessee Natural Gas Co.; Notice of Rate Filing

January 25, 1995.

Take notice that on January 20, 1995, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet Nos. 30 and 31. East Tennessee requests an effective date for these tariff sheets of February 20, 1995.

East Tennessee states that it is making this filing in order to permit injections under its LNGS Rate Schedule into its LNG storage facility by tank truck. East Tennessee further states that emergency situations have arisen both this winter and last winter in which East Tennessee had to inject gas into its LNG facility by tank truck under the emergency regulations. East Tennessee believes that a tariff change is a more appropriate method of addressing this occasional need than continuing to rely on the Commission's emergency regulations when these situations arise. East Tennessee proposes to add a section 4.4 to its LNGS Rate Schedule specifically allows injection by tank truck. The proposed rate for this service is the quantity injection times the Authorized Overrun Rate for FT–A service.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before February 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2261 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP85–209–042 and RP88–27–031]

Koch Gateway Pipeline Co.; Notice of Refund Report

January 25, 1995.

Take notice that on December 16, 1994, Koch Gateway Pipeline Company (Koch), formerly United Gas Pipe Line Company, tendered for filing a refund report reflecting funds remitted by Koch to three of its customers pursuant to settlement agreements filed in the referenced dockets.

Koch states that the refunds were paid in September 1994. Koch states that the total refunds covered by the instant filing amount to $59,334,887, inclusive of principal and interest.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Regulations. All such protests should be filed on or before February 1,1 995. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2262 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–19–000]

Paiute Pipeline Co.; Notice of Refund Report

January 25, 1995.

Take notice that on January 18, 1995, Paiute Pipeline Company (Paiute), submitted a refund report reflecting refunds of $451,644.94 received from Northwest Pipeline Corporation (Northwest), pursuant to Commission orders issued in Docket Nos. RP89–137, *et al.,* pertaining to Northwest's take-or-pay buyout and buydown direct-billed charges and commodity surcharges. Paiute also received a refund of $808.06 as a result of Commission orders issued in Docket Nos. TM91–6–37 and TM92–7–37 reflecting Northwest's annual fuel reimbursement percentage.

Paiute states that on December 20, 1994, Paiute refunded amounts received from Northwest to its former customers, inclusive of principal and interest.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2263 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP83–58–022]

Southern Natural Gas Co.; Notice of Refund Report

January 25, 1995.

Take notice that on December 16, 1994, Southern Natural Gas Company (Southern), tendered for filing a refund report pursuant to Article II of the Stipulation and Agreement (Stipulation) in Docket No. RP83–58, *et al.* and the Commission's order dated March 23, 1989, approving such Stipulation. These refund levels result from the removal of Southern's Volumetric Take-or-Pay Surcharge (surcharge).

Southern seeks in this filing to refund surcharge levels collected from December 18, 1993 through April 31, 1994 since the full level of cost allocated to the surcharge was deemed fully recovered on December 17, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (section 385.211). All such protests should be filed on or before February 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2264 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–7–29–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

January 25, 1995.

Take notice that on January 20, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing First Revised Eighteenth Revised Fourth Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective January 1, 1995.

TGPL states that the purpose of the filing is to track a rate change attributable to the transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, which service underlies the service provided by TGPL under its Rate Schedule FT–NT. This tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule FT–NT.

TGPL states that copies of the instant filing are being mailed to its FT–NT customers and interested state commissions.

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, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2265 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. RP95–132–000]

Williams Natural Gas Co.; Notice of Refund Report

January 25, 1995.

Take notice that on January 20, 1995, Williams Natural Gas Company (WNG), tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of net revenue received from

cash-outs. WNG proposes to make the refund upon Commission approval of its calculation method as set out in this report.

WNG states that on October 1, 1993, in Docket No. RS92–12, it implemented a new methodology for handling transportation imbalances. Included in this methodology was a cash-out mechanism. Pursuant to Article 9.7(a)(iv), Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to WNG as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred.

Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.7(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.7(c). Article 9.7(d) provides that during each twelve month period beginning on the effective date of Article 9, WNG shall refund any net revenue (sales less purchase cost) received from the operation of paragraphs (a)(iv) and (c) to all Shippers on a pro-rata basis based on quantity delivered under rate schedules applicable to Article 9.7 to each Shipper during such twelve month period. It further provides that carrying costs shall be calculated on the net balance each month (either net revenue or net cost).

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2266 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–575–000]

El Paso Natural Gas Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed San Juan Triangle Expansion Project and Request for Comments on Environmental Issues

January 25, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the construction and operation of the facilities proposed by El Paso Natural Gas Company (El Paso) for its San Juan Triangle Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

El Paso seeks Commission authorization to:

- Construct and operate approximately 29.7 miles of 34-inch-diameter pipeline loop [2] between El Paso's existing Blanco Plant and its Gallup Compressor Station, in San Juan County, New Mexico; and
- Install a replacement compressor unit on one of the turbines at El Paso's existing Gallup Compressor Station, in McKinley County, New Mexico.

The proposed San Juan Triangle Expansion Project would allow El Paso to receive additional volumes of natural gas from the San Juan Basin area and transport up to 300,000 thousand cubic feet per day through the new loop to its customers. The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

The proposed loop would be constructed parallel to an existing pipeline corridor which already contains five other pipelines for approximately 16.7 miles and two other pipelines for about 13 miles. The new loop would be installed 30 feet west of the existing El Paso Blanco Plant to Gallup Station Loop Line, except at locations where terrain or other factors dictate a wider spacing. The construction right-of-way would be 100 feet wide, beginning 10 feet west of the existing loop.

El Paso would acquire an additional 10 to 30 feet of new permanent right-of-way for the proposed loop, and 50 feet of temporary work space would be needed west of the new permanent right-of-way. Other temporary work space would be required adjacent to the planned construction right-of-way at road and stream crossings. Following construction, the temporary work space would be allowed to revert to its former land use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis on important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues we will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage the to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resources.

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[1] El Paso's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations on June 1, 1994.

[2] A loop is a segment of pipeline installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through that segment of the pipeline system.

[3] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention in the EA, based on a preliminary review of the proposed facilities and the information provided by El Paso. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis. The environmental issues are:

- The proposed loop would be within allotted and Tribal lands administered by the Navajo Nation.
- The proposed loop would cross 4 major washes and 18 ephemeral drainages.
- The proposed loop would disturb desert shrub and grasslands.
- The proposed loop could impact federally listed threatened and endangered species.
- The proposed loop could impact significant cultural resources.

Public Participation

You can make a difference by sending a letter addressing your specific comments on concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded.

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP94–575–000;
- Send a copy of your letter to: Paul Friedman, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before March 3, 1995.

Additional information about the proposed project is available from Paul Friedman, EA Project Manager, at (202) 208–1108. If the EA is published for comment and you wish to receive a copy of the EA, you should request one from Mr. Friedman at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions mut show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 95–2258 Filed 1–30–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 94–18—Certification Notice—146]

Brooklyn Navy Yard Cogeneration Partners, L.P. Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On January 9, 1995, Brooklyn Navy Yard Cogeneration Partners, L.P., 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 within the capability to use coal or another alternate fuel as primary energy source. In order to meet the requirement or 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) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Brooklyn Navy Yard Cogeneration Partners, L.P.
Operator: Brooklyn Navy Yard Cogeneration Partners, L.P.
Location: Brooklyn, New York
Plant Configuration: Combined cycle cogeneration facility arranged in a topping cycle configuration
Capacity: 286 megawatts
Fuel: Natural gas
Purchasing Entities: Consolidated Edison Company
In-Service Date: November 30, 1995

Issued in Washington, DC, January 18, 1995.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–2347 Filed 1–30–95; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5144–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

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

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1666.02; National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations—63–0; was approved 12/05/94; OMB No. 2060–0283; expires 12/31/97.

EPA ICR No, 1659.02; NESHAP for Gasoline Distribution Facilities, Reporting and Recordkeeping Requirements—63-R; was approved 12/05/94; OMB No. 2060–0325; expires 12/31/97.

EPA ICR No. 1678.02; National Emissions Standards for Magnetic Tape Manufacturing Operations—63-EE; was approved 12/05/94; OMB No. 2060–0326; expires 12/31/97.

EPA ICR No. 1611.02; National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks—63-N; was approved 12/05/94; OMB No. 2060–0327; expires 12/31/97.

EPA ICR No. 1655.02; Gasoline Detergents Additive Regulations, Interim Program (Final Rule); was approved 12/16/94; OMB No. 2060–0275; expires 12/31/97.

EPA ICR No. 1056.05; Information Requirements for Nitric Acid Plants—NSPS Subpart G; was approved 12/29/94; OMB No. 2060–0019; expires 12/31/97.

EPA ICR No. 1503.02; Data Acquisition for Registration; was approved 11/16/94; OMB No. 2070–0122; expires 11/30/97.

EPA ICR 1582.02; Compliance Extension for Early Reductions; was approved 11/20/94; OMB No. 2060–0222; expires 11/30/97.

EPA ICR No. 1593.02; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers at Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; was approved 11/09/94; OMB No. 2060–0318; expires 11/30/97.

EPA ICR No. 1694.01; Clean Fuel Fleet Program Requirements for Vehicle Conversion and the California Pilot Test Program; was approved 12/20/94; OMB No. 2060–0314; expires 06/30/95.

EPA ICR No. 1246.04; EPA Asbestos Worker Protection Rule Revision; was approved 12/20/94; OMB No. 2070–0072; expires 12/31/95.

OMB Extensions of Expiration Dates

EPA ICR No. 0794.06; Notification of Substantial Risk of Injury to Health and the Environment under Section 8(E) of the Toxic Substances Control Act (TSCA); OMB No. 2070–0046; expiration date extended to 03/31/95.

EPA ICR No. 0370.12; Underground Injection Control Facility and Well Inventory Information; OMB No. 2040–0042; expiration date extended to 06/30/95.

EPA ICR No. 1590.01; California Pilot Test Program: Vehicle Credit Program; OMB No. 2060–0229; expiration date extended to 05/31/95.

EPA ICR No. 0186.06; NESHAP for Vinyl Chloride (Subpart F) Information Collection; OMB No. 2060–0071; expiration date extended to 06/30/95.

EPA ICR No. 0959.06; Facility Ground-Water Monitoring Requirements; OMB No. 2050–0033; expiration date extended to 05/30/95.

EPA ICR No. 1381.03; Recordkeeping/Reporting Requirements for Compliance with the 40 CFR 258 Solid Waste Disposal Facility Criteria; OMB No. 2050–0122; expiration date extended to 06/30/95.

EPA ICR No. 1603.01; Lead-Based Paint Abatement and Repair and Maintenance Study in Baltimore; OMB No. 2070–0123; expiration date extended to 06/30/95.

Dated: January 26, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–2336 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5147–5]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on December 23, 1994, the Environmental Protection Agency received an application from Environment S.A., 111 bd. Robespierre, 78300 Poissy, France, to determine if their Model AC31M Nitrogen Oxides Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–2309 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Gainesville Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 24, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Gainesville Bancshares, Inc., Gainesville, Missouri; to acquire 100 percent of the voting shares of Douglas County Bancshares, Inc., Ava, Missouri, and thereby indirectly acquire Douglas County National Bank, Ava, Missouri.

2. Mercantile Bancorporation Inc., and Mercantile Bancorporation Inc. of Arkansas, both of St. Louis, Missouri; to acquire 100 percent of the voting shares of TCBankshares, Inc., North Little Rock, Arkansas; and thereby indirectly acquire Twin City Bank, North Little Rock, Arkansas; First National Bank of Crawford County, Van Buren, Arkansas; First National Bank of Conway County, Morrilton, Arkansas; First Ozark National Bank, Flippin, Arkansas; First

National Bank of Cleburne County, Heber Springs, Arkansas, and TCB The Community Bank of Arkansas, N.A., Batesville, Arkansas.

In connection with this application, Mercantile Bancorporation Inc. of Arkansas, St. Louis, Missouri, has applied to become a bank holding company.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Mountain Parks Financial Corporation, Denver, Colorado; to acquire 100 percent of the voting shares of Financial Holdings, Inc., Louisville, Colorado, and thereby indirectly acquire The Bank of Louisville, Louisville, Colorado, and Boulder Valley Bank & Trust, Boulder, Colorado.

Board of Governors of the Federal Reserve System, January 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2302 Filed 1–30–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010395 AND 011395

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
United Asset Management Corporation, Provident Investment Counsel, Provident Investment Counsel	95–0562	01/04/95
Providence Media Partners L.P., Estate of Charles A. Sammons, Sammons Communications of New York, Inc	95–0619	01/04/95
First Data Corporation, State Mutual Life Assurance Company of America, 440 Financial Group of Worcester, Inc	95–0639	01/04/95
The Broken Hill Proprietary Company Limited, North Star BHP Steel, L.L.C., North Star BHP Steel, L.L.C	95–0659	01/04/95
Century Communications Corp., Rock Associates Incorporated, Rock Associates Incorporated	95–0665	01/04/95
Cisco Systems, Inc., Bolt Beranek and Newman, Inc., LightStream Corporation	95–0673	01/04/95
The Atlantic Foundation, GT Interactive Software Corp., GT Interactive Software Corp	95–0679	01/04/95
The Earth Technology Corporation (USA), HazWaste Industries Incorporated, HazWaste Industries Incorporated	95–0680	01/04/95
Alltel Corporation, Alltel Corporation, Fort Smith MSA Limited Partnership	95–0702	01/04/95
Handleman Company, Mr. Amos Alter, Madacy Music Group, Inc	95–0710	01/04/95
Shawmut National Corporation, Barclays Bank PLC, Barclays Business Credit Inc	95–0711	01/04/95
Sumner M. Redstone, Ronald O. Perelman, New World Communications of Boston, Inc	95–0721	01/04/95
SASIB S.p.A., Figgie International, Inc., Figgie Packaging Systems	95–0738	01/04/95
Arctic Slope Regional Corporation, Puget Corporation, Puget Corporation	95–0739	01/04/95
The Wharf (Holdings) Limited, Shoreham Hotel Limited Partnership, The Shoreham Hotel	95–0750	01/04/95
Berisford International plc, Welbilt Corporation, Welbilt Corporation	95–0757	01/07/95
Dresser Industries, Inc., Kerr-McGee Corporation, Kerr-McGee Corporation	95–0736	01/09/95
Nabors Industries, Inc., Gordon P. Getty, Delta Drilling Company	95–0743	01/09/95
UtiliCorp United Inc., Wascana Energy Inc., Broad Street Oil & Gas Co	95–0751	01/09/95
Winterthur Swiss Insurance Company, Jefferson-Pilot Corporation, Jefferson-Pilot Fire & Casualty Company	95–0764	01/09/95
Century Communications Corp., ML Media Partners, L.P., ML Media Partners, L.P	95–0676	01/10/95
Golder, Thoma, Cressey, Rauner Fund IV, L.P., Allen J. Nesbitt, Lason Systems, Inc	95–0716	01/11/95
The Bisys Group, Inc., Concord Holding Corporation, Concord Holding Corporation	95–0733	01/11/95
General Electric Company, Bruce R. McGrath, Elder Equipment Leasing, Inc	95–0752	01/11/95
Thermo Electron Corporation, Compagnie Financiere de Paribas, Engineering Technology Inc., Knowledge Corporation	95–0766	01/11/95
Federal Express Corporation, Delta Air Lines, Inc., Delta Air Lines, Inc	95–0771	01/11/95
Charter Oak Partners, SiMETCO, Inc., SiMETCO, Inc	95–0806	01/11/95
Guy P. Gannett Trust, VS&A Communications Partners, L.P., Hughes Broadcasting Partners	95–0681	01/12/95
Rochester Telephone Corporation, Steven C. Simon, American Sharecom, Inc	95–0701	01/12/95
Steven C. Simon, Rochester Telephone Corporation, Rochester Telephone Corporation	95–0703	01/12/95
James J. Weinert, Rochester Telephone Corporation, Rochester Telephone Corporation	95–0704	01/12/95
Rochester Telephone Corporation, WCT Communications, Inc., WCT Communications, Inc	95–0715	01/12/95
K–III Communications Corporation, VS&A Communications Partners, L.P., PJS Publications, Inc	95–0723	01/12/95
Fremont General Corporation, The Continental Corporation, Casualty Insurance Company	95–0747	01/12/95
Loews Corporation, The Continental Corporation, The Continental Corporation	95–0755	01/12/95
Micron Technology, Inc., ZEOS International, ZEOS International	95–0775	01/12/95
Loews Corporation, CBS Inc., CBS Inc	95–0781	01/12/95
Furon Company, Custom Coating & Laminating Corporation, Custom Coating & Laminating Corporation	95–0687	01/13/95
Rock-Tenn Company, Alliance Display and Packaging Company, Alliance Display and Packaging Company	95–0709	01/13/95
WHX Corporation, Teledyne, Inc., Teledyne, Inc	95–0722	01/13/95
American Stores Company, A.D. Clark, Inc., A.D. Clark, Inc	95–0730	01/13/95
Marshall S. Cogan, Henry Crown and Company, CHF Industries, Inc	95–0759	01/13/95
Canadian Pacific Limited, Canadian Pacific Limited, Shawnee Mall Associates Limited Partnership	95–0768	01/13/95
ZENECA Group PLC, Salick Health Care, Inc., Salick Health Care, Inc	95–0772	01/13/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010395 AND 011395—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Gemina S.p.A, Marco Rivetti/Giovanna Rivetti, Gruppo Finanziario Tessile, S.p.A	95–0774	01/13/95
Vestar Equity Partners, L.P., Astrum International Corporation, Anvil Knitwear division	95–0778	01/13/95
Code, Hennessy & Simmons II, L.P., Harold Kay, Whitney Corr-Pak International	95–0791	01/13/95
Code, Hennessy & Simmons II, L.P., J. Anton Schiffenhaus, Whitney Corr-Pak International	95–0792	01/13/95
Code, Hennessy & Simmons II, L.P., Laurence C. Schiffenhaus, Whitney Corr-Pak International	95–0793	01/13/95
CRH plc, Arizona Block Manufacturing, Inc., Superlite Block	95–0794	01/13/95
CRH plc, CRH plc, Superlite Block	95–0799	01/13/95
Sodexho S.A., Gardner Merchant Services Group Limited, Gardner Merchant Services Group Limited	95–0800	01/13/95
Apache Corporation, Texaco Inc., Texaco Exploration and Production Inc	95–0803	01/13/95
United Parcel Service of America, Inc., Ray R. Thurston, Sonic Couriers of Arizona, Inc., and Sonic Telex	95–0813	01/13/95
Ray R. Thurston, United Parcel Service of America, Inc., United Parcel Service of America, Inc	95–0814	01/13/95
Champion Enterprises, Inc., Chandeleur Homes, Inc., Chandeleur Homes, Inc	95–0815	01/13/95
Champion Enterprises, Inc., Crest Ridge Homes, Inc., Crest Ridge Homes, Inc	95–0816	01/13/95
Southern New England Telecommunications Corporation, Bell Atlantic Corporation, Bell Atlantic Corporation	95–0818	01/13/95
The Ho Family Trust, Gus A. Paloian (Trustee in Bankruptcy), LeMeridien Chicago Hotel	95–0819	01/13/95
AmeriChoice Corporation, Beatrice Welters, Atlantic Systems, Inc	95–0825	01/13/95
Beatrice Welters, AmeriChoice Corporation, AmeriChoice Corporation	95–0826	01/13/95
Edgar Rios, AmeriChoice Corporation, AmeriChoice Corporation	95–0827	01/13/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–2303 Filed 1–30–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3547]

The American Tobacco Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Connecticut-based company from disseminating advertising, for Carlton or any other cigarettes, that represents that consumers will get less tar or nicotine by smoking any number of cigarettes of any of its brands than by smoking one or more cigarettes of any other brand, unless such representations are both true and substantiated by competent and reliable scientific evidence.

DATES: Complaint and Order issued January 3, 1995.[1]

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler or Shira Modell, FTC/S–4002 Washington, D.C. 20580. (202) 326–3090 or 326–3116.

SUPPLEMENTARY INFORMATION: On Thursday, October 13, 1994, there was published in the **Federal Register**, 59 FR 51980, a proposed consent agreement with analysis In the Matter of The American Tobacco Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–2304 Filed 1–30–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–1010]

Armstrong Cork Company; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1965 consent order that settled allegations that the respondent engaged in resale price-maintenance, and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued November 3, 1965. Set aside order issued December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Armstrong Cork Company. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

In the Matter of: Armstrong Cork Company, a corporation, Docket No. C–1010.

Order Reopening Proceeding and Setting Aside Order

On September 6, 1994, Armstrong World Industries, Inc. (''Armstrong''), the successor to Armstrong Cork Company, filed a Petition to Reopen Proceedings and Set Aside Order (''Petition'') in this matter. Armstrong requests that the Commission set aside the 1965 consent order in this matter pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued July 22, 1994, published at 59 Fed. Reg. 45,286–92 (Sept. 1, 1994) (''Sunset Policy Statement''). In the Petition, Armstrong affirmatively states that it has not engaged in any conduct violating the terms of the order. The

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Request was placed on the public record, and the thirty-day comment period expired on October 14, 1994. No comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.'' [1] The Commission's order in Docket No. C–1010 was issued on November 3, 1965, and has been in effect for more than twenty-nine years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. C–1010.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. C–1010 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–2305 Filed 1–30–95; 8:45 am]

BILLING CODE 6750–01–M

[1] *See* Sunset Policy Statement, 59 Fed. Reg. at 45,289.

[File No. 922 3212]

Formu-3 International, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Ohio weight-loss centers from making false and unsubstantiated weight-loss and weight-loss maintenance claims, and from misrepresenting the price of the program in any way, and would require the respondents to make certain disclosures in conjunction with weight-loss and safety maintenance claims in the future.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Brenda Doubrava, Cleveland Regional Office, Federal Trade Commission, 520–A Atrium Office Plaza, 668 Euclid Ave., Cleveland, Ohio 44114–3006. (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Formu-3 International, Inc., a corporation, Formu-3 of Northern Ohio, Inc., a corporation, and Formu-3 of Southern Ohio, Inc., a corporation, File No. 922 3212.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Formu-3 International, Inc., a corporation, Formu-3 of Northern Ohio, Inc., a corporation, and Formu-3 of Southern Ohio, Inc., a corporation (''proposed respondents''), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Formu-3 International, Inc., a Formu-3 of Northern Ohio, Inc., and Formu-3 of Southern Ohio, Inc., by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents Formu-3 International, Inc., Formu-3 of Northern Ohio, Inc., and Formu-3 of Southern Ohio, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio. The principal place of business of all three corporations is located at 4790 Douglas Circle NW., Canton, Ohio 44718.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the

Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the draft complaint and the Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence, based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. ''Weight loss program'' shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A ''broadcast medium'' shall mean any radio or television broadcast, cablecast, home video or theatrical release;

D. For any Order-required disclosure in a print medium to be made ''clearly and prominently'' or in a ''clear and prominent'' manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is small than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made ''clearly and prominently'' or in a ''clear and prominent manner'', the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

E. A ''short broadcast advertisement'' shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is Ordered that respondents, Formu–3 International, Inc., a corporation, Formu–3 of Northern Ohio, Inc., a corporation, and Formu–3 of Southern Ohio, Inc., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

1. Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants using the program, said evidence shall, at a minimum, be based on a representative sample of:

a. All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

b. All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

2. Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

3. Any weight loss is maintained permanently said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

a. Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

b. Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: ''For many dieters, weight loss is temporary.''; provided, further that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

1. The Average percentage of weight loss maintained by those participants;

2. The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

3. If the participant population referred to is not representative of the general participant population for respondents' programs:

a. The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

b. The statement: ''Form-You-3 Weight Loss Centers makes no claim that this [these] result[s] is [are] representative of all participants in the Form-You-3 Weight Loss Centers program.'';

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation

about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

1. Include, clearly and prominently, and in immediate conjunction with such representation, the statement: ''Check at our centers for details about our maintenance record.'';

2. For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

a. Give to each potential client a separate document entitled ''Maintenance Information,'' which shall include all the information required by paragraph I.B. and subparagraphs I.C.1–3 of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D.2 shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here _____.]

For many dieters, weight loss is temporary.

I have read this notice.

_____
(Client Signature)

_____
(Date)

b. Require each potential client to sign such document; and

c. Give each client a copy of such document; and

3. Retain in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as ''most of our customers maintain their weight loss long-term''; and

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants in respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

1. What the generally expected success would be for Form-You-3 Weight Loss Centers customers in losing weight or maintaining achieved weight loss; provided, however, that in determining the generally expected success for Form-You-3 Weight Loss Centers customers, respondents may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

2. One of the following statements:

a. ''You should not expect to experience these results.''

b. ''This result is not typical. You may not do as well.''

c. ''This result is not typical. You may be less successful.''

d. ''_____'s success is not typical. You may not do as well.''

e. ''_____'s experience is not typical. You may achieve less.''

f. ''Results not typical.''

g. ''Results not typical of program participants.'';

provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure; and

provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E.1. by accurately disclosing the generally expected success in the following phrase: ''Form-You-3 Weight Loss Centers clients lose an average of _____ pounds over an average _____ - week treatment period''; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E.1. or 2. herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, the average or typical rate or speed at which participants or prospective participants in any weight loss program have lost or will lose weight, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

G. Representing, directly or by implication, that participants or prospective participants in respondents' weight loss programs have reached or will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

G. Representing, directly or by implication, that participants or prospective participants in respondents' weight loss programs have reached or will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

H. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two

consecutive weeks, or (2) in writing to all participants, when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

I. Representing, directly or by implication, the daily, weekly, or monthly price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, and in close proximity to such representation, either: (1) The number of days, weeks, or months participants will be obligated to pay the weekly price represented; or (2) the total cost of the weight loss program;

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

J. Misrepresenting, directly or by implication, the competence, skill, training, credentials or expertise of any of respondents' employees or any of the employees of respondents' franchisees.

K. Misrepresenting, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of calories, fat, or any other nutrient or ingredient in any food product, or otherwise misrepresenting the performance, efficacy, safety, nutritional composition, or benefits of any food or drug, as those terms are defined in Section 15 of the Federal Trade Commission Act.

L. Misrepresenting, directly or by implication, the performance, efficacy, price, or safety of any weight loss program.

II

Nothing in this Order shall prohibit respondents from making any representation that is specifically permitted in labeling for any such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, or by nutrition labeling regulations promulgated by the Department of Agriculture pursuant to the Federal Meat Inspection act or the Poultry Products Inspection Act.

III

Nothing in this Order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IV

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

V

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VI

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees, who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VII

It is further ordered that:

A. Respondent Formu-3 International, Inc., shall distribute a copy of this Order to each of its franchises and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondent may satisfy this contractual requirement by incorporating such Order requirements into its current Operations Manual; and

B. Respondent Formu-3 International, Inc., shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the Order provisions; respondent may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

Provided, however, that respondent Formu-3 International, Inc.'s compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondent's franchisees or licensees that violates this Order where respondent: a) has not authorized, approved or ratified that conduct; b) has reported that conduct promptly to the Federal Trade Commission under this Part; and c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the Order, has diligently pursued reasonable and appropriate remedies available under the franchise or license agreement and applicable state law to bring about cessation of that conduct by the franchisee or licensee.

VIII

It Is Further Ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Formu-3 International, Inc., Formu-3 of Northern Ohio, Inc., and Formu-3 of Southern Ohio, Inc., (hereinafter referred to collectively as ''Formu-3''), marketers of the Formu-You-3 (or ''Formu-3'') Weight Loss Centers' low-calorie diet program. The Formu-3 diet program is offered to the public throughout much of the United States through centers franchised by Formu-3 International, Inc., and through centers owned by

Formu-3 of Northern Ohio, Inc., and Formu-3 of Southern Ohio, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) Their diet program's success in helping customers achieve and maintain weight loss; (2) the rate at which customers will lose weight; (3) the time frame within which consumers will achieve their desired weight loss goals; (4) the purchase price of the Formu-3 program; (5) the benefits to dieters of the food products Formu-3 sells; and (6) the qualifications and expertise of counselors employed at Formu-3 weight loss centers. The complaint also alleges that Formu-3 engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet protocol.

Success

The complaint against Formu-3 alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, Formu-3 represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the Formu-3 diet program long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because Formu-3, at the time it made the claims, did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) all participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondents for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that ''For many dieters, weight loss is temporary'' (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (*e.g.*, ''60% of achieved weight loss was maintained''),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—*e.g.*, ''participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)'', and

(3) Where the participant population referred to is not representative of the general participant population for the program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage of actual numbers of participants—e.g. ''Participants on maintenance—30% of our customers—kept off an average of 66% of the weight for one year (includes time on maintenance program)'' or, in lieu of that factual disclosure, the statement: ''Form-You-3 Weight Loss Centers makes no claim that this result is representative of all participants in the Form-You-3 Weight Loss Centers program.''

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that Formu-3, in lieu of making the factual disclosures required for such claims by Part I.C:

(1) Include in such advertisements the statement ''Check at our centers for details about our maintenance record.''; and

(2) Provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C, which form must be signed by the client and retained in the company's client file. If any potential participant who does not then participate in the program refused to sign or accept a copy of such document, respondent shall so indicate on such document.

The proposed order makes clear that this alternative disclosure requirement does not relieve Formu-3 of the obligation to substantiate any maintenance success claim, in accordance with Part I.A of the order, and it ''takes back'' the exception from full quantitative disclosures in short broadcasting advertising if Formu-3 makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as ''most of our customers maintain their weight loss long term.'' Formu-3 in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what Formu-3 diet program participants generally achieve, the order (Part I.E.) requires that Formu-3 disclose either what the generally expected success would be for Formu-3 customers, or one of several alternative statements, such as ''This result is not typical. You may be less successful,'' which explains the limited applicability of atypical testimonials in accordance with the Commission's ''Guides Concerning Use

of Endorsements and Testimonials in Advertising'' 16 C.F.R. 255.2 (a). Under the proposed order, Formu-3 may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: ''Form-You-3 Weight Loss Centers clients lose an average of _____ pounds over an average _____ - week treatment period.''

Finally, the proposed order (Part I.L.) generally prohibits Formu-3 from misrepresenting the performance or efficacy of any weight loss program.

Rate of Weight Loss

The Commission's complaint further alleges that Formu-3 failed to possess a reasonable basis for claims it made concerning the rate of weight loss for participants in its program and that the rate of weight loss claims it made were false.

The proposed consent order addresses these practices (Part I.F.) by prohibiting Formu-3 from representing that participants in its program will lose weight at an average or typical rate or speed unless Formu-3 possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Projection of Weight Loss

The Commission's complaint also alleges that Formu-3 failed to possess a reasonable basis for its claim, made during initial sales presentations, that consumers will typically reach their desired weight-loss goals within the time frame computed by Formu-3 personnel.

To address this practice, the proposed order (Part I.G.) prohibits Formu-3 from representing that prospective participants will reach a specified weight within a specified period of time, unless proposed respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

Price

The Commission's complaint against Forum-3 also alleges that Formu-3 failed to disclose adequately to consumers the total price of the diet program.

The proposed consent order seeks to address the practice in two ways. First, Part I.I. of the proposed order prohibits Formu-3 from advertising a daily, weekly or monthly price for its program unless it also discloses: (1) the number of days, weeks or months participants will be required to pay the advertised price; or (2) the total cost of the weight loss program. Second, Part I.L. of the order prohibits Formu-3 from misrepresenting the price of the program in any way.

Monitoring Practices

According to the complaint, Formu-3 provides its customers with diet protocols that require customers to come in to one of proposed respondents' centers three times per week for monitoring of their progress, including weighing-in. In the course of regularly ascertaining weight loss progress, respondents, in some instances, are presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that Formu-3 has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.H.) requires Formu-3 to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.L.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

Certified Counselors

The Commission's complaint also charges that Formu-3 falsely claimed counselors employed in its diet centers are certified by an objective evaluation process in the treatment of obesity.

The order seeks to address this practice by prohibiting Formu-3 from misrepresenting the competence, training or expertise of any of its employees or employees of its franchisees. (Part I.J.)

Benefits of Food Products

The complaint alleges that Formu-3 misrepresented the benefits to dieters of the food products it sells. To remedy this practice, the order (Part I.K.) prohibits respondents from misrepresenting the existence or amount of calories, fat or any other nutrient or ingredient in any food product, or the benefits of any such product.

Parts II. and III. of the order allow respondents to make claims about food products and drugs that are specifically permitted in labeling by regulations of the Food and Drug Administration or the Department of Agriculture pursuant to statutes administered by those agencies.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–2306 Filed 1–30–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0124]

Nestle Food Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, Nestle, a California-based manufacturer, to complete its planned acquisition of Alpo PetFoods, but would require that it divest the Fort Dodge, Iowa, manufacturing plant within twelve months. The consent agreement also would require Nestle to obtain prior Commission approval of the divestiture and if not completed on time, would permit the Commission to appoint a trustee to complete the transaction. In addition, the consent agreement would require Nestle, for ten years, to obtain Commission approval before acquiring stock in any entity engaged in, or assets used for, manufacturing canned cat food in the United States.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Stephen Riddell, FTC/S–2105, Washington, DC 20580. (202) 326–2610 or 326–2721.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's

Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Nestle Food Company, a corporation, File No. 941–0124.

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated and investigation of the proposed acquisition by Nestlé Food Company (''Nestlé''), a direct wholly-owned subsidiary of Nestlé Holdings, Inc., a wholly-owned subsidiary of Nestlé S.A., of certain assets of Allen Products Company, Inc., d/b/a ALPO PetFoods, and its subsidiaries (''Alpo''), a wholly-owned subsidiary of Grand Metropolitan Incorporated (''Grand Metropolitan''), and it now appearing Nestlé, hereinafter referred to as proposed respondent, and Nestlé S.A. are willing to enter into an Agreement Containing Consent Order (''Agreement'') to divest certain assets, to cease and desist from making certain acquisitions, and providing for other relief:

It Is Hereby Agreed By And Between Nestlé and Nestlé S.A. by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 800 North Brand Boulevard, Glendale, California 91203.

2. Nestlé S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its principal executive offices located at Avenue Nestlé 55, Ch-1800 Vevey, Switzerland.

3. Nestlé and Nestlé S.A. admit all the jurisdictional facts set forth in the draft of Complaint.

4. Nestlé and Nestlé S.A. waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

6. This Agreement is for settlement purposes only and does not constitute an admission by Nestlé or Nestlé S.A. that the law has been violated as alleged in the draft of Complaint, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Nestlé S.A., (1) issue its Complaint corresponding in form and substance to the draft of Complaint and its Decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and decision containing the agreed-to Order to Nestlé's address as stated in this Agreement shall constitute service. Nestlé waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Nestlé and Nestlé S.A. have read the proposed Complaint and Order contemplated hereby. Nestlé understands that once the Order has been issued, it will be required to file one or more compliance reports showing that they have fully complied with the Order. Nestlé and Nestlé S.A. further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

A. ''Respondent'' or ''Nestlé'' means Nestlé Food Company, its parent Nestlé S.A., predecessors, subsidiaries, divisions, and affiliates and groups controlled by Nestlé Food Company, their directors, officers, employees, agents, and representatives, and their successors and assigns.

B. ''Nestlé S.A.'' means Nestlé S.A., its predecessors, subsidiaries, divisions, and affiliates and groups controlled by Nestlé S.A., their directors, officers, employees, agents, and representatives, and their successors and assigns.

C. ''Alpo'' means Allen Products Company, Inc., its predecessors, subsidiaries, divisions, and affiliates and groups controlled by Allen Products Company, Inc., their directors, officers, employees, agents, and representatives, and their successors and assigns.

D. ''Acquisition'' means the acquisition by Nestlé from Alpo of certain assets of Alpo, as described in an Asset Purchase Agreement dated September 16, 1994.

E. ''Commission'' means the Federal Trade Commission.

F. The ''assets to be divested'' or ''Fort Dodge Plant'' means the following assets used in the manufacture of canned pet food, which assets are located at 2400 5th Avenue South, Fort Dodge, Iowa 50501:

a. All buildings, machinery, fixtures, equipment, vehicles, storage facilities, furniture, tools, supplies, spare parts and other tangible personal property;

b. All rights, title and interest in and to real property, together with appurtenances, licenses, and permits;

c. All rights under warranties and guarantees for equipment, express or implied;

d. All on site quality control equipment, including all supplies and technical information and drawings concerning the equipment; and

e. At the option of the Acquirer, to the extent such can be assigned to the Acquirer without third party consent, all rights, title, and interests in and to the contracts entered into in the ordinary course of business with suppliers, personal property lessors and

licensors, pertaining solely to the operation of the Fort Dodge Plant.

Provided, however, that excluded from the assets to be divested are: (i) Meat chunk sizer equipment that is proprietary to Nestlé and/or Nestlé S.A., and (ii) all inventory of finished goods, work in progress, raw materials and supplies used only in the production of finished goods.

G. ''Fort Dodge Plant Employees'' means all Nestlé employees based at the Fort Dodge Plant location as of the date of divestiture.

H. ''Optional Assets'' means any or all of Alpo's recipes for private label canned pet food that may be licensed without the consent of any third party and that were in existence as of September 16, 1994.

II

It Is Further Ordered that:

A. Nestlé shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Fort Dodge Plant.

B. Nestlé shall divest the Fort Dodge Plant only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Fort Dodge Plant is to ensure the continued use of the Fort Dodge Plant in the manufacture and production of canned cat food and to remedy the lessening of competition alleged in the Commission's complaint.

C. Pending divestiture of the Fort Dodge Plant, Nestlé shall take such actions as are reasonably necessary to maintain the viability and marketability of the assets to be divested and to prevent the destruction, removal, wasting, deterioration, or impairment of any assets that are subject to divestiture pursuant to this Order except for ordinary wear and tear.

D. Nestlé shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as Nestlé has divested all of the assets to be divested.

E. Nestlé shall facilitate and not interfere with the Acquirer's hiring of any Fort Dodge Plant Employees as may desire to undertake such employment.

III

It Is Further Ordered that:

A. If Nestlé has not divested, absolutely and in good faith and with the Commission's prior approval, the Fort Dodge Plant within twelve (12) months of the date this Order becomes final, the Commission may appoint a trustee to divest the assets to be divested. The trustee shall also have the authority, with the prior approval of the Commission, to license the Optional Assets on a non-exclusive basis to the Acquirer for a period not to exceed five (5) years from the date of the divestiture of the Fort Dodge Plant. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Nestlé shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other available relief, including a court-appointed trustee, pursuant to section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Nestlé or Nestlé S.A. to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Nestlé shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Nestlé, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisition and divestitures of manufacturing facilities. If Nestlé has not opposed, in writing, the selection of any proposed trustee within ten (10) days after its receipt of notice by the staff of the Commission to Nestlé of the identity of any proposed trustee, Nestlé shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Fort Dodge Plant and have the authority to grant to the Acquirer a non-exclusive license of Optional Assets, as described in Paragraph III.A.; for a period not to exceed five (5) years from the date of the divestiture of the Fort Dodge Plant, to facilitate the divestiture.

3. Within ten (10) days after appointment of the trustee, Nestlé shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers reasonably necessary to permit the trustee to effect the divestiture required by this Order, and, if appropriate, the license of Optional Assets.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.(3) to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that the divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the court in the case of a court-appointed trustee; provided, however, the Commission may only extend the divestiture period two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records (to the extent not prohibited by law) and facilities related to the Fort Dodge Plant, the Optional Assets, or to any other relevant information, as the trustee may request. Nestlé shall develop such financial or other information as such trustee may request and shall cooperate with any request of the trustee. Nestlé and Nestlé S.A. shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Fort Dodge Plant or the license of the Optional Assets. Any delays in divestiture caused by Nestlé or Nestlé S.A. shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or by the court for a court-appointed trustee.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Nestlé, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Nestlé, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary, and at reasonable fees, to carry out the trustee's

duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Nestlé, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the Fort Dodge Plant.

8. Nestlé shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Fort Dodge Plant.

12. The trustee shall report in writing to Nestlé and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It Is Further Ordered that, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Nestlé has fully complied with the provisions of Paragraph II or III of this order, Nestlé shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Nestlé shall include in its compliance reports, among other things that are required from time to time, a full description of all efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identities of all parties contacted. Nestlé also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

V

It Is Further Ordered that, for a period of ten (10) years from the date this Order becomes final, Nestlé and Nestlé S.A. shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in manufacturing or producing canned cat food in the United States; or

2. acquire any assets which are located in the United States and which are used, or previously used (and still suitable for use) in the manufacture or production of canned cat food from any other manufacturer or producer of canned cat food in the United States.

Provided, however, that this Paragraph V. shall not apply to the acquisition of products or services in the ordinary course of business.

It is Further Ordered that, one year from the date this Order becomes final, annually for nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Nestlé shall file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with Paragraph V. this Order.

VII

It Is Further Ordered that, for the purpose of determining or securing compliance with this Order and subject to any legally recognized privilege or restriction, Nestlé and Nestlé S.A. shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Nestlé relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Nestlé or Nestlé S.A., and without restraint or interference from them, to interview their officers or employees, who may have counsel present, regarding such matters.

VIII

It Is Further Ordered that, Nestlé and Nestlé S.A. shall notify the Commission at least thirty (30) days prior to any proposed change in Nestlé or Nestlé S.A. such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of domestic subsidiaries or any other change that may affect compliance obligations arising out of this Order.

Appendix I—United States of America Before The Federal Trade Commission

In the matter of Nestle Food Company, a corporation, File No. 941–0124.

Asset Maintenance Agreement

This Asset Maintenance Agreement (''Agreement'') is by and between Nestlé Food Company (''Nestlé''), a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal executive offices located at 800 North Brand Boulevard, Glendale, California 91203, and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively, the ''Parties'').

Premises

Whereas, on September 16, 1994, Nestlé entered into an Agreement to acquire certain assets (hereinafter ''Acquisition'') from Allen Products Company, Inc., d/b/a ALPO PetFoods and its subsidiaries (''Alpo''); and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Order''), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the Fort Dodge Plant, as defined in Paragraph I.F. of the Consent Order, and the Optional Assets, as defined in Paragraph I.H. of the Consent Order, during the period prior to the Commission's issuance of its Decision and Order (after the 60-day comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be

possible, or might be a less than effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Fort Dodge Plant and, if appropriate, the license of the Optional Assets and to preserve the Commission's right to seek to have the Fort Dodge Plant continue as a viable concern; and

Whereas, the purpose of this Agreement is to:

A. Preserve the Fort Dodge Plant as a viable, ongoing concern engaged in canned cat food manufacture in which it is presently engaged until divestiture is achieved; and

B. Maintain and make certain improvements to the Fort Dodge Plant to ensure it can be effectively divested as a viable independent facility engaged in the manufacture and production of canned cat food; and

C. Preserve the Optional Assets pending the divestiture of the Fort Dodge Plant or, if required under the Consent Order, the license of the Optional Assets; and

D. Preserve a remedy for any anticompetitive effects of the Acquisition; and

Whereas, Nestlé's entering into this Agreement shall in no way be construed as an admission by Nestlé that the Acquisition is illegal or anticompetitive; and

Whereas, Nestlé understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from Nestlé with respect to the Acquisition (except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event that the divestiture required in Paragraph II of the Consent Order is not accomplished, to appoint a trustee to seek divestiture of the Fort Dodge Plant and, if required, the license of the Optional Assets), the Parties agree as follows:

1. Nestlé agrees to execute and be bound by the Consent Order. Nestlé and the Commission further agree that each term defined in the Consent Order shall have the same meaning in this Agreement.

2. Nestlé agrees that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 2.a. and 2.b., it will comply with the provisions of Paragraph 3. of this Agreement:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules; or

b. The time that the divestiture required by the Consent Order is completed.

3. Nestlé shall maintain and preserve the viability and marketability of the Fort Dodge Plant and the Optional Assets on the following terms and conditions:

a. Nestlé shall continue to provide the Fort Dodge Plant with such support services as provided by Nestlé prior to the Acquisition.

b. Nestlé shall take all necessary steps to ensure that the Fort Dodge Plant is staffed with sufficient employees to maintain the viability and marketability of the Fort Dodge Plant.

c. Nestlé shall take all necessary steps to maintain the production capability of the Fort Dodge Plant in a condition at least equal to that existing as of the date of this Agreement (''Current Condition''). Nestlé shall continue to make all expenditures necessary to maintain the Fort Dodge Plant in its Current Condition. Nestlé shall maintain the Fort Dodge Plant in accordance with Nestlé usual standards of plant maintenance.

d. Nestlé shall complete all capital improvements in the Fort Dodge Plant that were initiated prior to the date of this Agreement.

e. Nestlé shall take all necessary steps to ensure that the Fort Dodge Plant is furnished with all the equipment, machine parts and other assets necessary to produce canned pet food in can sizes in the range of: (1) Five (5) to six (6) ounces; and (ii) thirteen (13) to fourteen (14) ounces; and that such equipment, machine parts and other assets are in good working order.

f. Nestlé shall refrain from, directly or indirectly, selling, disposing of, or causing to be transferred any assets or property of the Fort Dodge Plant, except that Nestlé may sell or otherwise dispose of manufactured products in the ordinary course of business, and may replace and sell or dispose of assets or property in the course of fulfilling its maintenance and capital improvements obligations set forth above, and may sell the assets or property of the Fort Dodge Plant pursuant to Paragraph II of the Consent Order.

g. Nestlé shall refrain from mortgaging or pledging the assets of the Fort Dodge Plant or the Optional Assets pursuant to any loan transaction.

h. Nestlé shall maintain hazard insurance on the Fort Dodge Plant in the same manner as prior to this Agreement to provide for the facility's replacement.

i. Nestlé shall maintain separate cost books and records for the Fort Dodge Plant, and, upon request, shall make some available to the Commission. All such books, records and statements shall be kept in a manner consistent with Nestlé standard accounting practices. Nestlé shall provide the Commission with copies of all agreements entered into by Nestlé with third parties relating to any of the Optional Assets.

4. Should the Federal Trade Commission seek in any proceeding to compel Nestlé to divest itself of the Fort Dodge Plant or to license any Optional Assets, or to seek any other injunctive or equitable relief, Nestlé shall not raise any objection based on the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or the fact that the Commission has permitted the Acquisition. Nestlé also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Nestlé made to its principal office, Nestlé shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Nestlé and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Nestlé relating to compliance with this Agreement;

b. Upon five (5) days' notice to Nestlé and without restraint or interference from it, to interview officers or employees of Nestlé, who may have counsel present, regarding any such matters.

6. In the event the Commission has not finally issued the Consent Order within one hundred twenty (120) days of its publication in the **Federal Register**, Nestlé may, at its option, terminate this Agreement by delivering written notice of termination to the

Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including, but not limited to, an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement shall in no way operate to terminate the Consent Order that Nestlé has entered into in this matter.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment from Nestlé Food Company (''Nestlé''), an agreement containing a consent order to divest certain assets. The agreement is designed to remedy any anticompetitive effect stemming from Nestlé's acquisition of most of the assets of Allen Products Company, Inc., d/b/a ALPO PetFoods, and its subsidiaries (''Alpo''), a wholly-owned subsidiary of Grand Metropolitan Incorporated (''Grand Metropolitan). Nestlé is an indirect subsidiary of and controlled by Nestlé S.A.

The agreement has been placed on the public record for 60 days for reception of comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the order contained in the agreement.

The Commission's draft complaint charges that on or about September 16, 1994, Nestlé and its parent Nestlé S.A. agreed to acquire certain assets of Alpo, a wholly-owned subsidiary of Grand Metropolitan, for $510 million. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the draft complaint, Nestlé and Alpo are direct competitors in the United States market for the manufacture and production of canned cat food. According to the draft complaint, the market is highly concentrated and entry is difficult or unlikely. Nestlé acquisition of Alpo may reduce competition in the United States canned cat food market by eliminating the direct competition between Nestlé and Alpo, by increasing the likelihood that Nestlé will become a dominant firm, and by increasing the likelihood of collusive behavior among the few remaining significant competitors. Consequently, the acquisition may lead to higher prices for purchasers of canned cat food.

The agreement containing consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order, Nestlé must divest its canned cat food manufacturing facility located in Fort Dodge, Iowa, within twelve months, to a purchaser approved by the Commission. The assets to be divested included: (1) All rights to the real property, buildings, machinery, fixtures, equipment, furniture, tools, supplies and spare parts; (2) all warranties and technical information concerning the equipment; and (3) at the option of the purchaser, all supply contracts that Nestlé has the absolute right to assign. A separate asset maintenance agreement requires the respondent to maintain the assets that are to be divested in a marketable and viable condition pending divestiture.

If Nestlé fails to complete the divestiture within the twelve months, the Commission may appoint a trustee to divest the facility. In addition, at the option of the purchaser, the trustee is empowered to grant the purchaser a non-exclusive license to use any and all of Alpo's wholly-owned private label formulations for the manufacture of canned cat food. The license may extend up to five years.

For ten years, the agreement containing consent order also requires Nestlé to obtain Commission approval before acquiring either stock in another company engaged in, or assets used in, the manufacture or production of canned cat food in the United States.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or in any way to modify their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–2307 Filed 1–30–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3343]

Ninzu, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Maryland-based marketers to possess and rely upon competent and reliable scientific substantiating evidence to support any performance, benefits, efficacy, or safety claims they make for any weight loss or weight control product or program or any acupressure device they market in the future.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Brian Dahl, FTC/S–4002, Washington, DC 20580. (202) 326–3182.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

United States of America Before Federal Trade Commission

In the matter of Ninzu, Inc., Davish Merchandising, Inc., Order By Phone, Inc., corporations, and Michael B. Metzger, individually and as an officer and director of said corporations, File No. 932 3343.

Agreement containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/

b/a Auricle Clip, Inc., corporations; and Michael B. Metzger, individually and as an officer and director of said corporations, hereinafter sometimes referred to as proposed respondents, and it now is appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., by their duly authorized officer; and Michael B. Metzger, individually and as an officer and director of said corporations, and counsel for the Federal Trade Commission that:

1. Proposed respondent Ninzu, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Proposed respondent Davish Merchandising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Proposed respondent Order By Phone, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1 East Chase Street, Suite 200, in the City of Baltimore, State of Maryland.

Proposed respondent Michael B. Metzger is an officer and director of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations. He resides at 12135 Heneson Garth, Owings Mills, Maryland.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. The agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this Order:

1. ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by personal qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. ''Acupressure device'' shall mean any product, program, or service that is intended to function by means of the principles of acupressure.

I

It Is Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the Ninzu, Auricle Clip, B-Trim or any other acupressure device in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that

A. Such product causes significant weight loss;

B. Such product causes significant weight loss without the need to diet or exercise;

C. Such product controls appetite, eliminates a person's craving for food, or causes weight loss without the user feeling hungry; or

D. Such product is scientifically proven to cause significant weight loss and control appetite.

II

It Is Further Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection

with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy, or safety of such product, program, or device unless such representation is true and unless, at the time of making such representation, respondent possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III

It Is Further Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as ''endorsement'' is defined in 16 C.F.R. § 255.0(b) of the product, program, or device represents the typical of ordinary experience of members of the public who use the product, program, or device unless this is the case.

IV

It Is Further Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc., corporations, their successors and assigns, and their officers; Michael B. Metzger, individually and as an officer and director of said corporations; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

V

It Is Further Ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VI

It Is Further Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order By Phone, Inc. d/b/a Auricle Clip, Inc. shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of issuance of this Order, provide a copy of this Order to each of respondents' future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

VII

It Is Further Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order by Phone, Inc. d/b/a Auricle Clip, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

VIII

It Is Further Ordered that respondent, Michael B. Metzger, shall, for a period of five (5) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

IX

It Is Further Ordered that respondents, Ninzu, Inc., Davish Merchandising, Inc. d/b/a Davish Enterprises and Davish Health Products, and Order by Phone, Inc. d/b/a Auricle Clip, Inc., corporations, and Michael B. Metzger, individually and as an officer and director of said corporations, shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., Order By Phone, Inc. d/b/a Auricle Clip, Inc., and Michael B. Metzger.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising related to the sale of an acupressure device, marketed under the names Ninzu, Auricle Clip, and B-Trim, which

clips onto the ear. The Commission's Complaint charges that proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., Order By Phone, Inc. d/b/a Auricle Clip, Inc., and Michael B. Metzger falsely represented that: (1) The Ninzu, the Auricle Clip, and the B-Trim cause significant weight loss; (2) the Ninzu causes significant weight loss without the need to diet or exercise; (3) the Auricle Clip causes significant weight loss without the need to diet; (4) the Ninzu controls appetite and eliminates a person's craving for food; (5) the Auricle Clip controls appetite; and (6) the B-Trim reduces the user's craving for food and causes weight loss without the user feeling hungry.

The Complaint also alleges that proposed respondents falsely and misleadingly represented that they possessed and relied upon a reasonable basis when they made those claims. The Complaint further alleges that proposed respondents falsely represented that the Ninzu and Auricle Clip are scientifically proven to cause significant weight loss and control appetite. Finally, the Complaint alleges that proposed respondents falsely represented that testimonials from consumers appearing in advertisements for the Ninzu reflect the typical or ordinary experience of members of the public who have used the Ninzu.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondents from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that the Ninzu, Auricle Clip, B-Trim, or any other acupressure device: (1) Causes significant weight loss; (2) causes significant weight loss without the need to diet or exercise; (3) controls appetite, eliminates a person's craving for food, or causes weight loss without the user feeling hungry; or (4) is scientifically proven to cause significant weight loss and control appetite. The order defines ''acupressure device'' as ''any product, program, or service that is intended to function by means of the principles of acupressure.'' Part II requires proposed respondents to possess competent and reliable scientific evidence before making representations regarding the performance, benefits, efficacy, or safety of any weight-loss or weight-control product or program or any acupressure device. Part III prohibits proposed respondents from falsely claiming that endorsements or testimonials for any weight-loss or weight-control product or program or any acupressure device represent the typical or ordinary experience of members of the public who use the product, program, or device. Part IV prohibits proposed respondents from misrepresenting the results of tests or studies for any weight-loss or weight-control product or program or any acupressure device.

Part V requires proposed respondents to maintain, for five (5) years, all materials that support, contradict, qualify, or call into question any representations they make which are covered by the proposed order. Part VI requires proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., and Order By Phone, Inc. d/b/a Auricle Clip, Inc. to distribute a copy of the order to current and future principles, officers, directors, and managers, as well as to any employees having sales, advertising, or policy responsibility with respect to the subject matter of the order. Under Part VII of the proposed order, proposed respondents Ninzu, Inc. d/b/a Davish Enterprises and Davish Health Products, Davish Merchandising, Inc., and Order By Phone, Inc. d/b/a Auricle Clip, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures that may affect compliance with the order's obligations. Part VIII requires that proposed respondent Metzger, for a period of five (5) years, notify the Commission of any change in his business or employment. Part IX obliges proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 522]

State and Community-Based Childhood Lead Poisoning Prevention Program and Surveillance of Elevated Blood Lead Levels in Children, Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1995 for new and competing continuation State and community-based childhood lead poisoning prevention programs, and to build statewide capacity to conduct surveillance of elevated blood lead levels in children.

State and community-based programs must (1) assure that children in communities with demonstrated high-risk for lead poisoning are screened, (2) identify those children with elevated blood lead levels, (3) identify possible sources of lead exposure, (4) monitor medical and environmental management of lead poisoned children, (5) provide information on childhood lead poisoning and its prevention and management to the public, health professionals, and policy- and decision-makers, (6) encourage and support community-based programs directed to the goal of eliminating childhood lead poisoning, and (7) build capacity for conducting surveillance of elevated blood lead (PbB) levels in children.

Surveillance grants are to develop and implement complete surveillance systems for blood lead levels in children to ensure appropriate targeting of interventions and track progress in the elimination of childhood lead poisoning.

Applicants may apply for either a prevention program grant or a surveillance grant. Applicants applying for prevention grant funds must address surveillance issues in their application.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (To order a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247b-1) of the Public Health Service Act, as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal Funds in which education, library, day care, health care, and early childhood development services are provided to children.

Environmental Justice Initiative

Activities conducted under this announcement should be consistent with the Federal Executive Order No. 12898 entitled, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Grantees, to the greatest extent practicable and permitted by law, shall make achieving environmental justice part of its program's mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of lead on minority populations and low-income populations.

Eligible Applicants

Eligible applicants for State childhood lead poisoning prevention programs and surveillance programs are State health departments or other State health agencies or departments deemed most appropriate by the State to direct and coordinate the State's childhood lead poisoning prevention program, and agencies or units of local government that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. Also eligible are federally recognized Indian tribal governments.

Applicants from eligible units of local jurisdiction must elect to *either* apply directly to CDC as a grantee, or to apply as part of a statewide grant application. You cannot submit applications simultaneously through both mechanisms.

For Surveillance Funds only: Eligible applicants must have regulations for reporting of PbB levels by both public and private laboratories or provide assurances that such regulations will be in place within *six* months of awarding the grant. This program is intended to initiate and build capacity for surveillance of childhood PbB levels. Therefore, any applicant that already has in place a PbB level surveillance activity must demonstrate how these grant funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. CDC funds should be added to blood-lead surveillance funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for surveillance of PbB levels. Applicants other than State health departments must apply in conjunction with their State or territorial health department.

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided.

Applicants that currently have Childhood Lead Prevention Grants may submit supplements for the surveillance component. These supplements must meet all the above eligibility and will be evaluated as a part of the surveillance objective review.

Special Consideration

In order to help empower distressed communities—those that are designated as ''Empowerment Zones'' or ''Enterprise Communities'' (EZ/EC) under the Community Empowerment Initiative [Public Law 103–66–August 10, 1993], or those that meet the characteristics of those areas—special consideration will be given to qualified applicants for comprehensive program activities in communities that:

1. Are characterized by a high incidence of children with elevated blood lead levels;

2. Have high rates of poverty and other indicators of socio-economic distress, such as high levels of unemployment, and significant incidence of violence, gang activity, and crime; and

3. Provide evidence that their target community has prepared and submitted an EZ/EC application to HHS for a ''comprehensive community-based strategic plan for achieving both human and economic development in an integrated manner.''

Applicants that meet both the program criteria and the EZ/EC criteria outlined above, will be awarded points in the objective review of their application.

Availability of Funds

State and Community-Based Prevention Funds: Approximately $8,000,000 will be available in FY 1995 to fund a selected number of new and competing continuation childhood lead poisoning prevention programs. The CDC anticipates that program awards for the first budget year will range from $200,000 to $1,500,000.

Surveillance Funds: Approximately $200,000 will be available in FY 1995 to fund a selected number of new and competing continuation grants to support the development of PbB surveillance activities. Surveillance awards are expected to range from $60,000 to $75,000, with the average award being approximately $70,000.

The new awards are expected to begin on or about July 1, 1995. New awards are made for 12-month budget periods within project periods not to exceed 3 years. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

These grants are intended to develop, expand, or improve prevention programs in communities with demonstrated high-risk populations, and/or develop statewide capacity for conducting surveillance of elevated blood-lead levels. Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or surveillance activities. Grant funds should be used to increase the level of expenditures from State, local, and other funding sources.

Awards will be made with the expectation that program activities will continue when grant funds are terminated.

Note: Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these program activities are appropriately carried out.

- Not more than 10 percent (exclusive of Direct Assistance) of any grant may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

Purpose

Prevention Grant Program

State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities; however, limited resources have made it difficult for agencies to develop and maintain programs for the elimination of this

totally preventable disease. The purpose of this grant program is to provide impetus for the development and operation of State and community-based childhood lead poisoning prevention programs in high-risk areas, and build capacity for conducting surveillance of elevated blood-lead levels in children. Grant-supported programs are expected to serve as catalysts and models for the development of non-grant-supported programs and activities in other States and communities. Further, grant-supported programs should create community awareness of the problem (e.g., among community and business leaders, medical community, parents, educators, and property owners). It is expected that State health agencies will play a lead role in the development of community-based childhood lead poisoning prevention programs, including ensuring coordination and integration with maternal and child health programs; State Medicaid EPSDT programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act.

The prevention grant program will provide financial assistance and support to State and community-based government agencies to:

1. Establish, expand, or improve services to assure that children in communities with demonstrated high risk for lead poisoning are screened. Screening should focus on (1) making certain children, not currently served by existing health care services, are screened, and (2) integrating screening efforts with maternal and child health programs; State Medicaid programs, such as the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act, and (3) guaranteeing that high-risk children seen by private providers are screened.

2. Intensify case management efforts to ensure that children with lead poisoning receive appropriate and timely follow-up services.

3. Establish, expand, or improve environmental investigations to rapidly identify and reduce sources of lead exposure throughout a community.

4. Develop infrastructure to implement the provisions of the CDC Lead Statement, *Preventing Lead Poisoning in Young Children* (October 1991).

5. Develop and implement efficient information management/data systems compatible with CDC guidelines for monitoring and evaluation.

6. Improve the actions of other appropriate agencies and organizations to facilitate the rapid remediation of identified lead hazards in high-risk communities.

7. Enhance knowledge and skills of program staff through training and other methods.

8. Based upon program findings, provide information on childhood lead poisoning to the public, policy-makers, the academic community, and other interested parties.

Surveillance Grant Funds

The surveillance component of this announcement is intended to assist State health departments or other appropriate agencies to implement a complete surveillance activity for PbB levels in children. Development of surveillance systems at the local, State and national levels is essential for targeting interventions to high-risk populations and for tracking progress in eliminating childhood lead poisoning.

The childhood blood lead surveillance program has the following five goals:

1. Increase the number of State health departments with surveillance systems for elevated PbB levels;

2. Build the capacity of State- or territorial-based PbB level surveillance systems;

3. Use data from these systems to conduct national surveillance of elevated PbB levels;

4. Disseminate data on the occurrence of elevated PbB levels to government agencies, researchers, employers, and medical care providers; and

5. Direct intervention efforts to reduce environmental lead exposure.

Program Requirements

Prevention Grant Program

The following are requirements for Childhood Lead Poisoning Prevention Projects:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of the program.

2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of the program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicants' personnel system.

3. A data management component that supports the development, implementation, and maintenance of an automated case management system that provides timely and useful analysis and reporting of program data.

4. A plan to monitor and evaluate all major program activities and services.

5. Demonstrated experience or access to professionals knowledgeable in conducting and evaluating public health programs.

6. Ability to translate program findings to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

7. Provides information that describes why certain communities were selected for program activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or activities for childhood lead poisoning prevention.

8. A comprehensive public and professional information and education outreach plan directed specifically to high-risk populations, health professionals and paraprofessionals and the public. The plan may also address education and outreach activities directed to policy and decision-makers, parents, educators, property owners, community and business leaders, housing authorities and housing and rehabilitation workers, and special interest groups. The plan should be based on a needs assessment which: (a) determines the feasibility of a health education program; (b) utilizes assessment data interpretations to determine priorities for health education programming; and (c) identifies the appropriate target population for the program.

9. Establishment and maintenance of a system to monitor the notification and follow-up of children who are confirmed with elevated blood lead levels and who are referred to local Public Housing Authorities (PHAs).

10. Effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (e.g., housing authorities, environmental agencies, maternal and child health programs, State Medicaid EPSDT programs; or, community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act, State epidemiology programs, State and local housing rehabilitation offices, schools of public health and medical schools, and environmental interest groups) to appropriately address the needs and requirements of programs (e.g., data management systems to

facilitate the follow-up and tabulation of children reported with elevated blood lead levels, training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of networks with other State and local agencies with expertise in childhood lead poisoning prevention programming.

11. Activities, services, and educational materials provided by the program must be culturally sensitive (i.e., programs and services provided in a style and format respectful of cultural norms, values, and traditions which are endorsed by community leaders and accepted by the target population), developmentally appropriate (i.e., information and services provided at a level of comprehension which is consistent with learning skills of individuals to be served), linguistically-specific (i.e., information is presented in dialect and terminology consistent with the target population's native language and style of communication), and educationally appropriate.

12. Assurances that income earned by the childhood lead poisoning prevention program is returned to the lead program for use by the program.

13. For awards to State agencies, there must be a demonstrated commitment to provide technical, analytical, and program evaluation assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

14. SPECIAL REQUIREMENT regarding Medicaid provider-status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b-1) as amended by Sec. 303 of the ''Preventive Health Amendments of 1992'' (Pub. L. 102–531), applicants AND current grantees must meet the following requirements: For Childhood Lead Poisoning Prevention Program services which are Medicaid-reimbursable in the applicant's State:

- Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.
- Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers.

An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

15. For State Prevention Programs, a Surveillance component defined as a process which: (1) systematically collects information over time about children with elevated PbB levels using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; and (3) provides timely and useful analysis and reporting of the accumulated data including an estimate of the rate of elevated PbB levels among all children receiving blood tests.

For Surveillance Grants

The following are requirements for surveillance only grant projects:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of surveillance program activities.

2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of this program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicants' personnel system.

3. Effective, well-defined working relationships with childhood lead poisoning prevention programs within the applicants' State.

4. Revise, refine, and implement, in collaboration with CDC, the methodology for surveillance as proposed in the respective program application.

5. Collaborate with CDC in any interim and/or final evaluation of the surveillance activity.

6. Monitor and evaluate all major program activities and services.

7. Demonstrated experience or access to professionals knowledgeable in conducting and evaluating public health programs.

8. Ability to translate program findings to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

Evaluation Criteria

The review of applications will be conducted by an objective review committee who will review the quality of the application based on the strength and completeness of the plan submitted. The budget justification will be used to assess how well the technical plan is likely to be carried out using available resources. The maximum ratings score of an application is 100 points.

A. The factors to be considered in the evaluation of prevention program grant funds are:

1. *Evidence of the Childhood Lead Poisoning Problem* (35%) The applicant's ability to identify populations and communities at high risk, as defined by data from previous screening efforts, environmental data, and/or demographic data. (Population-based data or estimates should be compared to NHANES III data discussed in the Background and Definition Section included in the application kit). Current screening prevalence should also be discussed.

2. *Technical Approach* (30%) The quality of the technical approach in carrying out the proposed activities including:

(a) Goals and Objectives: The extent to which the applicant has included goals which are specific, measurable, and relevant to the purpose of this proposal (10 points).

(b) Approach: The extent to which the applicant provides a detailed description of the proposed activities which are likely to achieve each objective for the budget period (10 points).

(c) Timeline: The extent to which the applicant provides a reasonable schedule for implementation of the activities (5 points).

(d) Evaluation: The extent to which evaluation plans address the achievement of each objective (5 points).

3. *Applicant Capability* (10%) Capability of the applicant to initiate and carry out proposed program activities successfully within the time frames set forth in the application. Proposed staff skills must match the proposed program of work described. Elements to consider include:

(a) Demonstrated knowledge and experience of the proposed project director or manager and staff in planning and managing large and complex interdisciplinary programs involving public health, environmental management, and housing rehabilitation. The percentage of time the project manager will devote to this project is a significant factor, and must be indicated (5 points).

(b) Written assurances that proposed positions can and will be filled as described in the application (3 points).

(c) Evidence of institutional capacity, demonstrated by the experience and continuing capability of the jurisdiction, to initiate and implement similar environmental and housing projects. The applicant should describe these related efforts and the current capacity of its agency (2 points).

4. *Collaboration* (20%)

(a) Extent to which the applicant demonstrates that proposed activities are being conducted in conjunction with, or through, organizations with known and established ties in the target communities. Evidence of support and

participation from appropriate community-based or neighborhood-based organizations in the form of memoranda of understanding or other agreements of collaboration (10 points).

(b) Extent to which the applicant documents established collaboration with appropriate governmental agencies responding to childhood lead poisoning prevention issues such as environmental health, housing, medical management, etc., through specific commitments for consultation, employment, or other activities, as evidenced by the names and proposed roles of these participants and letters of commitment. Absence of letters describing specific participation will result in a reduced rating under this factor (10 points).

5. *Special Consideration for EZ/EC* (5%) Special consideration will be given to applicants that target program activities in communities that:

(a) Are characterized by a high incidence of children with elevated blood lead levels;

(b) Have high rates of poverty and other indicators of socio-economic distress, such as those with high levels of unemployment, and significant incidence of violence, gang activity, and crime; and

(c) Are preparing or implementing a comprehensive community-based strategic plan for achieving both human and economic development in an integrated manner.

6. *Budget Justification and Adequacy of Facilities* (Not Scored) The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

B. The factors to be considered in the evaluation of applications for Surveillance Program Grant Funds only are:

1. *Surveillance Activity* (35%) The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate. The following points will be specifically evaluated:

a. How laboratories report PbB levels.

b. How data will be collected and managed.

c. How data quality and completeness of reporting will be assured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated.

f. Protocols for follow-up of individuals with elevated PbB levels.

g. Provisions to obtain denominator data.

2. *Progress Toward Complete Blood-Lead Surveillance* (30%) The extent to which the proposed activities are likely to result in substantial progress towards establishing a complete State-based PbB surveillance activity (as defined in the ''PURPOSE'' section).

3. *Project Sustainability* (20%) The extent to which the proposed activities are likely to result in the long-term maintenance of a complete State-based PbB surveillance system. In particular, specific activities that will be undertaken by the State during the project period to ensure that the surveillance program continues after completion of the project period.

4. *Personnel* (10%) The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal.

5. *Use of Existing Resources* (5%) The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

6. *Budget* (Not Scored) The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Other Requirements

Paperwork Reduction Act Projects that involve the collection of information from ten or more individuals and funded by this grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1, OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before April 14, 1995.

1. Deadline:

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications:

Applications which do not meet the criteria in 1.A. or 1.B., above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. This abstract should be included in the ''Application Content'' section of the application.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796.

Please refer to Announcement Number 522 when requesting information and submitting any application.

Technical assistance on prevention activities may be obtained from David L. Forney, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (404) 488–7330.

Technical assistance on surveillance activities may be obtained from Carol Pertowski, M.D., Medical Epidemiologist, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (404) 488–7330.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: January 24, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–2273 Filed 1–30–95; 8:45 am]

BILLING CODE 4163–18–P

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.–5 p.m., February 15, 1995. 8:30 a.m.–12 noon, February 16, 1995.

Place: Sheraton Century Center Hotel, 2000 Century Boulevard, NE, Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

SUPPLEMENTARY INFORMATION: In October 1991 the Secretary of Health and Human Services released the CDC policy statement, ''Preventing Lead Poisoning in Young Children.'' This statement is used by pediatricians and lead screening programs throughout the United States, and great progress has been made in implementing the statement. Copies of this statement may be requested from the contact person listed below.

Matters to be Discussed: Since the release of this statement, new data have become available and some information gaps have been identified. The committee will discuss issues related to revising the statement, particularly the blood lead screening guidelines.

Agenda items are subject to change as priorities dictate.

Persons wishing to make written comments regarding additions or changes to the statement should provide such written comments to the contact person no later than February 8, 1995.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

FOR FURTHER INFORMATION CONTACT: Barbara Nelson, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F42), Atlanta, Georgia 30341–3724, telephone 404/488–7330, FAX 404/488–7335.

Dated: January 25, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–2274 Filed 1–30–95; 8:45 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Quarterly Medicaid Statement of Expenditures; *Form No.:* HCFA–64; *Use:* This information is submitted by State Medicaid agencies to report their actual program and administrative expenditures. HCFA uses this information to compute the Federal share for reimbursement of State Medicaid program costs; *Frequency:* Quarterly; *Respondents:* State or local governments; *Estimated Number of Responses:* 57; *Average Hours Per Response:* 59.5; *Total Estimated Burden Hours:* 13,566.

2. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Post Eligibility Preprint; *Form No.:* HCFA–SP–1; *Use:* This information collection is required to standardize the display of information on the post eligibility process in the State Medicaid plan. The State plan is used as a basis for Federal financial participation in the State program; *Frequency:* On occasion; *Respondents:* State or local governments; *Estimated Number of Responses:* 56; *Average Hours Per Response:* .59; *Total Estimated Burden Hours:* 529.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 17, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–2253 Filed 1–30–95; 8:45 am]

BILLING CODE 4120–03–P

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the

Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 42066, August 16, 1994), is amended to reflect the reorganization of the Office of the Director, NIH (OD/NIH) (HNA). This reorganization is consistent with Administration objectives related to the National Performance Review (NPR) and the Continuous Improvement Program (CIP)—specifically, the streamlining, delayering, and decreasing the ratio of supervisors to employees in accordance with effective management practices. The reorganization consists of the following: (1) Abolish the Office of Management (HNA9); (2) realign the Standard Administrative Code (SAC) of the (a) Office of Administration from (HNA92) to (HNAB); (b) Office of Financial Management from (HNA96) to (HNAJ); (c) Office of Human Resource Management from (HNA97) to (HNAK); and (d) Office of Research Services (ORS) from (HNA93) to (HNAL); and (3) revise the ORS functional statement.

Section HN–B, Organization and Functions, is amended as follows:

(1) Under the heading *Office of Management (HNA9),* delete the title and functional statement in their entirety.

(2) Under the heading *Office of Administration (HNA92),* change the Standard Administrative Code to *(HNAB).*

(3) Under the heading *Office of Financial Management (HNA96),* change the Standard Administrative Code to *(HNAJ).*

(4) Under the heading *Office of Human Resource Management (HNA97),* change the Standard Administrative Code to *(HNAK).*

(5) Under the heading *Office of Research Services (HNA93),* (a) change the Standard Administrative Code to *(HNAL)*; and (b) substitute ''NIH Director'' for the present reference to ''Deputy Director for Management'' in the functional statement.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of the NIH which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

Dated: January 23, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–2270 Filed 1–30–95; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Revised Redelegations of Authorities for Disposition of Supplemental Security Income Overpayments

Section 1631(b) of the Social Security Act (the Act), provides the Secretary of Health and Human Services (the Secretary) with authority to approve or deny waiver of adjustment or recovery of those Supplemental Security Income (SSI) benefit payments made under the provision of title XVI of the Act found to be incorrect. This applies to situations where the overpaid individual is without fault and recovery of the overpayment would defeat the purposes of title XVI, or would be against equity and good conscience, or would, because of the small amount involved, impede efficient or effective administration of title XVI. The Secretary has delegated her authority under section 1631(b) of the Act to the Commissioner of Social Security (the Commissioner), with authority to redelegate (38 FR 15648, dated June 14, 1973).

Under 31 U.S.C. 3711, the Secretary, or her designee, is authorized to compromise, suspend or terminate collection action on certain debts owned to the Department of Health and Human Services (HHS). To take such action, appropriate HHS regulations must be promulgated in accordance with standards provided in Joint Regulations of the Department of Justice (DOJ) and the General Accounting Office (4 CFR parts 101–105). Such regulations for HHS are published in the Code of Federal Regulations at 45 CFR Part 30. The Secretary's authority is restricted to those debt claims which involve compromise, suspension or termination of collection action regarding amounts of $100,000 or less, exclusive of interest. In addition, the Secretary's authority does not apply to cases involving fraud, presentation of a false claim, misrepresentation on the part of the debtor or any other party having an interest in the claim, or conduct in violation of antitrust laws.

Claims which cannot be collected, suspended, compromised or terminated, or which amount to more than $100,000, exclusive of interest, are referred to DOJ for disposition. Cases involving fraud, false claims, misrepresentation, or violation of antitrust laws are also handled by DOJ.

The Secretary has delegated her authority under 31 U.S.C. 3711 to the Commissioner, with authority to redelegate (33 FR 5836 and 5843, dated April 16, 1968), insofar as that authority relates to the mission of the Social Security Administration (SSA).

The above authorities to approve or deny waiver of adjustment or recovery of SSI overpayments, and to compromise, suspend or terminate collection action on these overpayments, were redelegated by the Commissioner to other SSA positions on November 29, 1988. These redelegations were effective upon publication in the **Federal Register**, which occurred on December 14, 1988 (53 FR 50300–50301). Notice is hereby given that the Commissioner has approved revised redelegations of these authorities, as follows:

Authorities

1. Authority to approve or deny waiver of adjustment or recovery of incorrect SSI benefit payments, under section 1631(b) of the Act.

2. Authority to compromise, suspend or terminate collection action on debts owed to SSA as a result of SSI overpayments.

Delegates	Scope of authority
a. Deputy Commissioner for Operations. b. Deputy Commissioner for Programs. c. Associate Commissioner and Deputy Associate Commissioner for Retirement and Survivors Insurance and Supplemental Security Income Policy. d. Regional Commissioners and Deputy Regional Commissioners. e. Assistant Regional Commissioners and Deputy Assistant Regional Commissioners for Program Operations and Systems. f. District Managers, Assistant District Managers, Branch Managers, Resident Representatives, Operations Supervisors, Claims Representatives, Field Representatives, Service Representatives and Service Representative/Data Review Technicians. g. Teleservice Representatives in Teleservice Centers. h. Debt Specialists and Chiefs, Debt Management Sections, Program Service Centers. i. All positions in the direct line of management above the positions specified in items f., g. and h. above.	a.–i. The incumbents of these positions may exercise authorities 1. and 2. on SSI overpayment cases within the jurisdiction of their respective components, to the extent permitted by their particular functional responsibilities, as specified in their position descriptions or other pertinent issuances.

Conditions

(1) Further redelegations are not authorized.

(2) These redelegations do not apply to the handling of any debt claim where there is an indication of fraud, the presentation of a false claim, misrepresentation on the part of the debtor or any other party having an interest in the claim, or conduct in violation of antitrust laws. Such cases are handled by DOJ.

(3) Decisions to compromise, suspend or terminate collection efforts on cases involving amounts exceeding $20,000 up to $100,000, exclusive of interest, are made by the Commissioner, the Deputy Commissioner for Operations or the Assistant Regional Commissioners for Program Operations and Systems, while those over $100,000 are made by DOJ.

(4) These redelegations must be exercised in accordance with all pertinent provisions of law, regulations, policies, procedures, operating instructions and other requirements.

The above revised redelegations are effective on the date they are published in the **Federal Register** and replace those previous redelegations approved by the Commissioner on November 29, 1988 and published in the **Federal Register** on December 14, 1988 (53 FR 50300–50301). I affirm and ratify any actions by the above delegates which may constitute the exercise of any of the subject authorities before the date these revised redelegations are published in the **Federal Register**.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–2252 Filed 1–30–95; 8:45 am]

BILLING CODE 4190–29–M

Published Social Security Acquiescence Rulings

AGENCY: Social Security Administration, HHS.

ACTION: Notice of published Social Security acquiescence rulings.

SUMMARY: Social Security Acquiescence Rulings (ARs) explain the manner in which the Social Security Administration (SSA) applies holdings of the United States Courts of Appeals that conflict with SSA's interpretation of a provision of the Social Security Act (the Act) or regulations when adjudicating claims under title II and title XVI of the Act and part B of the Black Lung Benefits Act. This notice lists ARs and rescissions of ARs that were published in the **Federal Register** from January 11, 1990, through December 31, 1994. The purpose of this notice is to assist individuals in finding ARs.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Even though we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), SSA's regulations were amended on January 11, 1990, to provide that ARs are to be published in their entirety in the **Federal Register** under authority of the Commissioner of Social Security (20 CFR 422.406(b)(2)). An AR explains how SSA will apply a holding of a United States Court of Appeals that is at variance with SSA's interpretation of the Act or regulations in adjudicating claims under title II and title XVI of the Act and part B of the Black Lung Benefits Act.

Although regulations and ARs are published in the **Federal Register**, only the regulations are subsequently published in the Code of Federal Regulations (CFR). The CFR is a codification of the general and permanent rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. Consequently, the CFR may not state the circuitwide standard in effect when we have determined that the holding in a decision of a United States Court of Appeals is at variance with our national interpretation. Therefore, we are publishing this listing to assist individuals who need to reference ARs in effect as a result of holdings of the United States Courts of Appeals.

If an AR is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided for in 20 CFR 404.985(e), 410.670c(e), or 416.1485(e). If we decide to relitigate an issue covered by an AR, as provided for by 20 CFR 404.985(c), 410.670c(c), or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation and not the standard expressed in the AR, and explain why we have decided to relitigate the issue. In either of these situations, we will include the information in notices of published ARs such as this one.

This notice contains a listing of all ARs published under the requirements of 20 CFR 422.406(b)(2) during the period January 11, 1990, through December 31, 1994. The listing includes the AR number, title, publication date and the **Federal Register** reference number. This notice also lists ARs which were rescinded during this period. We anticipate publishing a notice each year that will list similar information.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-

Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Walter H. Burton, Jr.

Social Security.

Published Social Security Acquiescence Rulings

This notice lists ARs published in the **Federal Register** including the period from January 11, 1990, through December 31, 1994. It includes three ARs which were issued earlier, rescinded and replaced by revised ARs under their original AR number. It also includes the outright rescission of four ARs issued during this period, and the outright rescission of four ARs issued earlier. One AR published during this period was revised. Two ARs published during this period required correction. The correction notices are also discussed in this notice. (The parenthetical number that follows each AR number refers to the United States judicial circuit involved.)

Acquiescence Rulings

AR 86-2R(2) *Rosenberg* v. *Richardson*, 538 F.2d 487 (2d Cir. 1976); *Capitano* v. *Secretary of HHS*, 732 F.2d 1066 (2d Cir. 1984)—Entitlement of a Deemed Widow When a Legal Widow is Entitled on the Same Earnings Record—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28527.

Note: The original AR for the Second Circuit Court of Appeals' holding in *Rosenberg* and *Capitano* (AR 86-2(2)), issued January 23, 1986, was rescinded and replaced by this revised AR.

AR 86-18R(5) *Woodson* v. *Schweiker*, 656 F.2d 1169 (5th Cir. 1981)—Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28529 as AR 860918R(5).

Note: The original AR for the Fifth Circuit Court of Appeals' holding in *Woodson* (AR 86-18(5)), issued May 22, 1986, was rescinded and replaced by this revised AR.

AR 86-19R(11) *Woodson* v. *Schweiker*, 656 F.2d 1169 (5th Cir. 1981)—Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28524.

Note: The original AR applicable in the Eleventh Circuit for the Fifth Circuit Court of Appeals' holding in *Woodson* (AR 86-19(11)), issued May 22, 1986, was rescinded and replaced by this revised AR.

AR 90-1(9) *Paxton* v. *Secretary of Health and Human Services*, 856 F.2d 1352 (9th Cir. 1988)—Treatment of a Dependent's Portion of an Augmented Veterans Benefit Paid Directly To a Veteran—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28946. Rescinded—See section on Rescissions in this notice.

AR 90-2(2) *Ruppert* v. *Bowen*, 871 F.2d 1172 (2d Cir. 1989)—Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28947.

AR 90-3(4) *Smith* v. *Bowen*, 837 F.2d 635 (4th Cir. 1987)—Use of Vocational Expert or Other Vocational Specialist in Determining Whether a Claimant Can Perform Past Relevant Work—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28949.

AR 90-4(4) *Culbertson* v. *Secretary of Health and Human Services*, 859 F.2d 319 (4th Cir. 1988); *Young* v. *Bowen*, 858 F.2d 951 (4th Cir. 1988)—Waiver of Administrative Finality in Proceedings Involving Unrepresented Claimants Who Lack the Mental Competence to Request Administrative Review—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28943.

AR 90-5(2) *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38400. Rescinded—See section on Rescissions in this notice.

AR 90-6(1) *Cassas* v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), *reh'g denied*, April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38398. Rescinded—See section on Rescissions in this notice.

AR 90-7(9) *Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38402. Rescinded—See section on Rescissions in this notice.

AR 91-1(5) *Lidy* v. *Sullivan*, 911 F.2d 1075 (5th Cir. 1990)—Right to Subpoena an Examining Physician for Cross-examination Purposes—Titles II and XVI of the Social Security Act.

Published: December 31, 1991, at 56 FR 67625 as AR 91-X(5).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 91-1(5).

AR 92-1(3) *Mazza* v. *Secretary of Health and Human Services*, 903 F.2d 953 (3d Cir. 1990)—Order of Effectuation in Concurrent Application Cases (Title II/Title XVI).

Published: January 10, 1992, at 57 FR 1190 as AR 91-X(3).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 92-1(3).

AR 92-2(6) *Difford* v. *Secretary of Health and Human Services*, 910 F.2d 1316 (6th Cir. 1990), *reh'g denied*, February 7, 1991—Scope of Review on Appeal in a Medical Cessation of Disability Case—Title II of the Social Security Act.

Published: March 17, 1992, at 57 FR 9262.

AR 92-3(4) *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985); *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990)—What Constitutes a Significant Work-Related Limitation of Function.

Published: March 10, 1992, at 57 FR 8463.

AR 92-4(11) *Bloodsworth* v. *Heckler*, 703 F.2d 1233 (11th Cir. 1983)—Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge (ALJ) Decision.

Published: April 8, 1992, at 57 FR 11961.

AR 92-5(9) *Quinlivan* v. *Sullivan*, 916 F.2d 524 (9th Cir. 1990)—Meaning of the Term ''Against Equity and Good Conscience'' in the Rules for Waiver of Recovery of an Overpayment—Titles II and XVI of the Social Security Act; Title IV of the Federal Mine Safety and Health Act of 1977.

Published: June 22, 1992, at 57 FR 27783.

AR 92-6(10) *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before 12 Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Published: September 17, 1992, at 57 FR 43007.

AR 92-7(9) *Gonzalez* v. *Sullivan*, 914 F.2d 1197 (9th Cir. 1990)—Effect of Initial Determination Notice Language on the Application of Administrative Finality—Titles II and XVI of the Social Security Act.

Published: September 30, 1992, at 57 FR 45061.

AR 93-1(4) *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985); *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990)—What Constitutes a Significant Work-Related Limitation of Function.

Published: April 29, 1993, at 58 FR 25996.

Note: The original AR for the Fourth Circuit Court of Appeals' holding in *Branham* and *Flowers* (AR 92-3(4)), issued March 10, 1992, was revised to reflect a regulatory change regarding the IQ Listing range. There were no other substantive changes to this AR.

AR 93-2(2) *Conley* v. *Bowen*, 859 F.2d 261 (2d Cir. 1988)—Determination of Whether an Individual With a Disabling Impairment Has Engaged in Substantial Gainful Activity Following a Reentitlement Period—Title II of the Social Security Act.

Published: May 17, 1993, at 58 FR 28887.

AR 93-3(6) *Akers* v. *Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40662.

AR 93-4(2) *Condon and Brodner* v. *Bowen*, 853 F.2d 66 (2d Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40663.

AR 93-5(11) *Shoemaker* v. *Bowen*, 853 F.2d 858 (11th Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40665.

AR 93-6(8) *Brewster on Behalf of Keller* v. *Sullivan*, 972 F.2d 898 (8th Cir. 1992)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Published: August 16, 1993, at 58 FR 43369.

AR 94-1(10) *Wolfe* v. *Sullivan*, 988 F.2d 1025 (10th Cir. 1993)—Contributions To Support re: Posthumous Illegitimate Child—Title II of the Social Security Act.

Published: June 27, 1994, at 59 FR 33003.

AR 94-2(4) *Lively* v. *Secretary of Health and Human Services*, 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Published: July 7, 1994, at 59 FR 34849.

Rescissions Without Replacement ARs

AR 86-1(9) *Summy* v. *Schweiker*, 688 F.2d 1233 (9th Cir. 1982)—Third party payments for medical care or services—Title XVI of the Social Security Act.

Notice of Rescission Published: July 5, 1994, at 59 FR 34444.

AR 87-5(3) *Velazquez* v. *Heckler*, 802 F.2d 680 (3d Cir. 1986)—Consideration of Vocational Factors in Past Work Determinations.

Notice of Rescission Published: July 16, 1990, at 55 FR 28943.

AR 88-5(1) *McCuin* v. *Secretary of Health and Human Services*, 817 F.2d 161 (1st Cir. 1987)—Reopening by the Appeals Council of Decisions of Administrative Law Judges under Titles II and XVI of the Social Security Act.

Notice of Rescission Published: February 23, 1994, at 59 FR 8650.

AR 88-7(5) *Hickman* v. *Bowen*, 803 F.2d 1377 (5th Cir. 1986)—Evaluation of Loans of In-Kind Support and Maintenance for Supplemental Security Income Benefit Calculation Purposes.

Notice of Rescission Published: September 8, 1992, at 57 FR 40918.

AR 90-1(9) *Paxton* v. *Secretary of Health and Human Services*, 856 F.2d 1352 (9th Cir. 1988)—Treatment of a Dependent's Portion of an Augmented Veterans Benefit Paid Directly To a Veteran—Title XVI of the Social Security Act.

Notice of Rescission Published: November 17, 1994, at 59 FR 59416.

AR 90-5(2) *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

AR 90-6(1) *Cassas* v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), *reh'g denied*, April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23591.

AR 90-7(9) *Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990)— Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

[FR Doc. 95–2269 Filed 1–30–95; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–047073; ES–960–9800–02, Group 26, Missouri]

Notice of Filing of Plat of Dependent Resurvey and Subdivision of Sections

The plat of the dependent resurvey of a portion of the north boundary (Standard Parallel North); the west boundary and subdivisional lines, and the subdivision of certain sections, Township 34 North, Range 3 West, Fifth Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 20, 1995.

The survey was made upon request submitted by the United States Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., March 20, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: January 23, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–2254 Filed 1–30–95; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–787371

Applicant: Coastal Resources Institute, California Polytechnic State University, San Luis Obispo, California

The applicant requests amendment of their permit for take (capture and release) of the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) to include Monterey County, California to determine presence or absence of the species for the purpose of enhancing its survival.

Permit No. PRT–797315

Applicant: Dr. Michael L. Morrison, Tucson, Arizona

The applicant requests a permit to take (capture, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the Fresno kangaroo rat (*Dipodomys nitratoides exilis*) at the Lemoore Naval Air Station in Fresno, California to conduct population/habitat studies and to determine presence or absence of the species for the purpose of scientific research and for enhancing its survival. These studies were previously authorized under the Regional Director's permit no. PRT–702631.

Permit No. PRT–798017

Applicant: Habitat Restoration Group, Felton, California

The applicant requests a permit to take (capture and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in Santa Cruz and Monterey Counties, California to determine presence or absence of the species for the purpose of enhancing its survival.

Permit No. PRT–798025

Applicant: California Desert Studies Consortium, Fullerton, California

The applicant requests a permit to take (capture, mark, and release) the Mohave tui chub (*Gila bicolor mohavensis*) in Lake Tuendae, Desert Studies Center, Baker, California to determine presence or absence of the species for the purpose of enhancing its survival.

Permit No. PRT–798003

Applicant: North State Resources, Inc., Redding, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus wootoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing its survival.

Permit No. PRT–798015

Applicant: Mr. Michael Skenfield, Murphys, California

The applicant requests a permit to take (harass by survey, collect and sacrifice voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in vernal pools throughout the species' range in northern California to determine presence or absence of the species for the purpose of enhancing its survival.

Permit No. PRT–795931

Applicant: Biota Biological Consulting, Sacramento, California

The applicant requests amendment of their permit to include take (harass by survey, collect and sacrifice) of the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and Riverside fairy shrimp (*Streptocephalus wootoni*) in vernal pools throughout the species' range in California to determine presence or absence of the species for the purpose of enhancing its survival.

Permit No. PRT–798018

Applicant: Golden Gate Raptor Observatory, San Francisco, California

The applicant requests a permit to take (capture, band, and release) the peregrine falcon (*Falco peregrinus*) in the Golden Gate National Recreation Area, Marin County, California for the purpose of enhancing its survival.

DATES: Written comments on the permit applications must be received on or before March 2, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

[The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).]

Dated: January 20, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–2278 Filed 1–30–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for La Costa Villages, Carlsbad, CA

AGENCY: Fish and Wildlife Service, Interior Department.

ACTION: Notice.

SUMMARY: Fieldstone/La Costa Associates and the City of Carlsbad, California (applicants) have applied for an incidental take permit from the Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The proposed permit would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) in San Diego County, California, for a period of 30 years. The proposed taking is incidental to planned home and road construction on 1,940 acres of land primarily owned by Fieldstone/La Costa Associates.

This notice advises the public that the Service has re-opened the comment period on the permit application and the environmental assessment (EA). The permit application includes a Habitat Conservation Plan (HCP), two HCP addendums, and an Implementing Agreement (IA). The EA package includes an EA, EA addendum, and a draft Finding of No Significant Impact (FONSI) which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended.

This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of

the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the coastal California gnatcatcher. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period.

This notice supplements an earlier notice published in the **Federal Register** on October 28, 1994 (59 FR 54207). That notice announced an initial 30-day public comment period on the HCP, first HCP addendum, and draft EA. The draft EA was not available for public review until two weeks into the initial 30-day comment period. Subsequently, an addendum to the draft EA, a second addendum to the HCP, and an IA were completed that include a description of a change in mitigation for a portion of the proposed project. Consequently, the Service has re-opened the period for public comment on the NEPA documents and the complete application package, as revised.

DATES: Written comments on the HCP, HCP addendums, IA, EA, EA addendum, and draft FONSI should be received on or before March 2, 1995.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to telephone (619) 431–9618. Please refer to permit No. PRT–795759 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich (Field Supervisor) or Ken Corey (Biologist) at the above address, or telephone (619) 431–9440. Individuals wishing copies of the documents should immediately contact Ken Corey. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION: Proposed grading and construction activities would directly impact 30 of 48 pairs of the threatened coastal California gnatcatcher (gnatcatcher) and 550 of 1,064 acres of suitable gnatcatcher habitat on-site (506 of 944 acres of coastal sage scrub and 44 of 120 acres of southern maritime chaparral). In addition, 254 of 307 acres of grassland and 69 of 114 acres of riparian scrub/woodland would be directly impacted on-site. Approximately 18 pairs of gnatcatchers, 438 acres of coastal sage scrub, 76 acres of southern maritime chaparral, and 173 acres of associated habitats will be conserved and managed on-site in perpetuity. In addition, the applicants will provide $1,000,000 for purchase of an off-site mitigation parcel, within the City of Carlsbad, to be approved by the Service.

The applicants have requested the issuance of permits (immediately or when a species is listed) under section 10(a) of the Act that would authorize incidental take, in accordance with the terms of the HCP, for up to 66 sensitive species listed in the HCP. Of these species, the coastal California gnatcatcher is the only federally-listed species observed on-site. Section 10(a) permits are issued only for federally-listed species; however, unlisted species that subsequently become listed, and are adequately conserved by the original HCP, can be added by permit amendment.

A concern has been raised regarding the consistency of the HCP with certain subarea and subregional plans under the statewide Natural Community Conservation Planning program (NCCP) (see 59 FR 54208). All interested agencies, organizations, and individuals are urged to provide comments on the permit application, NEPA documents, and the NCCP consistency issue. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial.

The Service will publish a record of its final action in the **Federal Register**.

Dated: January 25, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–2279 Filed 1–30–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Committee for the Preservation of the White House; Meeting

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Department of Commerce, Washington, DC at 1 p.m., Friday, February 17,1995. It is expected that the agenda will include policies, goals and long range plans. The meeting will be open, but subject to appointment and security clearance requirements, including clearance information by February 10, 1995.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: January 18, 1995.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 95–2256 Filed 1–30–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 21, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 15, 1995.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Arlington Park, 800–840 First St. W., 815–909 Second St. W. and 100–269 Munger Ave., Birmingham, 95000097

Lauderdale County

Seminary—O'Neal Historic District, Roughly, Seminary St. between Hermitage Dr. and Irvine Ave. and Irvine between Seminary and Wood Ave., Florence, 95000092

DELAWARE

New Castle County

Merestone, 1610–1620 Yeatman's Mill Rd., Mill Creek Hundred (Delaware); Yeatman's Station Rd., New Garden Township (Pennsylvania), Newark vicinity, 95000093

IOWA

Humboldt County

Renwick Generating Plant, 103 N. Field St., Renwick, 95000099

Jackson County

Chicago, Milwaukee & St. Paul Narrow Gauge Depot—LaMotte (Advent & Development of Railroads in Iowa MPS), Market St., LaMotte, 95000105

Polk County

Camp Dodge Pool District, Buildings A22–A24, Camp Dodge, Johnston, 95000098

LOUISIANA

Terrebonne Parish

Cook, Herman Albert, House, 515 W. Main St., Houma, 95000107

MASSACHUSETTS

Hampshire County

South Amherst Common Historic District, 445 Shays St., South Amherst Common, 979–1081 S. East St. and 324 Pomeroy Ln., Amherst, 95000100

MICHIGAN

Hillsdale County

Hillsdale Downtown Historic District, Roughly bounded by Ferriss, Cook, E. Bacon, S. Howell, Waldron, N. Manning, Monroe and Hillsdale Sts. and Carlton Rd., Hillsdale, 95000075

Kent County

Ford, President Gerald R., Jr., Boyhood Home, 649 Union Ave., SE., Grand Rapids, 95000073

St. Clair County

St. Clair Inn, 500 N. Riverside Ave., St. Clair, 95000074

NEBRASKA

Deuel County

Waterman, Wallace W., Sod House, Day Rd., 9 mi. N of Big Springs, Big Springs vicinity, 95000096

Dodge County

Fremont Historic Commercial District, Roughly bounded by 3rd, Military, Park and D Sts., Fremont, 95000091

Knox County

Winnetoon Jail, Jct. of First St. and Sherman Ave., Winnetoon, 95000094

Otoe County

Unadilla Main Street Historic District, Main St., N side, between G and H Sts., Unadilla, 95000095

NEW YORK

Albany County

Washington Avenue (Tenth Battalion) Armory (Army National Guard Armories in New York State MPS), 195 Washington Ave., Albany, 95000077

Cattaraugus County

Olean Armory (Army National Guard Armories in New York State MPS), 119 Times Sq., Olean, 95000080

Cayuga County

House at 21 West Cayuga Street (Moravia MPS), 21 W. Cayuga St., Moravia, 95000103

Franklin County

Malone Armory (Army National Guard Armories in New York State MPS), 116 W. Main St., Malone, 95000089

Fulton County

Gloversville Armory (Army National Guard Armories in New York State MPS), 87 Washington St., Gloversville, 95000081

Jefferson County

LeRaysville Archeological District, Address Restricted, LeRay vicinity, 95000069

Sterlingville Archeological District, Address Restricted, Philadelphia vicinity, 95000070

Wood's Grist Mill, Address Restricted, Wilna, 95000072

Lewis County

Alpina Archeological District, Address Restricted, Diana vicinity, 95000068

Lewisburg Archeological District, Address Restricted, Diana vicinty, 95000071

Madison County

Oneida Armory (Army National Guard Armories in New York State MPS), 217 Cedar St., Oneida, 95000084

New York County

Fort Washington Avenue Armory (Army National Guard Armories in New York State MPS), 216 Fort Washington Ave. (jct. with 168th St.), New York, 95000085

Niagara County

Niagara Falls Armory (Army National Guard Armories in New York State MPS), 901 Main St., Niagara Falls, 95000076

Oneida County

Utica Armory (Army National Guard Armories in New York State MPS), 1700 Parkway Blvd. E., Utica, 95000083

Ontario County

Geneva Armory (Army National Guard Armories in New York State MPS), 300 Main St., Geneva, 95000082

Otsego County

Oneonta Armory (Army National Guard Armories in New York State MPS), 4 Academy St., Oneonta, 95000078

Rensselaer County

Hoosick Falls Armory (Army National Guard Armories in New York State MPS), Jct. of Church and Elm Sts., Hoosick Falls, 95000086

St. Lawrence County

Ogdensburg Armory (Army National Guard Armories in New York State MPS), 225 Elizabeth St., Ogdensburg, 95000088

Schenectady County

Schenectady Armory (Army National Guard Armories in New York State MPS), 125 Washington Ave., Schenectady, 95000087

Washington County

Whitehall Armory (Army National Guard Armories in New York State MPS), 62 Poultney St., Whitehall, 95000079

NORTH CAROLINA

Guilford County

Pomona High School, Former (Greensboro MPS), 2201 Spring Garden St., Greensboro, 92000361

OREGON

Multnomah County

United States Steel Corporation Office and Warehouse (Boundary Decrease), 2345 NW. Nicolai St., Portland, 95000104

TEXAS

Lubbock County

Lubbock Post Office and Federal Building, 800 Broadway, Lubbock, 95000101

Marion County

Jefferson Ordnance Magazine, 0.3 mi. NE of US 59B crossing of Big Cypress Bayou, Jefferson vicinity, 95000102

VIRGINIA

Alexandria Independent City

Alexandria National Cemetery (Civil War Era National Cemeteries MPS), 1450 Wilkes St., Alexandria (Independent City), 95000106

[FR Doc. 95–2257 Filed 1–30–95; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (P.L. 94–283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 200.6 percent from its 1974 annual average of 147.7 to its 1994 annual average of 444.0. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 200.6 percent from its 1974 annual average of 100 to its 1994 annual average of 300.6.

Signed at Washington, D.C., on the 25th day of January 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–2340 Filed 1–30–95; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Mine Safety and Health Administration, Labor Department.

ACTION: Notice of establishment of advisory committee.

SUMMARY: The Secretary of Labor has determined that it is in the public interest to establish an advisory committee to make recommendations for the elimination of pneumoconiosis among coal miners. The committee will provide a collective expertise not otherwise available to the Secretary to

address the complex and sensitive issues involved.

DATES: Comments must be received on or before February 15, 1995.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: Since enactment of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), efforts by government, labor, and industry have resulted in significantly lower levels of respirable dust in coal mines. As a result, the prevalence of pneumoconiosis, commonly referred to as ''Black Lung'' and silicosis, has been reduced. Despite this progress, the most recent medical evidence indicates that miners continue to be at risk of developing occupational lung disease. The annual cost to the federal government in ''Black Lung'' disability benefits currently exceeds $1.3 billion. Therefore, additional steps need to be undertaken if this disease is to be eliminated.

Background

The 1969 Coal Act established the first comprehensive dust standards for coal mines in the United States. Those standards were intended to protect the health of miners by imposing strict limits on the amount of respirable coal mine dust allowed in the air that miners breathe. Under current Mine Safety and Health Administration (MSHA) regulations, mine operators are required to implement measures to control the amount of dust in the mine atmosphere, to obtain MSHA approval of these measures, and to monitor through sampling the amount of coal mine respirable dust in the mine atmosphere where miners work or travel. Citations are issued and abatement is required whenever respirable dust samples collected either by a mine operator or by a Federal mine inspector show noncompliance with the dust standard.

In the 25 years since enactment of the Coal Act, there has been a significant reduction in coal mine respirable dust levels. MSHA data shows that average dust levels in most mines have been reduced from 8.0 mg/m^3 to below the current standard of 2.0 mg/m^3. During this period, considerable knowledge and experience have been gained in controlling exposure to coal mine dust and new technology has been introduced to minimize dust generation.

Despite this progress, the National Institute for Occupational Safety and Health (NIOSH) issued a draft criteria document in June 1993 which concludes that the risk to miners of developing coal workers' pneumoconiosis (CWP) is greater than had been predicted at the current standard level. Also, to reduce the risk of silicosis, the document proposed lowering the existing standard by 50 percent.

The cost to the Federal government in ''Black Lung'' disability benefits also dictates that we take action to eliminate these diseases. In fiscal year 1993, over 75,000 former miners were receiving black lung benefits at an annual cost of $1.3 billion. In the 25 years since passage of legislation to compensate miners and their dependents for black lung, the Departments of Labor and Health and Human Services have paid benefits totaling over $30 billion.

Recent events also have raised serious concerns about the respirable coal mine dust sampling program and have resulted in all segments of the mining community recognizing that improvements must be made in the program. However, there are significant differences of opinion among representatives of government, labor and industry over the specific action needed to be taken. These differences involve three primary issues.

They are:

The Current Risk to Miners of Coal Workers Pneumoconiosis (CWP)

Recent studies by British scientists and by NIOSH indicate that the risk of developing the most serious form of CWP at the present standard is higher than had been previously believed. However, the Australians have reported that they have no evidence of CWP at levels greater than our present 2.0 mg/m^3 standard. Additionally, although most reports indicate that levels of respirable coal mine dust are generally below 2.0 mg/m^3, the recent evidence of tampering with respirable dust samples raises questions about the dust exposure levels of miners in United States coal mines.

The Strategy for Monitoring Respirable Coal Mine Dust

There are significant differences of opinion concerning the role of MSHA, the mine operator and the miners' representative in the monitoring process. Also, the future potential to continuously monitor respirable coal mine dust with new equipment would require a revised approach to sampling which may raise differences in opinion.

The Adequacy of Existing Control Measures

There needs to be a review of the engineering controls to maintain exposures at or below the standard for all methods of mining and how those controls can be improved.

In accordance with the provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act) and the Federal Advisory Committee Act (FAC), and after consultation with the General Services Administration, I have determined that the establishment of a short-term advisory committee to address the elimination of pneumoconiosis among coal miners is in the public interest. I am establishing the committee under Sections 101(a) and 102(c) of the Mine Act and the FAC Act to address this issue at surface and underground coal mines.

The committee shall make recommendations to me for improved standards, or other appropriate actions, on permissible exposure limits to eliminate black lung disease and silicosis; the means to control respirable coal mine dust levels; improved monitoring of respirable coal mine dust levels and the role of the miner in that monitoring; and the adequacy of the operator's current sampling program to determine the actual levels of dust concentrations to which miners are exposed.

As required by Section 102(c) of the Mine Act, the majority of the committee will be composed of individuals who have no economic interest in the mining industry and who are not operators, miners, or officers or employees of the Federal, state, or local government. There will be seven committee members: one representing labor, one representing industry, and five persons who have no economic interest in the industry.

The committee will function solely as an advisory body and in compliance with the provisions of the FAC Act. In accordance with FAC Act, its charter will be filed 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the committee, within the allowable time, to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, at the address listed above.

Dated: December 2, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–2287 Filed 1–26–95; 10:59 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

Notice of Memorandum of Understanding Between the Occupational Safety and Health Administration and the Office of Environment, Safety and Health Regarding Worker Safety and Health at Facilities Leased by the United States Enrichment Corporation

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Memorandum of Understanding (MOU) between the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) and the U.S. Department of Energy (DOE) Office of Environment, Safety and Health. The MOU delineates the areas of responsibility of each agency at the gaseous diffusion plants owned by DOE and leased by the United States Enrichment Corporation (USEC); describes generally the efforts of the agencies to assure worker protection at these plants; and provides procedures for coordination of activities between DOE and OSHA.

EFFECTIVE DATE: December 21, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Ave., N.W., Washington, D.C. 20210. Telephone: (202) 219–8615.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992, (the Energy Policy Act, 42 U.S.C. Section 2297 *et. seq.*), created the USEC, a government corporation which administers uranium enrichment facilities leased from DOE. The Energy Policy Act also required the Nuclear Regulatory Commission (NRC) to establish standards for the regulation of the gaseous diffusion plants leased by the USEC. The NRC final rule set forth requirements for plant certification, and announced assumption of NRC regulatory authority over diffusion plants in ''late 1995.'' See 59 FR 48944–48976.

Until such time as the NRC assumes regulatory jurisdiction, DOE will exercise nuclear safety and safeguards and security oversight authority. The regulatory framework under which DOE exercises its authority is contained in a Regulatory Oversight Agreement incorporated in the lease agreement between DOE and USEC. Specific matters related to the process by which NRC will assume, and DOE will relinquish, responsibility for regulatory oversight under the Energy Policy Act are set forth in a Joint Statement of Understanding between Nuclear Regulatory Commission and Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plant, 59 FR 4729 (February 1, 1994).

Both DOE and OSHA have jurisdiction over safety and health at the portions of the gaseous diffusion plants leased by the USEC. A coordinated inter-agency effort, as outlined in the MOU (Appendix) will minimize potential gaps in the protection of the workers and avoid possible conflicting requirements.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C. 20210.

Signed in Washington, D.C. this 19th day of January 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

Appendix

Memorandum of Understanding Between the U.S. Department of Labor, Occupational Safety and Health Administration, and U.S. Department of Energy, Office of Environments, Safety and Health

I. Purpose and Background

A. The purpose of this Memorandum of Understanding between the United States Department of Energy's (DOE) Office of Environment, Safety and Health and the United States Department of Labor's Occupational Safety and Health Administration (OSHA) is to delineate the areas of responsibility of each agency at the gaseous diffusion plants owned by DOE and leased by the United States Enrichment Corporation (USEC); to describe generally the efforts of the agencies to assure worker protection at these; and, to provide procedures for coordination of activities between DOE and OSHA.

B. Both DOE and OSHA have jurisdiction over radiological safety and health at the portions of the gaseous diffusion plants leased by the USEC. A coordinated inter-agency effort can minimize potential gaps in the protection of workers and, at the same time, avoid possible conflicting requirements.

II. Hazards Associated With Gaseous Diffusion Plants

Four basic categories of hazards are associated with the gaseous diffusion plants:

A. Industrial safety hazards due to the plant's physical condition or its operations;

B. Health hazards due to chemical and toxicological exposures associated with non-radioactive materials;

C. Health hazards due to potential exposure associated with radioactive materials; and,

D. Radiation hazards to the general public and the environment.

OSHA will regulate the hazards listed in paragraphs II. A; B; and C. DOE will regulate the hazards listed in paragraphs II. C, and D.

III. DOE Responsibilities

The Energy Policy Act of 1992, (the Energy Policy Act, 42 U.S.C. Section 2297 *et. seq.*), created the USEC, a government corporation, for purposes including leasing DOE's uranium enrichment facilities to market and sell enriched uranium and uranium enrichment and related services to the Department and domestic and foreign interests. The Energy Policy Act also requires the Nuclear Regulatory Commission (NRC) to establish standards for the regulation of the gaseous diffusion plants leased by the USEC by October 24, 1994, in order to protect the public health and safety from radiological hazards and to provide for the common defense and security. After these standards are promulgated, the USEC is required to apply at least annually for a certificate of compliance with these standards. Until such time as the NRC assumes regulatory jurisdiction at the gaseous diffusion plants, DOE will exercise nuclear safety and safeguards and security oversight authority to protect the public at the leased portions of the gaseous diffusion plant located in Paducah, Kentucky, and Piketon, Ohio. The regulatory framework for which DOE exercises its authority is contained in the Regulatory Oversight Agreement, Exhibit D to the Lease Agreement between DOE and USEC dated July 1, 1993. Specific matters related to the process by which NRC will assume, and DOE will relinquish, responsibility for regulatory oversight under the Energy Policy Act are set forth in a Joint Statement of Understanding between Nuclear Regulatory Commission and Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plant, 59 FR 4729 (February 1, 1994).

DOE's responsibility is to promote and protect the radiological health and safety of the public and workers and to provide for the common defense and security at the leased portion of the DOE-owned gaseous diffusion plants. These responsibilities are performed pursuant to the guidelines established in the Safety Basis and Framework for DOE Oversight of the Gaseous Diffusion Plants (Appendix A to the Regulatory Oversight Agreement); and the conducting of inspections, reviews, investigations, and enforcement actions, in accordance with the Regulatory Oversight Agreement.

IV. OSHA Responsibilities

OSHA is responsible for administering the requirements of the Occupational Safety and Health Act of 1970 (the OSH Act, 29 U.S.C. 651 *et. seq.*). Under the OSH Act, every employer has a general duty to furnish each employee a place of employment which is free from recognized hazards which may cause death or serious physical harm; employers are also required to comply with specific OSHA standards, regulations, and other requirements.

The Energy Policy Act of 1992 specifically makes all OSHA requirements, including all injunctive and administrative enforcement remedies, applicable to USEC facilities notwithstanding the limitations otherwise imposed on OSHA enforcement by section 4(b)(1) of the Occupational Safety and Health Act. Additionally, the Energy Policy Act specifically waives any immunity which might otherwise be applicable to USEC, 42 U.S.C. Section 2297b–11(c) (1992). Therefore, OSHA requirements applicable to working conditions within the gaseous diffusion facilities administered by USEC or its subcontractors are not subject to preemption by regulations issued by other federal agencies.

Accordingly, OSHA will enforce all applicable standards, rules and requirements including, but not limited to, the standards on ionizing radiation hazards, 29 CFR 1910.96; control of hazardous energy sources, 29 CFR 1910.147; hazardous waste operations and emergency response, 29 CFR 1910.120; hazard communication, 29 CFR 1910.1200; and, the general duty clause. It is the intention of OSHA and DOE to coordinate their regulatory and oversight activities in a manner which avoids, to the extent possible, the imposition of inconsistent obligations on USEC.

V. Coordination Procedures

In recognition of the agencies' authorities and responsibilities enumerated above, the following procedures will be followed:

A. Referrals

1. Although DOE does not conduct inspections of industrial safety in the course of inspections of nuclear safety and safeguards and security, DOE Regulatory Oversight personnel may identify occupational safety or health concerns within the area of OSHA responsibility. In such instances:

a. Employee complaints received by DOE regarding issues that are within OSHA's purview will be immediately referred to OSHA, and the identity of the complaining employee shall not be disclosed to any employer by either OSHA or DOE.

b. All other safety and health concerns within OSHA's purview identified by DOE will be referred to USEC management in writing for expedient correction. DOE will provide the same information on these concerns to local union bargaining representatives of the USEC contractor employees.

c. Serious hazards within OSHA's purview will be reported to OSHA if uncorrected. DOE will periodically advise OSHA on the number and nature of serious hazards referred to USEC for correction.

2. OSHA Regional Offices will inform the DOE Regulatory Oversight Manager of matters which are in DOE's purview when such matters are identified during OSHA safety and health inspections or through complaints (identification of the complaining employee shall not be disclosed by DOE or OSHA). OSHA will provide the same information on these concerns to local union bargaining representatives of the USEC contractor employees.

a. The following are examples of reportable concerns:

(1) Insufficient security control affecting nuclear or radiological health and safety.

(2) Improper posting of radiation areas.

(3) Hazardous conditions relating to radiological or nuclear safety.

B. Inspections

1. DOE and OSHA will not normally conduct joint inspections at the gaseous diffusion plants. However, under certain conditions, such as investigations or inspections following accidents or resulting from reported activities as discussed in paragraph V. A., it may be mutually agreed on a case-by-case basis that joint investigations are appropriate.

2. The processing of uranium materials at the gaseous diffusion plants may present overlapping chemical and nuclear operation safety hazards which can best be evaluated by joint DOE–OSHA assessments.

C. Coordination

1. DOE and OSHA will, to the fullest extent possible, cooperate and coordinate at all organizational levels to develop and carry out information exchange, technical and professional assistance, referrals of alleged violations, and related matters concerning compliance and law enforcement activity to ensure the health and well-being of the workforce and the general public.

2. Resolution of policy issues concerning agency jurisdiction and operations will be coordinated by appropriate DOE and OSHA staff with input from the Office of the Solicitor. DOE and OSHA will designate points of contact for carrying out interface activities.

3. The whistleblower protection provisions of the Energy Reorganization Act, 42 U.S.C. Section 5851, as well as those in section 11(c) of the OSH Act, 29 U.S.C. Section 660(c), are applicable to employees of USEC and contractors at USEC administered facilities.

VI. Effective Date, Amendment, and Termination

This agreement shall become effective when signed by both parties. It may be modified or amended by written agreement between the parties. Such amendments shall become part of, and shall be attached to, this agreement. This agreement shall remain effective until terminated by either party upon 30 days written notice to the other, or until completion of the transition from DOE Regulatory Oversight to NRC enforcement of radiological safety and health matters at USEC facilities. The parties agree that if the transition process is not completed by October 1, 1995, the parties will review this MOU and make a decision on whether to renew, revise, reissue, or terminate the MOU.

Dated: December 21, 1994.

Joseph A. Dear,

Assistant Secretary, Occupational Safety and Health Administration.

Dated: December 21, 1994.

Tara O'Toole, M.D., M.P.H.

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 95–2341 Filed 1–30–95; 8:45 am]

BILLING CODE 4610–26–M

NATIONAL CAPITAL PLANNING COMMISSION

Washington, DC, Sports and Entertainment Arena; Intent to Prepare Environmental Assessment; Public Meeting

AGENCY: National Capital Planning Commission.

ACTION: Proposed construction and operation of a sports and entertainment arena in Washington, DC; addendum to notice of public meeting.

SUMMARY: On January 13, 1995, the National Capital Planning Commission in conjunction with the District of Columbia Government published a notice of a public meeting for the purpose of determining significant issues related to the alternatives and potential impacts associated with the proposed construction and operation of a sports and entertainment arena. The meeting, to be held on February 13, 1995, will serve as part of the formal environment review/scoping process for the preparation of the environmental document that is required for the project pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA).

As described in the earlier notice, this meeting will also serve to provide an opportunity for the public to comment on the historic preservation issues raised by the proposed project. This public participation is pursuant to Section 106 of the National Historic Preservation Act (16 USC 470f) and its implementing regulations at 36 CFR Part 800. Information concerning the time, place and purpose of the meeting can be found in the earlier notice at 60 FD 3273.

FOR FURTHER INFORMATION CONTACT: National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576, Attention: Ms. Sandra H. Shapiro, General Counsel, Phone: (202) 724–0174.

Ms. Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 95–2338 Filed 1–30–95; 8:45 am]

BILLING CODE 7502–02–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35268; File No. SR–CSE–95–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Relating to Designated Dealer Market Quotations Requirements

January 24, 1995.

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 January 17, 1995, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to amend Rule 11.9 by revising spread parameter requirements for Designated Dealers (''DDs''), which have been part of the Exchange's quality market policy, and by imposing new requirements on market quotes entered by DDs.

The text of the proposed rule change to CSE Rule 11.9(c) is as follows, with additions in italics:

Interpretations and Policies:

.01 Except during unusual market conditions or as otherwise permitted by an Exchange Official, the maximum allowable spread that may be entered by a Designated Dealer in a particular security shall be 125% (rounded out to the next ⅛ point increment) of the average of the three narrowest applicable spreads in that security. Applicable spreads shall include the inside quote of CSE and all ITS Participant market centers. In no event shall the maximum allowable spread that a Designated Dealer is required to quote be less than ¼ point. Nothing in this paragraph, however, shall prohibit a Designated Dealer from entering a quote whose bid/ask spread is less than ¼ point.

.02 Designated Dealers shall not furnish bid-asked quotations that are generated by an automated quotation tracking system (such as the Autoquote system or the Centramart system employed by certain ITS Participants).

.03 Except during unusual market conditions or as otherwise permitted by an Exchange official, the average firmwide quote-to-trade ratio for Designated Dealers shall not exceed ten-to-one. This ratio shall be measured on a quarterly basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enhance the quality of the CSE's market. First, the Exchange seeks to prohibit the furnishing of ''bid-asked quotations which are generated by an automated quotation tracking system.'' This prohibition broadens the current quotation restrictions contained in Section 8(d)(2) of the Intermarket Trading System (''ITS'') Plan, which limits such quotations to a size of 100 shares. Second, the Exchange seeks to impose a requirement that competing specialists spread their quotations no more than 125% of the average of the three best quote spreads provided by all markets that participate in the national market system. Finally, the Exchange proposes to require that the average firmwide quote-to-trade ratio for competing specialists, measured on a quarterly basis, not exceed ten-to-one.

The CSE is the first exchange to propose the complete elimination of autoquoting. Currently, regional exchange specialists use autoquoting as a means to technically comply with their obligation to provide continuous two-sided markets. The CSE believes that it is generally agreed that autoquoted markets provide no meaningful liquidity to the national market system: they are usually away from the NBBO; they must be limited to 100 shares by ITS rules; and they are exempt from ITS's national price protection rules, which means that they can be traded through without penalty. If extended to all exchanges, the CSE believes that the elimination of autoquoting would reduce capacity

demands on the consolidated quotation system and significantly enhance the transparency of the national market system.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is intended to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change is similar to that contained within File No. SR–CSE–94.11, which was circulated to ITS Participants and which has been withdrawn by the Exchange. The CSE received comments on SR–CSE–94–11 from the New York Stock Exchange, Inc. (''NYSE'').[1] The NYSE reiterated the positions it took on autoquoting, spread parameters, and quote-to-trade ratios in an earlier comment letter that was filed in response to File No. SR–CSE–94–01,[2] the CSE's earlier quality of markets filings.[3] In brief, the NYSE questioned the effectiveness of spread parameter and quote-to-trade ratios in improving market quality, and alleged that the CSE was attempting to codify a practice that violated the ITS Plan by permitting specialists to disseminate computer-generated quotes, all forms of which, the NYSE argued, were autoquoting. The NYSE acknowledged, however, in a letter dated September 15, 1994, that ''the method of autoquoting in and of itself is not the issue'' as much as the impact on market quality which flows from it.[4]

The CSE responded in depth to the NYSE's earlier comments in a letter dated July 29, 1994, and the Exchange incorporates, by reference, that response here.[5] Partly in response to industry comment, the CSE withdrew SR–CSE–94–01 and replaced it with SR–CSE–94–11, which has been withdrawn and replaced with this filing. In both of the recent filings, the CSE has simplified its autoquote prohibition by utilizing the language contained in Section 8(d)(ii) of the ITS Plan. The CSE believes that the elimination of autoquoting, as proposed by the CSE, will contribute significantly to the transparency and liquidity of the national market system without stifling the benefits of competition and technical innovation.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–95–01 and should be submitted by February 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2267 Filed 1–30–95; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* letter from James K.C. Doran, NYSE, to David Colker, CSE, dated December 22, 1994.

[2] *See* letter from James Buck, NYSE, to Jonathan Katz, Secretary, SEC, dated May 16, 1994 (commenting on File No. SR–CSE–94–01). This and other comment letters received by the Commission regarding SR–CSE–94–01 and SR–CSE–94–11 are available in the public file for this proposed rule change (File No. SR–CSE–95–1).

[3] The CSE withdrew SR–CSE–94–01 on December 22, 1994. *See* letter from Robert Ackerman, to Sharon Lawson, SEC, dated December 22, 1994.

[4] *See* letter from James K.C. Doran, NYSE, to ITS Operating Committee, dated September 15, 1994.

[5] *See* letter from David Colker, CSE, to Jonathan G. Katz, Secretary, SEC, dated July 29, 1994.

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0172]

Business Ventures, Inc.; Surrender of License

Notice is hereby given that Business Ventures, Inc., 20 North Wacker Drive, Chicago, Illinois 60606, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act).

Business Ventures Inc. was licensed by the Small Business Administration on October 31, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on January 23, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 25, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–2323 Filed 1–30–95; 8:45 am]

BILLING CODE 8025–01–M

[License #08–0002]

First Midwest Capital Corp.; Notice of License Surrender

Notice is hereby given that *First Midwest Capital Corporation (''FMCC''),* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). *FMCC* was licensed by the Small Business Administration on *March 19, 1959.*

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on January 24, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 25, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–2322 Filed 1–30–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2158 EJLI–26–95]

U.S. MAB National Committee for Man and the Biosphere; U.S. MAB Request for Proposals for Environmental Projects

The United States Man and the Biosphere (U.S.) Program hereby announces its request for proposals to continue its assistance to the U.S. Peace Corps in the development of a worldwide Environmental Gender and Development Training initiative as described below.

U.S. MAB will accept proposals of a maximum length of six (6) pages that outline how the objectives described below could be accomplished.

A curriculum vitae (C.V.) of a maximum length of four (4) pages for each principal(s), that clearly demonstrates a history of competency in the implementation of such tasks, must accompany the proposal.

Proposals may not request more than the sum of forty thousand ($40,000) dollars to implement this initiative.

All proposals must specify that all tasks will be completed at the headquarters of the U.S. Peace Corps or at other appropriate sites, as directed, on a half-time basis of 130 days during the period of March 13, 1995 through September 30, 1995.

Payments will be made on a quarterly basis in equal installments.

All proposals and accompanying documents must be received by the U.S. MAB Secretariat no later than the close of business (COB) on February 28, 1995. Proposals and c.v.'s will be evaluated on the criteria noted in the following section.

Selection will be made no later than March 3, 1995. Selected candidate principals must be prepared to implement their proposals beginning on March 13, 1995.

Objectives

To provide technical assistance to the U.S. Peace Corps, including but not limited to:

—Further develop the ongoing collaboration with the Environmental Sector in the design of Environmental Education projects and project components. As part of this effort, develop and coordinate in-service training workshops in Education and the Environment for Volunteers and their counterparts teaching math, science and English as a Foreign Language (EFL) in countries which are requesting this assistance;

—Take primary responsibility for providing technical support to Peace Corps Education projects, including, but not limited to, the following activities;

—Undertake approximately four consultancies to respond to requests from Peace Corps posts for technical assistance in project development, training development, or project evaluation;

—Develop and manage other initiatives in education, including, but not limited to, collaboration with other governmental and private agencies offering assistance to Peace Corps in project development and training;

—Review/select materials to be distributed through Peace Corps' Information Collection Exchange (ICE);

—Initiate and manage the development of training manuals and materials;

—Support the Agency in the implementation of PATS (Programming and Training System), including project design, monitoring, and evaluation assistance.

—Collaborate with incumbent Sector Specialists in the following tasks.

—Participate in project plan reviews for environmental education projects.

—Undertake annual reviews of country programs and technical assistance requests.

—Coordinate consultancies to respond to programming and training requests from the field, including developing and managing budgets and hiring and managing consultants.

—Work with other Education Sector Specialists in regular sector activities, including, but not limited to:

—Initiating and maintaining collaborative relationships with private organizations and other government agencies;

—Preparing documentation of sector activities'

—Sharing administrative tasks of the sector including managing budgets and coordinating activities;

—Collaborating with other sectors in OTAPS (Office of Training Program Support); for example, incorporating attention to WID (Women in Development) and Youth Issues into Education Sector projects/activities, and with other offices in Peace Corps.

Selection Criteria

—Performance record of the proposed principal;

—Demonstrated ability of the proposer to design and deliver training for environmental education.

—Demonstrated ability of the proposer to manage budgets and personnel;

—Demonstrated ability of the proposer to conduct needs assessments and develop project design;

—Fluency in Spanish or French preferred.

For further information concerning technical or grant performance-related inquiries, please contact: George Mahaffey, Director, Office of Training and Program Support, U.S. Peace Corps, Room 8624, 1990 K Street N.W., Washington, DC 20526, Tel. (202) 606–3101, FAX (202) 606–3204.

For submission of proposals: Roger E. Soles, Executive Director U.S. MAB, OES/EGC/MAB, U.S. Department of State, Washington, DC 20522, Tel. (703) 235–2946.

Dated: January 24, 1995.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program, Office of Global Change.

[FR Doc. 95–2300 Filed 1–30–95; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice 2157]

U.S. MAB National Committee for Man and the Biosphere; U.S. MAB Request for Proposals for Environmental Projects

The United States Man and the Biosphere (U.S.) Program hereby announces its request for proposals to continue its assistance to the U.S. Peace Corps in the development of a worldwide Environmental Gender and Development Training initiative as described below.

U.S. MAB will accept proposals of a maximum length of six (6) pages that outline how the objectives described below could be accomplished.

A curriculum vitae (C.V.) of a maximum length of four (4) pages for each principal(s), that clearly demonstrates a history of competency in the implementation of such tasks, must accompany the proposal.

Proposals may not request more than the sum of forty thousand ($40,000) dollars to implement this initiative.

All proposals must specify that all tasks will be completed at the headquarters of the U.S. Peace Corps or at other appropriate sites, as directed, on a half-time basis of 130 days during the period of March 13, 1995 through September 30, 1995.

Payments will be made on a quarterly basis in equal installments.

All proposals and accompanying documents must be received by the U.S. MAB Secretariat no later than the close of business (COB) on February 28, 1995. Proposals and c.v.'s will be evaluated on the criteria noted in the following section.

Selection will be made no later than March 3, 1995. Selected candidate principals must be prepared to implement their proposals beginning March 13, 1995.

Objectives

To provide technical assistance to the U.S. Peach Corps, including but not limited to:

—Coordinate Peace Corps/U.S. Agency for International Development support for the Peach Corps Worldwide Gender and Development Training Initiative, including the identification of project opportunities, organizing and delivering regional and sub-regional training of trainer workshops, develop training materials, and conduct country evaluations;

—Initiate and maintain collaborative relationships with private organizations and other government agencies;

—Train Peace Corps Headquarters and field staff, host country counterparts and host country NGO and PVO staff in gender analysis and its implications in development project planning, implementation and evaluation;

—Develop training materials which include gender analysis as part of social analysis skills Trainees develop during Pre-Service Training as well as the development of generic materials to be adapted by each country;

—Develop generic In-Service Training design for integration into sector specific IST workshops for PCVs and counterparts to train Peace Corps Volunteers and their host country counterparts in 40 countries in gender analysis and its implications for project implementation;

—In coordination and collaboration with the Women in Development Coordinator, provide technical assistance to field staff in project design and implementation issues related to gender and its implications for projects;

Selection Criteria

—Demonstrated ability of the proposer to design and deliver training in gender analysis and its implications for grassroots development projects;

—Demonstrated ability of the proposer to develop integrated training materials which strengthen existing training designs in technical, language and cross-cultural areas;

—Demonstrated ability of the proposer to conduct needs assessments and develop written materials and training designs which are based on field-generated needs and circumstances;

—Demonstrated ability to design and conduct staff development training for managers and technical specialists from a variety of cultural, linguistic and technical backgrounds;

—Demonstrated ability to produce written self-study materials enabling readers to develop an understanding of the role of pre-existing attitudes and values in determining perceptions and actions;

—Fluency in Spanish desired;

—Experience in training design and delivery for audiences from Latin America and the Caribbean, Africa, Eurasia and the Middle East and the Asia/Pacific regions required.

For further information concerning technical or grant performance-related inquiries, please contact: George Mahaffey, Director, Office of Training and Program Support, U.S. Peace Corps, Room 8624, 1990 K Street NW., Washington, DC 20526, Tel. (202) 606–3101, FAX (202) 606–3–24.

For submission of proposals: Roger E. Soles, Executive Director U.S. MAB, OES/EGC/MAB, U.S. Department of State, Washington, DC 20522, Tel (703) 235–2946.

Dated: January 24, 1995.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program, Office of Global Change.

[FR Doc. 95–2299 Filed 1–30–95; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice 2155]

United States International Telecommunications Advisory Committee Telecommunications Development Sector (ITAC–D) Group; Notice of Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Development Sector (ITAC–D) Group will meet on Thursday, February 16, 1995, in Room 1406 from 9:30 AM to 12:00 noon at the U.S. Department of State, 2201 ''C'' Street, N.W., Washington, DC 20520.

The agenda for the ITAC–D Group meeting will include (1) U.S. preparations for the ITU–D Study Group 1 (Telecommunication Development Strategies and Policies) meeting in Geneva, scheduled for March 6–17, and (2) a review of U.S. contributions for that meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please call (202) 647–5233 no later than five (5) days before the scheduled meeting. Enter from the ''C'' Street Main Lobby. A picture ID will be required for admittance.

Dated: January 23, 1995.

Doreen F. McGirr,

Chair, U.S. ITAC for ITU Telecommunications Development Sector.

[FR Doc. 95–2268 Filed 1–30–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended January 20, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50055

Date filed: January 19, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995

Description: Application of Reno Air, Inc., pursuant to 49 U.S.C. 41102, 14 CFR 302, Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing the carrier to provide two daily nonstop round trip combination flights between Reno, Nevada and Vancouver, British Columbia during the first year of the phase-in period under the new air transport agreement between the U.S. and Canada; and to provide one additional daily nonstop

round trip flight between Reno and Vancouver and one daily nonstop round trip between Las Vegas, Nevada and Vancouver during the second year of the phase-in period.

Docket Number: 50056
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, requests a certificate of public convenience and necessity for authority to offer scheduled foreign air transportation of persons, property and mail between the following city-pairs: 9) San Francisco, California—Vancouver, British Columbia, Canada; 2) Denver, Colorado—Vancouver, British Columbia, Canada; and 3) Los Angeles, California—Vancouver, British Columbia, Canada.

Docket Number: 50057
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Midwest Express Airlines, Inc., pursuant to 49 U.S.C. 41108 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to provide scheduled air transportation of persons, property and mail between Milwaukee, Wisconsin and Toronto, Canada.

Docket Number: 50058
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Shuttle, Inc., dba USAir Shuttle, pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity which would allow USAir Shuttle to engage in the foreign air transportation of persons, property and mail between LaGuardia Airport in New York and Montreal, Quebec, Canada, and Logan International Airport in Boston, Massachusetts and Montreal, Quebec, Canada.

Docket Number: 50059
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Trans World Airlines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between St. Louis, on the one hand, and Vancouver, Canada, on the other hand.

Docket Number: 50060
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Trans World Airlines, Inc., pursuant to 49 U.S.C. Section 41101, applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between St. Louis, on the one hand, and Montreal, Canada, on the other hand.

Docket Number: 50061
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize Continental to provide scheduled foreign air transportation of persons, property, and mail between New York/Newark and Vancouver and between Houston and Vancouver. Continental also requests the right to combine service at the points on these route segments with service at other points Continental is authorized to serve by certificates or exemptions, consistent with international agreements.

Docket Number: 50062
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize Continental to provide scheduled foreign air transportation of persons, property and mail between New York, New York/Newark, New Jersey, and Montreal, Canada; between Houston, Texas, and Montreal, Canada; and between Cleveland, Ohio, and Montreal, Canada.

Docket Number: 50063
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to authorize Continental to provide scheduled foreign air transportation of persons, property, and mail between New York/Newark and Toronto and between Houston and Toronto, with the right to coterminalize Toronto and Montreal for Houston operations.

Docket Number: 50064
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Trans World Airlines, Inc. pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between St. Louis, on the one hand, and Toronto, Canada, on the other hand.

Docket Number: 50065
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of America West Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to provide scheduled combination service between Phoenix, Arizona, on the one hand, and Vancouver, British Columbia, Canada, on the other hand, and between Las Vegas, Nevada, on the one hand, and Vancouver, British Colombia, on the other hand.

Docket Number: 50066
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for (1) a new or amended certificate of public convenience and necessity to provide foreign scheduled air transportation between Atlanta, Georgia and Toronto, Ontario, Canada commencing in Year 1, and (2) two additional roundtrip frequencies in Year 3 to augment the Atlanta-Toronto service, for a maximum of four frequencies.

Docket Number: 50067
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a new or amended certificate of public

convenience and necessity to provide foreign scheduled air transportation between Cincinnati, Ohio and Toronto, Ontario, Canada commencing in Year 2.

Docket Number: 50068
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to provide foreign scheduled air transportation between Atlanta, Georgia and Montreal, Quebec, Canada commencing in Year 1.

Docket Number: 50069
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to provide foreign scheduled air transportation between Cincinnati, Ohio and Montreal, Quebec, Canada commencing in Year 2.

Docket Number: 50070
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to provide foreign scheduled air transportation between Salt Lake City, Utah and Vancouver, British Columbia, Canada commencing in Year 1.

Docket Number: 50071
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to provide foreign scheduled air transportation between Cincinnati Ohio and Vancouver, British Columbia, Canada commencing in Year 2.

Docket Number: 50072
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies: (1) for an amendment of its certificate of public convenience and necessity for Route 52 to delete the long-haul restriction and authorize Delta to provide nonstop turnaround service between Portland, Oregon and Vancouver, British Columbia, Canada, and (2) for a certificate of public convenience and necessity authorizing nonstop foreign air transportation between a point or points in the U.S., on the one hand, and Calgary and Edmonton, Alberta, Canada, on the other hand, or alternatively, amendment of Delta's certificate for Route 404 to delete the long-haul restriction and authorize nonstop turnaround service between Salt Lake City, Utah, on the one hand, and Calgary and Edmonton, Alberta, Canada, on the other hand.

Docket Number: 50073
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 16, 1995
Description: Application of Eagle Canyon Airlines, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate scheduled air transportation of passengers, property and mail.

Docket Number: 50074
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property, and mail between Dallas/Ft. Worth, Texas and Chicago, Illinois, on the one hand, and Vancouver, British Columbia, Canada, on the other.

Docket Number: 50075
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 1995
Description: Application of Flagship Airlines, Inc. d/b/a American Eagle, pursuant to 49 U.S.C. 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property, and mail between New York, New York, and Montreal, Quebec, Canada.

Docket Number: 50076
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Flagship Airlines, Inc. d/b/a American Eagle, pursuant to 49 U.S.C. 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property, and mail between Boston, Massachusetts, and Toronto, Ontario, Canada.

Docket Number: 50077
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Valujet Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign transportation of persons, property and mail between Washington, D.C. and Montreal, Canada.

Docket Number: 50079
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Alaska Airlines, Inc., pursuant to 49 U.S.C. 41101, and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing Alaska to engage in the scheduled foreign air transportation of persons, property and mail between San Diego and Oakland, California, on the one hand, and Vancouver, British Columbia, Canada, on the other hand.

Docket Number: 50080
Date filed: January 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize Northwest to provide scheduled foreign air transportation of passengers, property and mail between Minneapolis/St. Paul Minnesota, on the one hand, and Vancouver, Canada, on the other hand.

Docket Number: 50081
Date filed: January 19, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize Northwest to provide scheduled foreign air transportation of passengers, property and mail (a) between Minneapolis/St. Paul, Minnesota, and Toronto, Canada, and (b) between Memphis, Tennessee, and Toronto.

Docket Number: 50082

Date filed: January 19, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to authorize Northwest to provide scheduled foreign air transportation of passengers, property and mail between Minneapolis/St. Paul Minnesota, on the one hand, and Montreal, Canada, on the other hand.

Docket Number: 50083

Date filed: January 19, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995

Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity so as to operate nonstop service in scheduled foreign air transportation between Washington, D.C. (National Airport) and Toronto, Canada.

Docket Number: 50084

Date filed: January 19, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995

Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity so as to operate nonstop service in scheduled foreign air transportation between New York (La Guardia Airport) and Toronto, Canada.

Docket Number: 50085

Date filed: January 19, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995

Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies to operate nonstop service in scheduled foreign air transportation between Pittsburgh, Pennsylvania, and Toronto, Ontario, Canada, and for a subsequent allocation of two (2) third-year frequencies in the Pittsburgh-Toronto market.

Docket Number: 50086

Date filed: January 19, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995

Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity so as to operate nonstop service in scheduled foreign air transportation between Pittsburgh, Pennsylvania, and Montreal, Canada.

Docket Number: 50088

Date filed: January 20, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 17, 1995

Description: Joint Application of American Airlines, Inc. and Delta Air Lines, Inc., pursuant to 49 U.S.C. 41105, and Subpart Q of the Regulations, request the Department approve the transfer to American of the following certificates now held by Delta: Miami/Tampa-Toronto (Route 609) and Miami/Tampa-Montreal (Route 154).

Myrna F. Adams,

Acting Chief Documentary Services Division.

[FR Doc. 95–2331 Filed 1–30–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended January 20, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50046

Date filed: January 17, 1995

Parties: Members of the International Air Transport Association

Subject: TC12 Reso/P 1628 dated November 25, 1994 USA-Europe Resos r-1 to r-32

Proposed Effective Date: April 1, 1995

Docket Number: 50047

Date filed: January 17, 1995

Parties: Members of the International Air Transport Association

Subject: TC2 Reso/P 1690 dated Nov. 18, 1994 r-1 to r-19; TC2 Reso/P 1691 dated Nov. 18, 1994 r-20 to r-47; TC2 Reso/P 1692 dated Nov. 18, 1994 r-48 to r-59; Within Europe Resos

Proposed Effective Date: April 1, 1995

Docket Number: 50054

Date filed: January 19, 1995

Parties: Members of the International Air Transport Association

Subject: Telex Agency Mail Vote A089 (Southwest Pacific) Enlargement of Area Covered by Reso 816

Proposed Effective Date: January 31, 1995.

Myrna F. Adams,

Acting Chief Documentary Services Division.

[FR Doc. 95–2330 Filed 1-30–95; 8:45 am]

BILLING CODE 4910-62-P

Office of the Secretary

[Order 95–1–36]

Fitness Determination of Aroostook Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Aroostook Aviation, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738 (*see* former section 491(e) of the Federal Aviation Act).

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street SW., Room 6401, Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2343.

Dated: January 25, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–2296 Filed 1–30–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 94–94; Notice 2]

Decision That Nonconforming 1990 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1990 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990 Mercedes-Benz 190E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 Mercedes-Benz 190E), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Baylor, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&G Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1990 Mercedes-Benz 190E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 6, 1994 (59 FR 62777) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 104 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 Mercedes-Benz 190E (Model ID 201.036) not originally manufactured to comply with all applicable Federal motor vehicle safety standards in substantially similar to a 1990 Mercedes-Benz 190E originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 25, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–2297 Filed 1–30–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–102; Notice 2]

Decision That Nonconforming 1994 Porsche 911 Carrera 2-Door Passenger Cars Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1994 Porsche 911 Carrera 2-Door passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994 Porsche 911 Carrera 2-Door passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.—certified versions of the 1994 Porsche 911 Carrera 2-Door passenger car), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer R–90–

006) petitioned NHTSA to decide whether 1994 Porsche 911 Carrera 2-Door passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 21, 1994 (59 FR 60042) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 103 is the eligibility number assigned to vehicles admissible under this decision

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1994 Porsche 911 Carrera 2-Door passenger car not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1994 Porsche 911 Carrera 1-Door passenger car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 25, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–2298 Filed 1–30–95; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 273939, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Profusion of Color: Korean Wrapping Cloths of the Choson Dynasty'' (see list) [1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at Asian Art Museum of Modern Art of San Francisco, California on or about February 28, 1995 through April 30, 1995 and the Seattle Art Museum of Seattle, Washington on or about September 9, 1995 through March 31, 1996 and Peabody Essex Museum of Salem, MA on or about April 25, 1996 through July 22, 1996 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 25, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–2342 Filed 1–30–95; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, This is to correct the **Federal Register** Notice / Vol. 60, No. 8 / Thursday, January 12, 1995 Notices page 3027 should read as follows: ''Visions of Love and Life: PRE-RAPHAELITE ART from the Birmingham Collection, England.'' (See listed [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Seattle Art Museum of Seattle, Washington, from on or about March 9, 1995 through May 7, 1995, and at the Cleveland Art Museum, Cleveland, Ohio, from on or about May 31, 1995 through July 6, 1996, and at the Delaware Art Museum, Wilmington, from on or about August 11, 1995 through October 15, 1995, and at the Museum of Fine Arts, Houston, Texas, from on or about November 4, 1995 through January 2, 1996, and at the High Museum of Art, Atlanta, Georgia, from on or about January 27, 1996 through April 7, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 25, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–2343 Filed 1–30–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained contacting Mr. Paul W. Manning, Assistant General Counsel, at 619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC. 20547.

[1] A copy of this list may be obtained by contacting Ms. Carol B. Epstein, Assistant General Counsel, at 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: COMMENTS ON THE INFORMATION COLLECTION SHOULD BE DIRECTED TO THE OMB DESK OFFICER ON OR BEFORE MARCH 2, 1995.

Dated: January 23, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614
2. The form is used to file a claim for accrued benefits available at the time of the veteran's death. The information is used by VA to determine the appropriate claimant eligible for accrued benefits
3. Individuals or households
4. 1,200 hours
5. 30 minutes
6. On occasion
7. 2,00 respondents

[FR Doc. 95–2310 Filed 1–30–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable, (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 2, 1995.

Dated: January 23, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Extension

1. Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d
2. The form is completed by certain disabled veterans when applying for benefits for acquiring adaptations/alterations to veterans' homes. The information is used by VA to evaluate the request and in approving or disapproving a veteran's application
3. Individuals or households
4. 25 hours
5. 20 minutes
6. On occasion
7. 75 respondents

[FR Doc. 95–2312 Filed 1–30–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: School Attendance, VA Forms 21–674b and 21–674b(JF)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 2, 1995.

Dated: January 23, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Reinstatement

1. School Attendance Report, VA Forms 21–674b and 21–674b(JF)
2. The forms are used to verify the enrollment by a child of a veteran in school. The information is used by VA to determine continued entitlement to the additional benefits for dependents
3. Individuals or households
4. 3,300 hours
5. 5 minutes
6. On occasion
7. 39,500 respondents

[FR Doc. 95–2311 Filed 1–30–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 20

Tuesday, January 31, 1995

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, February 6, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–2513 Filed 1–27–95; 3:45 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 30, February 6, 13, and 20, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 30

Wednesday, February 1

10:00 am
Briefing by Organization of Agreement States (Public Meeting)
(Contract: Rosetta Virgilio, 301–504–2307)

2:00 p.m.
Briefing on Core Shroud Issues (Public Meeting)
(Contract: Ashok Thadani, 301–504–1274)

Thursday, February 2

2:00 p.m.
Briefing on NRC's Initiatives on Responsiveness to the Public (Public Meeting)
(Contact: James Blaha, 301–415–1703)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 3

10:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

2:00 p.m.
Briefing on Advanced Reactor Technical Issues (Public Meeting)
(Contact: Ashok Thadani, 301–504–1274)

Week of February 6—Tentative

There are no meetings scheduled for the Week of February 6.

Week of February 13—Tentative

There are no meetings scheduled for the Week of February 13.

Week of February 20—Tentative

There are no meetings scheduled for the Week of February 20.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 415–1661.

Dated: January 26, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–2412 Filed 1–27–95; 10:36 am]

BILLING CODE 7590–01–M

Corrections

Federal Register

Vol. 60, No. 20

Tuesday, January 31, 1995

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.

DEPARTMENT OF COMMERCE

Technology Administration

Metric Policy Interagency Council and Commerce Department; Metric Town Meeting

Correction

In notice document 95–2046 beginning on page 5370 in the issue of Friday, January 27, 1995, make the following correction:

1. On page 5370, in the third column, under **SUMMARY:**, in the next to last line, ''speck'' should read ''speak''.

2. On page 5371, in the first column, under **SUPPLEMENTARY INFORMATION:**, in the first column, in the third line, ''united'' should read ''United'' and in the third paragraph, in the next to last line, ''nest'' should read ''next.''.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-95-1538; FR-2942-C-06]

RIN 2502-AG27

Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X); Correction

Correction

In rule document 95–553 beginning on page 2642 in the issue of Tuesday, January 10, 1995, make the following correction:

On page 2642, in the third column, in amendatory instruction 2, the first three lines should read as follows:

''2. The text on page 65455 is removed, and in addition in Appendix MS-1 to Part 3500, Servicing Disclosure Statement, is further corrected by''.

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

Correction

In notice document 94–31334 beginning on page 65806 in the issue of Wednesday, December 21, 1994, make the following correction:

On page 65807, in the first column, in paragraph 15, in the second line, ''(N1-146-84-1)'' should read ''(N1-146-94-1)''.

BILLING CODE 1505–01–D

federal register

Tuesday
January 31, 1995

Part II

Postal Service

39 CFR Parts 111 and 501

Manufacture, Distribution, and Use of Postage Meters; Proposed Rule

POSTAL SERVICE

39 CFR Parts 111 and 501

Manufacture, Distribution, and Use of Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would revise existing Domestic Mail Manual (DMM) and Domestic Mail Manual Transition Book (DMMT) standards regarding the manufacture, distribution, and use of postage meters and would introduce new regulations in title 39, Code of Federal Regulations (CFR), to clarify postal standards concerning the manufacture and distribution of postage meters.

Currently all meter standards pertaining to the manufacturer and distribution of meters and postal internal instructions regarding meters are contained in the DMMT, an interim handbook for postal standards. Postal standards regarding meter manufacturers are being revised and published in 39 CFR part 501. The proposed rules would allow the Postal Service to tighten controls over the manufacture, distribution, and use of meters with the goal of better protecting postal revenues. These changes are designed to increase the amount of information available to the Postal Service to facilitate effective management and control of the meter program. In addition, security controls are being supplemented to ensure that proper postage is being paid and that the risk of postage meter misuse is minimized.

DATES: Comments must be received on or before March 17, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mailing Systems Development, Room 8406, 475 L'Enfant Plaza SW., Washington, DC 20260–6807. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: Postage meters represent a widely accepted means for payment of postage. There are approximately 1.4 million postage meters in use, which accounted for approximately $18 billion of Postal Service revenues in FY 1994. The widespread use of meters can be attributed to the flexibility and convenience they convey to postal customers, including:

- Printing variable amounts of postage on virtually any class of mail to allow use of exact postage.
- Facilitating automated mail preparation operations for customers.
- Providing flexibility to comply with postage rate changes by affixing correct postage with a simple resetting procedure.
- Allowing licensees to purchase larger amounts of postage at a single resetting to reduce trips to the local post office.
- Providing a secure means for licensees to keep more accurate accounting records of postage utilized.
- Reducing the cost of applying postage for licensees.
- Providing remote ''telephonic'' resetting for licensee convenience.

Postage meters are available to Postal Service licensees only by lease from authorized manufacturers. The Postal Service holds manufacturers responsible for the control, operation, maintenance, and replacement (when necessary) of their meters. Traditionally, record-keeping of meters and meter licenses has been handled in a decentralized manner, primarily by local postmasters.

In 1991, the Postal Service identified opportunities for improving the efficiency and effectiveness of the Postal Service postage meter program. Three specific recommendations for improving the management of the meter program were identified:

1. Establishment of a central management group and development of meter control systems to manage the meter program.
2. Development of increased security mechanisms.
3. Introduction of new technology to improve the tracking and control of meters and the financial transactions associated with their use.

Further study by the Postal Service supported these initial recommendations, and independent investigations by the Postal Inspection Service also uncovered instances of postage meter fraud and identified a substantial risk of loss of postal revenues. In the past 2 years, the United States Postal Service (USPS) Inspection Service has uncovered 16 cases in which mailers have used varying techniques to duplicate or force the application of postage meter impressions without payment of postage. Although the nature of meter fraud is such that its extent is unknowable, in these cases alone, it is estimated that the Postal Service sustained losses in excess of $16 million. This estimate is expected to grow following resolution of current cases. The USPS Inspection Service has been aggressively pursuing these cases through arrests, indictments, and administrative and civil remedies. The problem was so critical that it drew the attention of Congress and resulted in a General Accounting Office investigation and report that supported earlier Postal Service findings. The results of these investigations have mandated the Postal Service to enhance the financial controls associated with the meter program.

After three joint meetings with authorized meter manufacturers to discuss proposed regulatory changes, the Postal Service has considered all and adopted many of the oral and written comments that were provided in connection with these sessions. In conjunction with an independent research firm, the Postal Service convened six groups of meter licensees representing small-, medium-, and large-volume meter licensees to solicit their comments. Revisions have been incorporated in the proposed regulations to reflect many of the meter licensees' suggestions. The Postal Service also gave notice of its intention to publish this notice of proposed rulemaking and invited interested parties to attend a public meeting held on December 13, 1994. 59 FR 61302 (November 30, 1994). The Postal Service presented a summary of proposed regulations at the public meeting and solicited comments and suggestions from attendees. The Postal Service responded to inquiries made during the meeting and advised participants to provide additional comments in writing. The Postal Service reviewed all inputs from attendees and included suggestions in the final proposed regulations as warranted. Transcripts of the public meeting and subsequent written comments are available for review and photocopying at USPS Headquarters, 475 L'Enfant Plaza, Room 8430, Washington DC 20260–6807.

The Postal Service has drafted proposed regulations and program changes to tighten security and fiscal control of postage meters. The following proposed regulations are designed to:

- Reduce fraud associated with the misuse of postage meters.
- Permit licensees to gain a better understanding of meter use and Postal Service licensee requirements.
- Develop an efficient system to capture and track meter population data on a national basis to facilitate centralized management decisions and to provide a means for dissemination of information for decentralized program administration.
- Provide a transition from a paper-based management system to efficient

automated processes for management of the meter program.

• Provide the necessary mechanisms to recover lost and stolen meters and therefore reduce the potential for meter misuse and fraud.

The proposed regulations fall into four general categories: Meter security, administrative controls, other issues, and Computerized Meter Resetting System (CMRS). Each is discussed in turn.

I. Meter Security

A. Integrity Weakness and Design Deficiencies

The Postal Service has followed a practice of absorbing postage revenue losses even if such losses occur after a meter manufacturer knows or should have known of any defect that compromises meter security and/or revenue protection and fails to notify the Postal Service accordingly. Proper reporting of these instances would minimize revenue losses both by establishing a dialogue leading to the early identification of potential security weaknesses and by facilitating development and implementation of corrective technical or administrative actions.

Prompt notification of all potential security weaknesses identified in a particular meter or class of meters is necessary to protect postal revenues. The Postal Service depends on manufacturers to identify and notify the Postal Service of any potential security weaknesses. Postal Service notification of security concerns serves the following objectives:

• Problem Quantification—to determine whether similar problems exist in other meters made by that manufacturer.

• Commonality—to determine whether similar problems are inherent to meters distributed by other manufacturers because there are similarities in security features.

• Meter Authorization—to facilitate development of a database of known security issues to ensure systemic review of new meters presented for evaluation to avoid similar weaknesses.

Historically, the Postal Service has relied on voluntary reporting by the meter manufacturers to identify integrity weaknesses and design deficiencies in their meters. Experience has shown that voluntary reporting of this information has not been satisfactory. Recent information received from outside sources has identified security weaknesses and instances of abuse that, if known, would have alerted the Postal Service to security weaknesses of meters used earlier in the United States. This knowledge, regardless of whether the meter is approved for use in the United States, would allow the Postal Service to preserve the security and use of the postage meter payment process and thereby protect Postal Service revenues. This measure would also protect meter licensees. If the Postal Service is kept apprised of security weaknesses in meters, it will be less likely to approve meters that might be withdrawn later. Meter licensees will thus be less likely to purchase mailing systems that are compatible with a single meter that is withdrawn at a later date as a result of emergent security issues.

The Postal Service proposes that 39 CFR 501.13, Reporting, specify manufacturers' responsibilities in notifying the Postal Service of security weaknesses of meters distributed in the United States and/or foreign markets. Manufacturers must submit a preliminary report to the manager of Mailing Systems Development (MSD), USPS Headquarters, within 21 calendar days of the date an authorized dealer, agent or employee of such, or any employee of the manufacturer identifies a potential meter security weakness. Potential security weaknesses that must be reported include known or suspected equipment defects, suspected abuse by a meter licensee or manufacturer employee, suspected security breaches of Computerized Meter Resetting System (CMRS) information systems, occurrences outside normal performance, or any repeatable deviation from normal meter performance (within the same model family and/or by the same licensee). Preliminary reports regarding meter security weaknesses may be communicated by telephone; however, the manufacturer's corporate headquarters must submit a formal written report of each potential security weakness to USPS Headquarters within 45 days of the preliminary notification. Formal written notification must include the circumstances, proposed investigative procedure, and the expected completion date of the investigation. Periodic status reports are to be submitted during the subsequent investigation, and a summary of the findings is to be prepared and submitted on completion.

The Postal Service proposes to impose administrative sanctions against manufacturers that do not comply with these reporting requirements. Manufacturers are responsible for providing a timely and efficient channel for internal reporting, and they are required to provide the Postal Service with a copy of their internal policy and instructions associated with these reporting procedures. Sanctions for noncompliance with these reporting time frames include liability for the costs of investigation and documented revenue losses that can be traced to any meter for which the manufacturer failed to file a report in accordance with prescribed procedures, net of any amount collected from the meter users. Losses will be measured from the date that an authorized dealer, agent or employee of such, or any employee of the manufacturer knew or should have known of a potential meter security weakness.

39 CFR Part 501 References:

§ 501.13, Reporting.
§ 501.14, Administrative sanction on reporting.

B. Meter Manufacturers' Inspections

The Postal Service recognizes the importance of periodic inspections by manufacturer representatives. Such inspections provide the following advantages:

• Prevention—Because the meter licensee understands that meters are subject to periodic unannounced on-site inspections by the meter manufacturer (which include recording of interim register readings and seal numbers, and visual inspection for signs of tampering), meter users are deterred from misusing meters to avoid the payment of postage.

• Detection—Inspections provide a mechanism for uncovering attempts to misuse meters. Inspections by meter-knowledgeable personnel can uncover situations in which mailers are defrauding or misusing meters to avoid payment of postage.

• Uncovering Missing Meters—Periodic manufacturer on-site meter inspections serve to minimize the number of meters that are reported missing as a result of licensees relocating without notifying the Postal Service or manufacturers. Periodic on-site visits ensure that the location and identity of meters and meter users are updated periodically, and any meters that cannot be located will be reported promptly as lost or stolen.

• Additional Meter Accountability—Visual inspections of meters by manufacturer personnel provide the Postal Service with verification of register readings (control totals), locking mechanisms, and seal identification numbers, and these inspections also provide assurance that the meter is being maintained in an appropriate manner by the licensee. Because postage meters remain the property of the meter

manufacturers, they benefit by inspecting their ''inventory'' to ensure its continued viability.

• Identification of Malfunctioning Meters—Periodic manufacturer inspections facilitate identification of malfunctioning meters (e.g., not indicating or recording correct register readings, worn or deteriorated plate imprints) and ensure that the tracking, control, and operational mechanisms are functioning properly between meter settings.

• Complete Meter Inspection—On-site meter inspections are the only means to inspect postage meters in a fully operational or ''live'' environment. When meters are examined by Postal Service employees, they are unable to operate the meters (e.g., printing .00 indicia) because certain meters are not operational when unattached to a meter base. Manufacturer inspections provide a mechanism for ensuring that meters are functioning and printing indicia correctly.

• Enhancement of Postal Service Examination Procedures and Controls—Periodic manufacturer inspections supplement ordinary setting and periodic Postal Service examinations in the joint manufacturer-Postal Service effort to ensure that postage meters are accounted for and functioning properly.

• Increase in Manufacturers' Visibility—Periodic meter inspections ensure that meter manufacturers maintain communication channels with meter licensees and provide an opportunity to determine licensees' meter requirements and disseminate meter changes to meter users.

• Assurance for Lessor of Compliance With Postal Regulations—Periodic inspection of licensee equipment assures meter users that their meters are properly maintained and that they are in compliance with postal regulations. This serves to protect the licensees from situations in which mail might be refused as a result of deteriorated equipment.

Postal regulations require that manufacturers have all meters in service inspected twice annually at approximately 6-month intervals. Some manufacturers have not been able to comply with this requirement. Over the past several years, meter manufacturers have asked the Postal Service to consider alternatives to the semiannual inspection requirements.

By definition, each postage meter must have an ascending counting device (which registers the total amount of postage imprinted) and a descending counting device (which registers the balance of unused postage). Electronic meters have either nonvolatile registers or solid-state memories to store the postage data. System meters contain the printing die and registers for a mailing machine, but they are detachable for setting and examination. Stand-alone meters are used independently of any other mailing equipment. Experience and security evaluations have shown that different models of meters and different types of users of meters are subject to varying levels of risk; therefore, all meters do not need to be inspected at the same frequency.

As a consequence of the Postal Service's assessment of varying levels of risk of fraud, the Postal Service proposes to revise inspection schedules in 39 CFR 501.25, Inspection of Meters in Use. The new schedules will be based on meter and licensee characteristics. The inspection schedule better relates to the demonstrated security risks associated with mechanical and electronic meters, system meters, and the use of Computerized Meter Resetting System (CMRS). The Postal Service will develop a central tracking system to monitor the inspection of meters by manufacturers.

The Postal Service proposes to require less frequent inspections of electronic meters and stand-alone meters, but more frequent inspections of mechanical and system meters. Electronic, stand-alone, and CMRS meters provide the Postal Service with a higher degree of security. These meters generally possess additional security features (such as redundant register memories). Stand-alone meters also have low volume capacity. Therefore, inspection frequencies for these meters will be decreased under the new inspection standards.

With respect to the meter licensee, inspection frequencies would generally vary with the licensee's mailing volume level. Proposed standard inspection intervals are shown in the table below; however, the Postal Service may require more frequent inspections in special circumstances. The revised inspection frequencies will concentrate on the higher risk meters and users but will, in total, result in fewer required inspections than were mandated by prior meter standards published in the DMMT.

Meter type	Monthly	Quarterly	Semiannually	Annually
Mechanical	Special Circumstances	High-Volume Licensees Using System Meters.	Other Licensees Using System Meters.	Stand-Alone Meters.
Electronic	Special Circumstances		High-Volume Licensees Using Non-CMRS System Meters.	All CMRS and Other Electronic Meters.

The Postal Service also proposes to impose sanctions in 39 CFR 501.23, Administrative sanction, against manufacturers who do not perform 100 percent of the required inspections. The proposed sanctions would permit the Postal Service to recover costs and revenue losses (net of any amount collected from the meter users) that result from the manufacturer's failure to conduct all required inspections. Imposition of sanctions for noncompliance with Postal Service meter inspection schedules does not affect the requirement that the manufacturer conduct meter inspections that have not been completed. Additionally, the Postal Service may suspend further distribution of meters by a manufacturer that fails to comply with relevant inspection requirements.

39 CFR Part 501 References

§ 501.5, Suspension and revocation of authorization.
§ 501.23, Administrative sanction.
Domestic Mail Manual Transition Book (DMMT) 144.962, redrafted as § 501.25, Inspection of meters in use.

C. Custody of Suspect Meters

Currently DMM P030.2.4, Licensee Responsibilities, provides that meters in the licensee's custody and the records of meter transactions or the latest Postal Service (PS) Form 3603, Receipt for Postage Meter Setting, must be available for examination or audit on request by the Postal Service or meter manufacturer. This section authorizes the Postal Service to examine meters and meter records on-site, at the licensee's place of business. However, there is no provision to allow postal inspectors to withdraw from service meters suspected of being manipulated for forensic examination. Inspectors must either obtain a federal search warrant or request the meter

manufacturer to withdraw the meter from service. In most instances, there is only reasonable suspicion that a meter has been tampered with or has failed to lock out, thus falling short of the probable cause necessary to obtain a warrant. Requesting the meter manufacturer to take custody of suspect meters might create problems in any resulting litigation.

The Postal Service proposes to amend DMM P030.2.4 and add section P030.2.5, Custody of Suspect Meters, to authorize postal inspectors to conduct unannounced on-site examinations of meters suspected of being manipulated or failing to lock out. Postal inspectors will also be authorized to withdraw a suspect meter from service without a warrant for physical and/or laboratory examination, thus enhancing an inspector's ability to uncover postage meter fraud and protect postal revenues.

39 CFR Part 111 References:

Domestic Mail Manual (DMM) P030.1.3, Possession
DMM P030.2.2, Licensee Agreement
DMM P030.2.4, Licensee Responsibilities
DMM P030.2.5, Custody of Suspect Meters

D. Missing Meters

Current standards mandate that manufacturers must provide the designated Information Systems Service Center (ISSC) with a compatible computer tape of lost and stolen meters quarterly. Lost and Stolen Meter Activity Reports are used by post offices and the Inspection Service in locating/recovering missing meters. Meters that are actually lost or stolen could be tampered with without detection because they are not inspected by the Postal Service or the manufacturer. The Postal Service is concerned that manufacturers do not always apply reasonable efforts to ensure the accuracy of lost and stolen meter reports. The Postal Service has found that, in some circumstances, the exercise of reasonable effort would have permitted the manufacturer to locate a significant portion of meters that were incorrectly reported as lost or stolen. Additionally, the Postal Service has found that, in a number of cases where meters were reported as lost or stolen and later located, the manufacturer failed to notify the Postal Service. As a result, the Postal Inspection Service has unnecessarily expended resources investigating the disappearance of some meters reported to be lost or stolen but in fact recovered by the manufacturer. Current recovery procedures and reporting formats differ significantly among manufacturers. As a result, the reliability and accuracy of lost and stolen meter reports can vary with the level of each meter manufacturer's effort and standard operating procedure.

Currently, meter manufacturers must notify designated postal inspectors of missing and recovered meters through established irregularity reporting procedures. Meter manufacturers are also responsible for updating a national computerized quarterly lost and stolen meter report that is distributed by the Minneapolis ISSC. The Postal Service proposes implementation of a new standardized meter incident reporting process that will provide the consistent and uniform data and procedures necessary to improve the overall effectiveness of the recovery process.

Standardized meter incident reports (shown in Exhibit A) will supplement this notification process and will facilitate compilation of monthly input for the manufacturers' national lost and stolen meter reporting. Manufacturers will be required to complete lost and stolen meter incident reports that will detail circumstances relating to the loss, theft, or recovery of postage meters. The report must be filed within 30 days after a meter is determined to be lost, stolen, or subsequently recovered. The manufacturer will be required to follow detailed instructions in attempting to locate a meter before that meter may be reported as lost or stolen. The manufacturer's representative must certify compliance. Distribution of the incident report will be made to the licensing post office and the Inspection Service.

The Postal Service also proposes to impose an administrative sanction against any manufacturer that without just cause fails to comply with these standardized reporting procedures or that without just cause fails to report a meter that is known to be lost or stolen. This administrative sanction is also proposed against any manufacturer that without just cause fails to report the recovery of a lost or stolen meter. These administrative sanctions are designed to permit the Postal Service to recover investigative and administrative costs for lost and stolen meters and any documented revenue losses (net of any amount collected from the meter users) that occur as a result of a manufacturer's failure to follow standardized lost and stolen meter incident reporting procedures. Proposed reporting procedures include the monthly update of the national computerized lost and stolen meter report.

39 CFR Part 111 References

DMM P030.2.8, Missing Meters

39 CFR Part 501 References

§ 501.22, Distribution controls.
DMMT 144.952(f), redrafted as § 501.22(i), Distribution controls.
§ 501.22(j), Distribution controls.
§ 501.23, Administrative sanction.
DMMT 144.963, redrafted as § 501.26, Meters not located.

E. Shipment of Meters

The loss or theft of postage meters represents a substantial risk to postal revenues regardless of whether it is a live meter (with postage set) or a meter that has not yet been checked into service. Registered mail is one of the safest means of shipping postage meters, and the Postal Service requires that all meters be shipped by registered mail. Shipment of meters by private carrier does not necessarily provide adequate security and control mechanisms and can result in the loss or mishandling of postage meters. This, in turn, may lead to meter misuse and significant revenue loss to the Postal Service.

The Postal Service proposes to mandate that all meters be shipped via registered mail. The Postal Service will, however, consider requests by the manufacturers to ship meters via private carrier on a case-by-case basis. Manufacturers that fail to comply with standards for meter shipment will be subject to an administrative sanction. Licensees that fail to comply with these standards will be subject to license revocation.

39 CFR Part 111 References

DMM P030.2.9, Returning Meters

39 CFR Part 501 References

§ 501.22(q), Distribution controls.
§ 501.23, Administrative sanction.

F. Security Seals

Whenever a postage meter is checked into service or additional postage is set into a non-CMRS meter, a postal employee must seal the meter to prevent unauthorized personnel from tampering with the meter. Currently, this task is accomplished using lead seals that are crimped into place with pliers. These lead seals and sealing pliers are supplied by authorized meter manufacturers.

Traditional lead seals are not adequately secure. The Postal Service has been testing new security seals that offer greater security. These new security seals have unique serial identification numbers that can be recorded when the meter is sealed. Additionally, these new meter seals are recyclable and are more environmentally acceptable than the traditional lead composition.

The Postal Service proposes to replace current meter seals with new security seals. When meters are checked into service, or additional postage is set on a non-CMRS meter, the serial identification numbers on the new security seals will be appropriately documented to facilitate subsequent verification that the meter has not been opened or tampered with. It is the responsibility of the licensee to ensure that the security seals and serial identification numbers remain intact between meter settings and/or examinations.

Meter seals will now be requisitioned directly from Postal Service's area supply centers rather than from the meter manufacturer's headquarters. The proposed rule clarifies that the manufacture and procurement process for the new seals will be under the control of the Postal Service. The costs associated with these new seals will continue to be the responsibility of the manufacturers. The Postal Service recognizes that some meters do not use seals and that some meters will require seals less frequently than others (such as CMRS meters, which are sealed at check-in and resealed only after Postal Service examinations). Seal costs will be computed based on the average seal usage per meter type. All costs will be apportioned by the manufacturer's installed base of meters. Manufacturers will be billed for the seals semiannually. Seal costs are estimated to be $0.10 per seal.

39 CFR Part 501 References

DMMT 144.341(d), redrafted as § 501.22(e), Distribution controls.
DMMT 144.946, redrafted as § 501.20, Keys and setting equipment.

G. Meter Labeling

The Postal Service proposes to require meter manufacturers to apply two standardized information labels to each postage meter leased prior to having a meter checked into service as outlined in 39 CFR 501.22(r).

A cautionary label must be applied that provides the meter user with basic reminders on leasing, meter movement, and misuse. A second label must be applied that contains a barcoded representation of the meter serial number. Meters without the required labels will not be placed into service if they are presented at a post office with the labels missing. Manufacturers that fail to comply with labeling requirements will be subject to administrative sanctions under § 501.23.

Cautionary labels will serve to deter fraud by advising licensees of the penalties associated with using meters in a fraudulent manner. The serial number barcode will increase the efficiency and accuracy of examination, setting, and audits by postal employees.

Labeling of meters in this fashion provides clear and unequivocal notice to the meter user that tampering or misuse of a postage meter is a federal offense and disseminates the telephone number for providing information concerning known or suspected abuses.

Exceptions to the formatting of required labeling will be determined on a case-by-case basis. Any deviations from standardized meter labeling requirements must be approved in writing by the manager of Mailing Systems Development.

39 CFR Part 111 References

DMM P030.2.4g, Licensee Responsibilities

39 CFR Part 501 References

§ 501.22(r), Distribution controls.
§ 501.23, Administrative sanction.

H. Postage Meter Testing

In order for a postage meter to be approved by the Postal Service it must be tested for reliability, durability, and security. With the introduction of advanced technology, a greater emphasis is being placed on testing by the manufacturers, or by certified laboratories on their behalf, and in the manufacturer's submission of test plans and supporting documentation. The Postal Service has arranged for independent experts to assist in the evaluation of the security features associated with these products. In order to ensure revenue protection, a meter model may be examined for security by the Postal Service anytime before or after approval. Suspension and revocation of meter approval for security weaknesses is discussed in part II.E, Suspension and Revocation, of this proposed rule. If requested by the Postal Service, manufacturers are required to provide service manuals, setting instructions, meter specifications, and additional documentation. This documentation is necessary for the Postal Service to conduct robust meter testing.

39 CFR Part 501 References

§ 501.7, Test plans.
§ 501.8, Submission of each model.
§ 501.9, Security testing.
§ 501.10, Meter approval.
§ 501.11, Conditions for approval.
§ 501.12, Suspension and revocation of approval.
§ 501.13, Reporting.
§ 501.14, Administrative sanction on reporting.
§ 501.16, Breakdown and endurance testing.

II. Administrative Controls

A. Postage Meter Refunds

The introduction of electronic meters brought new technology to the market place, as well as new problems. Older mechanical meters used a series of geared wheels with numbers on them (registers) to record the ascending and descending cash values within the meter. Newer postage meters have replaced the mechanical wheels with electronic registers. (The term electronic register is a carryover from the mechanical geared wheels, but it is more correctly referred to as electronic memory.) When connected to digital displays, memory chips provide the same functionality, without moving parts. The information retained in these memories is generally powered by a small battery located within the meter case. There are usually more than one of these electronic registers within each meter to provide a redundant fail-safe mechanism.

If the values in the meter's memories become unreadable from either a failure of the displays or a catastrophic failure of one or more of the electronic registers, the meter is returned to the manufacturer's plant for analysis and recommendation of the amount to be refunded to the licensee. The manufacturer provides the Postal Service with appropriate redundant electronic register documentation (e.g., a register readout) that identifies which register values were extractable from the meter. Experience has demonstrated that such redundant electronic registers are a reliable source of information to determine the amount of unused postage remaining in a meter.

There are some cases, however, where appropriate redundant electronic register documentation will *not* reveal any information about the descending register or the amount of funds remaining on the meter before the failure. In these cases, the meter manufacturer provides a recommendation regarding the amount to be refunded based on an analysis of prior meter settings and daily meter usage from the licensee's PS Form 3602–A, Record of Meter Register Readings, or electronic equivalent. The meter manufacturer then submits its recommendation on the amount to be refunded to the postmaster of the licensing post office. Typically, the refund is issued by the post office for the recommended amount with no further investigation. The Postal Service proposes to strengthen and streamline controls over the refund process by limiting the number of sites authorized to make refunds. In those instances

where appropriate redundant electronic register memory documentation cannot be retrieved, the Postal Service will analyze historical information (e.g., mailing statements, PS Form 3602–A or electronic equivalent, and PS Form 3610, Record of Postage Meter Settings) to determine the amount to be refunded.

The Postal Service proposes to establish new procedures to enhance control over electronic meter register refunds and expedite the refund process as follows:

1. If an electronic meter register fails, the licensee must provide the meter manufacturer's representative with the meter and a copy of the completed PS Form 3602–A to have the meter checked out of service. If the registers do not adequately document the correct postage adjustment, the manufacturer's representative must return the meter to the manufacturer's control facility for further analysis.

2. If appropriate redundant electronic register memory documentation can be retrieved by the manufacturer's control facility, the manufacturer will provide a refund recommendation and supporting documentation to the licensing post office to initiate the appropriate refund to the meter licensee.

3. If appropriate redundant electronic register memory documentation cannot be retrieved, the manufacturer will send all documents, including the refund request, to MSD, USPS Headquarters, with a complete analysis of the licensee's recent mailing history supported by the original PS Form 3602–A (or electronic equivalent) and a copy of PS Form 3610. MSD will review the supporting documentation and forward the package to the postmaster of the licensing post office for determination of the correct postage adjustment, if any.

4. Licensees may appeal meter refunds to the manager of MSD, USPS Headquarters.

39 CFR Part 111 References

DMM P030.3.8, Postage Adjustments, Misregistering Meters

39 CFR Part 501 References

§ 501.22(g), Distribution controls.
DMMT 144.364, redrafted as § 501.22(h), Distribution controls.

B. Use of PS Form 3602–A

The Postal Service proposes to require meter users to maintain a PS Form 3602–A or electronic equivalent for each meter in use. This form documents helpful information to determine the appropriate postage adjustment in the event of register failures. The licensee will be required to enter the readings of the ascending and descending registers each day of meter operation on PS Form 3602–A or maintain at least 12 months' equivalent information electronically generated by the meter. The licensee will be required to present PS Form 3602–A to the post office when the meter is reset or examined.

PS Form 3602–A has been used as a primary document for supporting the calculation of the descending register when there is a total loss of register memory within the meter. However, because its use is currently optional, in some instances manufacturers have had to estimate average daily usage to recommend postage adjustments. If a meter's registering mechanisms fail, and the PS Form 3602–A or electronic equivalent is not available, the Postal Service will not grant a postage adjustment without other valid supporting documentation.

39 CFR Part 111 References

DMMT 144.212, redrafted as DMM P030.2.1, Procedures
DMM P030.2.4, Licensee Responsibilities
DMM P030.3.7, Transferring and Refunding Postage
DMM P030.3.8, Postage Adjustments, Misregistering Meters

39 CFR Part 501 References

DMMT 144.364, redrafted as § 501.22(g), Distribution controls.
DMMT 144.383, redrafted as § 501.22(h), Distribution controls.

C. Meter Licensing Procedures

Existing postage meter licensing procedures do not provide sufficient information on the applicant and the applicant's business for adequate administration of the meter program. The current application process allows a mailer to obtain a meter prior to obtaining a license, and without any verification by the Postal Service of information provided about that licensee. Improved licensing procedures will provide the following advantages:

- Applicant Identification—Provides more detailed information about the applicant prior to issuance of a meter license to enable the Postal Service to identify licensees and maintain centralized records of approved licenses.
- Market Analysis—Facilitates the compilation of marketing information to aid in the identification and assessment of licensees' needs and requirements.
- Automated Tracking—Promotes data capture and population of an automated nationwide meter activity to support a tracking database.
- Continuous Update—Allows implementation of mechanisms to update meter/licensee information.

The Postal Service proposes to change meter licensing procedures to require that more comprehensive information be provided on the meter application. This information will be verified concurrently with the processing of the license by the Postal Service. The Postal Service goal is to achieve a 24-hour turnaround for applications electronically transmitted by a meter manufacturer. Receiving applications electronically will minimize the time required to process a license application and will permit the Postal Service to verify the correctness of the address information contained therein.

The Postal Service is working with all the meter manufacturers to develop a system to facilitate the electronic collection of licensee application information to promote efficiency and minimize application processing time. Applicants will still have the option to submit an application directly to the post office where they intend to deposit metered mail, but the processing will be completed at a Postal Service designated central processing center. Applicants may appeal a decision denying a license in accordance with DMM P030.1.9.

The license application (shown in Exhibit B) will request business and mailing profile information to determine estimated volume and type of mail that will be metered by the licensee. To ensure that the manufacturers can maintain control of meters leased to licensees and that Postal Service records reflect the correct location of these meters, licensees will periodically be sent a preprinted document reflecting the license and meter information currently on file with the Postal Service. Licensees will be responsible for verifying, updating, and returning this information to the Postal Service.

39 CFR Part 111 References

DMM P030.1.9, Appeals
DMM P030.2.1, Procedures
DMM P030.2.2, Licensee Agreement
DMM P030.2.3, Refusing to Issue a Meter License
DMM P030.2.4, Licensee Responsibilities

39 CFR Part 501 References

DMMT 144.21, redrafted as § 501.22(b), Distribution controls.
DMMT 144.355(a), redrafted as § 501.22(e), Distribution controls.

D. Performance Regulations

The Postal Service is aware of instances of noncompliance with current control regulations by manufacturers. For example:

- Meters have been shipped or leased to customers who do not hold a valid license.
- Meters have been supplied to licensees without having been checked into service.

• Meters and accountable supplies have been found stored by manufacturer branches or dealers in unsecured areas.

• Manufacturers have failed to maintain a complete rental history for meters, and they have failed to cancel leases or remove meters when instructed to do so by the Postal Service.

The Postal Service proposes that any manufacturer that without just cause fails to conduct or adequately implement the performance controls detailed in 39 CFR 501.22 be subject to an administrative sanction. Specific sanctions will be determined on a case-by-case basis and will permit the Postal Service to collect administrative and investigative costs, as well as documented revenue losses from the licensee or user. These sanctions will be strictly remedial in nature to collect costs and/or revenue losses (net of any amount collected from the meter users) resulting from manufacturer noncompliance.

39 CFR Part 501 References

§ 501.5, Suspension and revocation of authorization.
DMMT 144.952, redrafted as § 501.22, Distribution controls.
§ 501.23, Administrative sanction.

E. Suspension and Revocation

1. Policy and Procedure

Meter manufacturers must be authorized by the Postal Service to manufacture and distribute postage meters. Violation of Postal Service meter standards by a manufacturer can result in the suspension or revocation of the manufacturer's authority to manufacture and distribute meters. Additionally, if a certain meter model or meter class is determined to possess a security weakness, the Postal Service may suspend or revoke authorization for the manufacture or distribution of that meter or class of meter, pending analysis of potential security flaws.

The Postal Service proposes to clarify procedures pertaining to the suspension and/or revocation of a manufacturer's authorization to manufacture and distribute postage meters, a specific meter, or class of meter.

Suspension of the authority to distribute any or all of a manufacturer's postage meters will remain in effect for up to 90 days, pending analysis of the potential security flaws, or, in the case of suspension of a manufacturer's authorization to manufacture and distribute meters, investigation of the specific circumstances and violations, to determine whether authorization should be revoked. At the end of the 90-day period, the manager of MSD may:

• Extend the suspension in order to allow more time for investigation or to allow the manufacturer to correct the problem.

• Make a determination to revoke authorization to manufacture and/or distribute a manufacturer's meters in part or in whole or approval of a meter or class of meters.

• Withdraw the suspension based on implementation of a satisfactory solution to the problem.

2. Manufacturer's Authorization

The Postal Service, represented by the manager of MSD, retains the right to suspend or revoke production and/or distribution of any or all of a manufacturer's meters if the manufacturer engages in any unlawful scheme or enterprise, or fails to comply with Postal Service meter standards. In deciding to suspend or revoke the manufacturer's authorization to manufacture and distribute meters, the manager will take into account the nature and circumstances of the violation, whether the violation was willful, whether the manufacturer voluntarily admitted to the violation, whether the manufacturer cooperated with the Postal Service, whether the manufacturer implemented successful remedial measures, and the manufacturer's performance history.

The manufacturer will be issued a written notice setting forth the facts of and reasons for the suspension or revocation, and will be advised of the effective date of the suspension or revocation if a written defense is not presented within 30 calendar days of the notice (unless a shorter time frame is deemed necessary). Except in cases of willful violation, the manufacturer will be given an opportunity to correct deficiencies and achieve compliance with all requirements within a reasonable time limit, as determined by the manager of MSD. The manufacturer can appeal a decision suspending or revoking an authorization to manufacture and distribute postage meters to the manager of Customer Service Support, USPS Headquarters.

3. Specific Meters or Classes of Meters

The manager of MSD may also order suspension or revocation of production and/or distribution of a manufacturer's specific model or class of meter if such model or class poses an unreasonable risk to postal revenues. The manufacturer will be issued a written notice setting forth the facts of and reasons for the decision to suspend or revoke authorization to manufacture and/or distribute a specific meter or class of meter, and will be advised of the effective date if a written defense is not presented within 30 calendar days of the notice (unless a shorter time frame is deemed necessary). The manufacturer will be given an opportunity to correct deficiencies and achieve compliance with all requirements within a reasonable time limit, as determined by the manager of MSD. The manufacturer can appeal the decision to the manager of Customer Service Support.

39 CFR Part 501 References

§ 501.5, Suspension and revocation of authorization.
§ 501.12, Suspension and revocation of approval.
DMMT 144.933, redrafted as § 501.9, Security testing.

F. Installations and Withdrawals

Meters being installed into service must be checked in and meters being withdrawn from service must be checked out by a Postal Service representative. Currently there are no standardized documentation procedures to record the entry and exit of meters from service. The introduction of a standardized reporting process will allow for greater control of the entry and exit of meters and will provide an audit trail for determining the assignment of specific postage meters.

The Postal Service has developed a standardized format for recording the installation and withdrawal of postage meters from service. PS Form 3601–C, Postage Meter Installation, Withdrawal, or Replacement (shown in Exhibit C), will be used to record pertinent information regarding meters that are introduced or withdrawn from service. To install or withdraw a meter, the manufacturer will be required to present to the licensing post office (or the Postal Service representative at the manufacturer's direct distribution center) the postage meter, a completed PS Form 3601–C, the mailer's license (PS Form 3601–B), and a copy of the licensee's PS Form 3602–A (if the meter is being checked out of service).

39 CFR Part 111 References

DMM P030.1.3, Possession
DMM P030.3.1, Initial Setting
DMM P030.3.2, Licensee Relocation
DMM P030.3.9, Computerized Meter Resetting System

39 CFR Part 501 References

DMMT 144.343, redrafted as § 501.22(g), Distribution controls.
DMMT 144.355(a), redrafted as § 501.22(e), Distribution controls.
DMMT 144.36, redrafted as §§ 501.22(g) and 501.22(h), Distribution controls.

III. Other Issues

A. Taking a Meter Outside the United States

Licensees have attempted to take postage meters outside the United States for purposes of preparing mail at a foreign location and entering the mail into the United States. This presents a security problem because the Postal Inspection Service does not have immediate access to the meter when it is taken outside the United States, its territories, or its possessions. The Postal Service has advised licensees individually of its long-standing policy that meters may not be taken outside the United States, its territories, or its possessions. The Postal Service proposes to clarify its regulations accordingly. Failure to comply with this standard is grounds for revocation of the licensee's meter license.

39 CFR Part 111 References

DMM P030.2.7, Revocation of License

B. Licensee Reporting of Faulty or Defective Meters

Licensees are responsible for reporting misregistering or otherwise defective meters to the meter manufacturer. If a meter's printing or recording mechanism is faulty, or a meter fails to lock out properly when all set postage has been metered, and the sum of the two register values (control total) does not equal the control total on the PS Form 3602–A at the time of the last setting, the licensee must ensure that the meter is not used. The licensee is required to contact the meter manufacturer's representative in order to have the defective meter presented at the licensing post office within 3 business days to have the meter checked out of service.

39 CFR Part 111 References

DMM P030.2.5, redrafted as DMM P030.2.6, Defective Meters

39 CFR Part 501 References

DMMT 144.225, redrafted as § 501.22(h), Distribution controls.
DMMT 144.361, redrafted as § 501.22(h), Distribution controls.

C. Quarterly Meter Reports

Currently, authorized meter manufacturers are required to provide the Postal Service with a computer magnetic tape listing of all licensee meters in service, at the close of each reporting period, in a Postal Service designated format. The Postal Service proposes to expand reporting requirements so that each record must include the meter serial number and model number, the user's name and address, and the ZIP Code and finance number of the licensing post office. Manufacturers are also responsible for reconciling differences with the Postal Service, which result from meters that are not on Postal Service or manufacturer's records. Manufacturers are required, under special circumstances, to provide this data on a more frequent basis on request by the Postal Service.

39 CFR Part 501 References

DMMT 144.952(g), redrafted as § 501.22(j), Distribution controls.

D. Postal Service Examination of Meters

Current meter standards require non-CMRS meters not reset within a 6-month period to be brought to the setting or licensing post office for an examination. Similarly, CMRS meters must be examined semiannually. The Postal Service proposes to change the examination requirements as described in the following two paragraphs.

A non-CMRS meter not reset within a 3-month period must be presented for examination by the postal facility where it is regularly set or examined. CMRS meters will need to be presented for examination only annually if reset at least once every 3-month period. Less frequent examinations of CMRS meters are made possible by the added security features of the CMRS resetting process whereby the meter resetting company (MRC) verifies the meter serial number, licensee's account number, and the meter's ascending and descending register readings at the time of each setting. In effect, this verification checks the operational integrity of the meter. Manufacturers must report all CMRS meters that have not been reset during the prior quarter to the licensing post office, and they must contact licensees to instruct them to present their meters for examination within 15 days of being notified by the manufacturer. Failure to comply with this standard is grounds for revocation of the licensee's meter license.

Information collected by the Postal Service during meter licensee focus groups with small, medium, and large meter users suggests that most meters are set on a quarterly or more frequent basis. Therefore, although examination requirements under this new rule are more stringent for licensees that do not have their meters set regularly, the impact on licensees should be minimal. Meters that are not set or examined on a frequent basis are more susceptible to meter tampering without detection because the Postal Service cannot verify that the meters are operating correctly and have not been tampered with to avoid the payment of postage.

39 CFR Part 111 References

DMM P030.2.4, Licensee Responsibilities
DMM P030.3.11, Periodic Examination of CMRS Meters

39 CFR Part 501 References

DMMT 144.383, redrafted as § 501.22(f), Distribution controls.

E. Training Media

Postal Service training publications and security guidelines have not kept up with the introduction of new meter models, changes in direct distribution plans, and turnover of Postal Service retail clerks. Manufacturers have more specialized knowledge and expertise in working with their meters than Postal Service employees. Therefore, the Postal Service is clarifying existing manufacturer requirements for providing documentation relating to training materials and operating instructions for their meters.

The Postal Service proposes that, as a condition of approval, manufacturers are responsible for providing licensing post offices with resetting and inspection media for their meters prior to distribution. The contents of this media must include an explanation of how the meter is reset and an explanation of any special or unique features of the meter. The manufacturer must also provide a training video for new metering products that includes an explanation of how the device is reset as well as recommended methods for detecting evidence of tampering. Manufacturers are also responsible for ensuring that these media are updated as necessary and for providing the Postal Service with additional meter documentation on request.

39 CFR Part 501 References

§ 501.11(b), Conditions for approval.
§ 501.11(c), Conditions for approval.

IV. Computerized Remote Postage Meter Resetting System

The Computerized Meter Resetting System (CMRS) currently involves four entities: the authorized meter manufacturer that offers CMRS service (meter resetting company or MRC), a commercial bank providing a lockbox service, a trustee bank, and the Postal Service. Licensee payments are mailed to the commercial bank lockbox account and are then wire-transferred to the trustee bank. Each business day, the trustee bank wire-transfers the value of the previous day's meter settings to the Postal Service fund at the New York Federal Reserve Bank. Under the current financial arrangement, the Postal Service has no control over the investment of licensee deposits by the

trustee bank or the movement of those funds.

The Postal Service proposes changes to the current financial arrangement to allow the Postal Service to have more direct control of licensee payments and balances within CMRS. With developments in banking technology, there is no valid reason for retaining licensee funds in commercial bank trust accounts prior to transfer to the U.S. Treasury account of the Postal Service. The practice of holding funds in a commercial account exposes customer funds to an unnecessary risk. The Postal Service has concluded that the commercial bank trust account is not necessary to maintain the customer service provided by CMRS. Proposed system changes will involve the following adjustments:

- The commercial trustee bank account will be eliminated.
- All advance meter resetting balances will be wired to the Postal Service fund.
- All future licensee trust fund balances will be maintained in the Postal Service fund.
- The commercial lockbox bank account will become a Postal Service account.

The changes are likely to reduce substantially expenditures for banking service of the MRC, especially because payment for the fees of the lockbox bank would be absorbed by the Postal Service. In addition, advances are costly and time consuming; these changes would benefit the MRC because the number of advances is likely to decline owing to the decline in mail float. Moreover, the current requirement for the posting of a bond by the MRC is eliminated. The requirement that manufacturers have on deposit 1 day's average resettings would be amended to the manufacturer's advantage. If the MRC chooses to offer advancement of funds to licensees, it is required to maintain a deposit with the Postal Service equal to at least 1 day's average funds advanced. The total amount of funds advanced to licensees on any given day shall not exceed the amount the manufacturer has on deposit with the Postal Service.

The Postal Service further believes that the cash management improvements included in the revised procedures will improve service for CMRS licensees. Upgrading the cash management arrangements to reflect current banking technology will reduce significantly the amount of time licensees must have their funds remaining idle in trust accounts. The requirement for at least three strategically located lockbox bank collection, processing, and clearing locations will reduce mail-float time and the length of time before meters can be reset. Electronic automated clearinghouse (ACH) debits/credits and electronic funds transfer (or wire transfer) are to be offered at no cost to all CMRS licensees. The combination of reduced mail-float time and the addition of electronic payment options should reduce the need for licensee fund advances from the MRC. These changes should reduce fund advance fees paid by the licensee to the MRC. Customer service is expected to improve because the amount of the total advance deposits maintained for licensees will decline under the new arrangements. Moreover, because the total cost of CMRS to licensees, including interest forgone on their funds, will be reduced, the Postal Service believes that more licensees will take advantage of the service.

These improvements also lessen the risk to funds on deposit for postage. Because there is no longer a commercial bank trustee holding those deposits, they could be on deposit in the Postal Service fund. The funds in the Postal Service fund would be backed in full faith and credit by U.S. Treasury securities, whereas that is not always the case with investments by a commercial bank trustee.

39 CFR Part 111 References

DMM P030.3.12, Resetting CMRS Meters

39 CFR Part 501 References

DMMT 144.38, redrafted as § 501.28, Computerized remote postage meter resetting.

DMMT 144.97, redrafted as § 501.28, Computerized remote postage meter resetting.

In addition to the substantive changes concerning manufacture, distribution, and use of meters discussed above, the Postal Service also intends to reorganize and renumber standards pertaining to the use, manufacture, and distribution of meters. Currently, standards generally pertaining to the manufacture and distribution of meters are set forth in the Domestic Mail Manual Transition Book (see 58 FR 34887 (June 30, 1993) and 59 FR 31655 (June 20, 1994)), while standards generally pertaining to the use of meters are published in the Domestic Mail Manual. The Postal Service proposes to renumber and publish the former as amended as 39 CFR part 501. Part 144 of the Domestic Mail Manual Transition Book would accordingly be rescinded with the exception of §§ 144.312, 144.313, 144.341, 144.342, 144.344, 144.345, 144.346, 144.347, 144.348, 144.349, 144.35, 144.363, 144.37, 144.382(b), 144.383(b), 144.383(c), 144.383(d), 144.384, 144.53, 144.54, 144.61, 144.62, 144.63, 144.64, 144.65, and 144.7. These sections generally contain internal instructions for postal employees and are to be amended and published in an internal handbook following publication of final rules in connection with this rulemaking. Domestic Mail Manual standards generally governing the use of meters would be published as revised below. Editorial changes to the proposed standards are not intended to create any substantive change. The following charts show the proposed changes to 39 CFR parts 111 and 501 and cross-references previous regulations.

BILLING CODE 7710–12–P

Old DMM P030 Reference	New DMM P030 Reference	Changes and Notations
1.1	1.1	None.
1.2	1.2	Editorial changes. Authorized manufacturer names and addresses would be updated.
1.3	1.3	Editorial changes.
1.4, 1.5, 1.6, 1.7	1.4, 1.5, 1.6, 1.7	None.
1.8, 1.9	1.8	1.8, Meter Documentation, and 1.9, Markings and Endorsements, would be combined into one section and renumbered as 1.8, Meter Documentation, Markings, and Endorsements.
-	1.9	New 1.9, Appeals, would be added to specify appeal procedures for licensees and applicants.
2.0	2.0	None.
2.1	2.1	Would be modified to include electronic transmission of license applications by the manufacturer. Would require all licenses to be processed at a central processing location.
2.2	2.2	2.2 would be renamed from Customer Agreement to Licensee Agreement. Portions of 2.7 would be incorporated into 2.2, and clarify restrictions regarding taking meters out of the United States.
2.3	2.3	Editorial changes.
2.4	2.4	Would require use of Postal Service (PS) Form 3602-A. Examination requirements reference III.D above. License revocation for failure to comply with examination requirements. Modifications to licensing procedures. Reporting of malfunctioning meters. Labeling requirements.
-	2.5	New 2.5, Custody of Suspect Meters, would be added concerning postal inspectors authority for on-site visits and withdrawing suspect meters. Reference I.C above.
2.5	2.6	To be renamed from Faulty Printing or Recording to Defective Meters. Changes procedures when a meter's registers are faulty or defective. Manufacturers required to check meters out of service with a specific time frame and provide a replacement meter.
2.6	2.7	2.6, Place of Mailing, would be incorporated into 2.7(e), Revocation of License.
2.7	2.7	Would add removing meter from the United States as grounds for license revocation.
-	2.8	New 2.8, Missing Meters, would be added concerning reporting requirements for missing meters.
-	2.9	New 2.9, Returning Meters, would be added to specify the procedures for returning meters to the manufacturer whenever the meter is defective or no longer wanted by the licensee.
3.0	3.0	None.
3.1	3.1	Would require use of new PS Form 3601-C for meter installations, withdrawals, or replacements.
3.2	3.2	Editorial changes.

3.3	3.3	Editorial changes.
3.4	3.4	Would be renamed from Alternate Locations to Alternative Meter Setting Location. Editorial changes.
3.5	3.6	Would be renumbered.
3.6	-	3.6, Manufacturer Withdrawal, would be moved to 39 CFR 501.22(g) and 501.22(i).
3.7	3.5	Renumbered.
3.8	3.7	Renumbered.
-	3.8	New 3.8, Postage Adjustments, Misregistering Meters. Requirements would be expanded to include new procedures for processing refunds for defective meters.
3.9	3.8	3.9, Manufacturer's Statement, would be incorporated into 3.8, Postage Adjustments, Misregistering Meters.
3.10	3.9	3.10, CMRS, would be renamed and renumbered as 3.9, Computerized Meter Resetting System. Requirement added for use of PS Form 3601-C, Meter Installation, Withdrawal, or Replacement.
3.11	3.10	3.11, Postage Transfer, would be renamed and renumbered as 3.10, Postage Transfer for CMRS. Editorial changes.
3.12	3.11	3.12, Periodic Examination, would be renamed and renumbered as 3.11, Periodic Examination of CMRS Meters. Examination requirements to be revised as discussed in III.D above.
3.13	3.12	3.13, Resetting CMRS Meters, would be renamed and renumbered as 3.12, Resetting CMRS Meters. Requirements changed, reference IV above.
-	3.13	New 3.13, CMRS Refunds, would outline CMRS refund procedures as discussed in IV above.
4.0	4.0	None.
4.1	4.1	Editorial changes.
4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 5.0, 5.1, 5.2, 5.3, 5.4	4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 5.0, 5.1, 5.2, 5.3, 5.4	None.
6.0	6.0	Would state that manufacturer requirements relating to the manufacture and distribution of meters are published in 39 CFR 501.
6.1	-	Section would be eliminated and requirements moved to 39 CFR 501.1 and 501.2.
6.2	-	Section would be eliminated and requirements moved to 39 CFR 501.3.
6.3	-	Section would be eliminated and requirements moved to 39 CFR 501.5.
6.4	-	Section would be eliminated and requirements moved to 39 CFR 501.5.
6.5	6.0	Section would be eliminated and requirements moved to 6.0.

DMMT	39 CFR Part 501	Changes and Notations
144.9	501	None.
144.91, 144.912	501.1	Would be moved and combined with DMM P030.6.0.
144.911	501.2	Editorial changes.
144.915	501.3	Would be moved and combined with DMM P030.6.0.
-	501.4	New 39 CFR 501.4, Burden of proof standard, would clarify burden of proof standard.
144.913, 144.914	501.5	Parts of DMMT 144.913 and 144.914 would be moved, clarified, and expanded as discussed in II.E above.
144.92	501.6	Would be moved from DMMT 144.92.
144.931	501.7	Editorial changes.
144.932	501.8	Would be moved from DMMT 144.92.
144.935	501.9	Parts of DMMT 144.935, Approval, would be moved, redrafted, and renamed as 39 CFR 501.9, Security testing.
144.933, 144.935	501.10	DMMT 144.933 and parts of DMMT 144.935, Approval, would be moved, redrafted, and renamed as 39 CFR 501.10, Meter approval.
144.936, 144.937	501.11	Would be moved from DMMT 144.936 and expanded as discussed in III.E above.
144.913, 144.914	501.12	Parts of DMMT 144.913 and 144.914 would be moved and expanded as discussed in II.E above.
-	501.13	New 39 CFR 501.13, Reporting, would specify manufacturer reporting requirements as discussed in I.A above.
-	501.14	New 39 CFR 501.14, Administrative sanction on reporting, would specify sanctions for noncompliance with manufacturer reporting requirements as discussed in I.A above.
144.941	501.15	Would be moved from DMMT 144.941.
144.934, 144.942	501.16	DMMT 144.934 and 144.942 would be combined, renamed, and renumbered.
144.943	501.17	Would be moved from DMMT 144.943.
144.944	501.18	Would be moved from DMMT 144.944.
144.945	501.19	Would be moved from DMMT 144.945.
144.946	501.20	DMMT 144.946 would be moved, renumbered, and expanded as discussed in I.F above.
144.951	501.21	Would be moved from DMMT 144.951.
144.21,144.225, 144.343, 144.355a, 144.36, 144.361, 144.383, 144.952, 144.963	501.22	DMMT 144.952 would be moved, renumbered, and expanded as discussed in I.C, I.D, I.E, I.G, II.F, III.B, and III.D above.
-	501.23	New 39 CFR 501.23, Administrative sanction, would specify manufacturer sanctions for failure to comply with meter standards as discussed in II.D above.
144.96	501.24	Would be moved from DMMT 144.96.
144.962	501.25	DMMT 144.962 would be moved, renumbered, and expanded as discussed in I.B above.
144.952f, 144.963	501.26	DMMT 144.963 would be moved, renumbered, and expanded as discussed in I.D above.
144.964	501.27	Would be moved from DMMT 144.964.

144.97, 144.971, 144.972, 144.973, 144.974, 144.975, 144.976, 144.977	501.28	DMMT 144.97, 144.971, 144.973, 144.974, 144.975, 144.976, and 144.977 would be moved, combined, renumbered, and expanded as discussed in IV above.
144.98	501.29	Would be moved from DMMT 144.98.

BILLING CODE 7710–12–C

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the DMM as noted below:

P030 Postage Meters and Meter Stamps

1.0 BASIC INFORMATION

1.1 Description of Meters

Postage meters print one or more denominations of postage. Their mechanisms print postage and display the amount of postage used and remaining. The meter locks when no postage or minimal postage remains, and it generally must be brought to the licensing post office to be reset by payment for additional postage. Avoiding the payment of postage by misusing a meter is punishable by law.

1.2 Meter Manufacturers

Postage meters are available only by lease from authorized manufacturers. The USPS holds manufacturers responsible for the control, operation, maintenance, and replacement, when necessary, of their meters. The following manufacturers are authorized to lease meters:

ASCOM HASLER MAILING SYSTEMS INC
19 FOREST PKY
SHELTON CT 06484–0903

FRANCOTYP-POSTALIA INC
1980 UNIVERSITY LN
LISLE IL 60532–2152

FRIDEN NEOPOST
30955 HUNTWOOD
HAYWARD CA 94544–7005

PITNEY BOWES INC
1 ELMCROFT RD
STAMFORD CT 06926–0700

1.3 Possession

No one other than an authorized manufacturer may possess a postage meter without a valid USPS postage meter license and a rental agreement with the meter manufacturer and until the USPS sets, seals (if applicable), and checks it into service. Other parties in possession of a postage meter must immediately surrender it to the manufacturer or USPS.

* * * * *

1.8 Meter Documentation, Markings, and Endorsements

Unless excepted by standard, a mailing bearing meter stamp postage must be accompanied by documentation meeting the basic standards in P012 if the mailing contains nonidentical-weight pieces or pieces without the full correct postage at the applicable rate. Each mailpiece bearing meter postage must show the markings and endorsements required for the rate claimed or special services requested.

1.9 Appeals

Applicants who have been refused a meter license, or licensees who have had a license revoked, may file a written appeal with the manager of Mailing Systems Development within 10 calendar days of receipt of the decision. Licensees who are appealing decisions on postage adjustments may file their appeals with the same official, and must do so within 60 days of the date that the postage recommendation was submitted to the USPS by the manufacturer.

2.0 METER LICENSE

2.1 Procedures

An applicant wanting to be licensed to lease and use a postage meter must provide an original signed Form 3601–A to the post office where the applicant intends to deposit metered mail, or a meter manufacturer may, on behalf of the applicant, electronically transmit the information requested on the Form 3601–A to the designated USPS license application central processing center in a USPS-specified format. A single license covers all meters licensed to the same party by the same post office, but a separate application must be submitted for each post office where the applicant wants to deposit metered mail. There is no fee for this application and license. After approving an application, the USPS issues a license (Form 3601–B) and one Form 3602–A for each meter checked into service. In those instances where a meter manufacturer transmitted the application on behalf of the applicant, the manufacturer is notified by the USPS when a license is issued.

2.2 Licensee Agreement

By submitting an application, the licensee agrees that the license may be revoked immediately and the meter removed by the manufacturer or the USPS if the meter is used in any fraudulent or unlawful scheme or enterprise, if the meter is not used during any 12 consecutive months, if the licensee fails to exercise sufficient control of the meter or fails to comply with the standards for meter care or use, or if a meter is taken outside the United States, or its territories, or its possessions (without specific written permission by the manager of Mailing Systems Development, USPS Headquarters).

2.3 Refusing to Issue a Meter License

The USPS may refuse to issue a meter license if the applicant submitted false or fictitious information on the license application; if, within 5 years preceding submission of the application, the applicant violated any standard for the care or use of a meter that resulted in the revocation of that applicant's meter license; or if there is sufficient reason to believe that the meter is to be used in violation of the applicable standards. When an application for a license to lease and use postage meters is refused, the USPS notifies the licensee of the reason in writing. If the license application was electronically transmitted to the USPS by a manufacturer on behalf of the applicant, the applicable manufacturer is notified of the refusal by the USPS. An applicant who is refused a meter license may appeal the decision according to the procedures in 1.9.

2.4 Licensee Responsibilities

The meter licensee's responsibilities include:

a. After delivery to a licensee, a meter must be kept in the licensee's custody until it is returned to the authorized manufacturer or the licensing post office.

b. Each day of operation, the licensee must record the readings of the ascending and descending registers on Form 3602–A (except that licensees using metering systems that record these readings electronically may use system-generated printed records of the preceding 12 months of meter activity as a substitute for manual entry of daily readings on Form 3602–A). These records must be available for inspection to the USPS on request. The licensee must bring Form 3602–A to the post office when the meter is reset or examined.

c. Meters in the licensee's custody and records on meter transactions must

be immediately available for review and audit on request by the USPS or the meter manufacturer.

d. Meters not reset within a 3-month period must be presented with Form 3602–A for examination at the licensing post office. Remote-set meters that are reset at least once every 3 months need be presented for examination only annually. Failure to present a meter for examination on a timely basis following notification may result in revocation of the licensee's authorization to lease and use postage meters.

e. A licensee must immediately notify the licensing post office and manufacturer's representative of any changes in the licensee's name, address, or telephone number, or the location of the meter(s), or any other information contained on the original Form 3601–A. The USPS thereafter issues a modified meter license reflecting the updated information. Licensees must verify and update their license information on a periodic basis as well as following any event that would indicate the need to update this information immediately (e.g., billings returned to a meter manufacturer or failure of the manufacturer to locate the meter for inspection).

f. The licensee must report a misregistering or otherwise defective meter to the manufacturer according to 2.9 and must ensure that the meter is not used.

g. Licensees must ensure that the cautionary and barcode labels placed on each meter prior to its being placed into service are not removed while the meter is in the licensee's possession. The cautionary label provides the meter user with basic reminders on leasing, meter movement, and misuse. The barcode label contains a barcoded representation of the meter serial number. Meters without the required labels may not be checked into service.

2.5 Custody of Suspect Meters

Postal inspectors are authorized to conduct unannounced on-site examinations of meters reasonably suspected of being manipulated or otherwise defective. An inspector may also immediately withdraw a suspect meter from service for physical and/or laboratory examination. The inspector issues a receipt for the meter to the licensee and forwards a copy to the manufacturer and may assist in obtaining a replacement meter from the meter manufacturer. Advance notice to the manufacturer that a meter is to be inspected may be provided by the Inspection Service where possible. Except where there is reason to believe that the meter has been fraudulently set with postage, existing postage in the meter to be examined is transferred to the replacement meter.

2.6 Defective Meters

The manufacturer must pick up a defective meter and present it to the licensing post office to be checked out of service within 3 business days of being notified by the licensee under 2.9. A faulty meter must not be used under any circumstances, and it must be removed from service when presented to the licensing post office. The manufacturer will provide a replacement meter.

2.7 Revocation of License

The USPS notifies the licensee in writing if the meter license is to be revoked, providing the reasons. In addition, the USPS notifies the licensee's meter manufacturer of the revocation so that the manufacturer can cancel the lease agreement and remove the meter from service. Revocation is effective 10 days thereafter unless, within that time, the licensee appeals the decision according to the procedures in 1.9. A license is subject to revocation for any of these reasons:

a. A meter is used for any illegal scheme or enterprise.

b. The license or licensee's meters are not used for 12 consecutive months.

c. Any failure to exercise sufficient control of a meter or failure to comply with the standards for its care or use.

d. The meter is kept or used outside the boundaries of the United States or those U.S. territories and possessions where the USPS operates (except as specified in 2.2).

e. Mail is deposited at other than the licensing post office (except as permitted by 5.0 or D072).

2.8 Missing Meters

The licensee must immediately report to the licensing postmaster and the manufacturer the loss or theft of any meter or the recovery of any missing meter. Reports must include the meter model and serial number; the date, location, and details of the loss, theft, or recovery; and a copy of the police report, when applicable.

2.9 Returning Meters

After a meter is delivered to a licensee, the meter must be kept in the licensee's custody until returned to the authorized manufacturer or licensing post office. Licensees with a faulty misregistering meter, or licensees no longer wanting to retain a meter, must notify the meter manufacturer's representative of any meters that are to be returned to the licensing post office to be checked out of service. Meters must be shipped by registered mail unless specific written permission is given to ship meters otherwise by the manager of MSD, USPS Headquarters.

3.0 SETTING METERS

3.1 Initial Setting

Before delivery to the licensee, the manufacturer must take a meter to be set, sealed (if applicable), and checked into service by the post office where it is to be regularly set or examined, unless the meter is serviced through the on-site meter-setting program described in 3.5. The meter manufacturer must present the postal representative with the meter and a completed Form 3601–C when checking a meter into service.

3.2 Licensee Relocation

If a licensee changes the post office where metered mail is to be deposited, the meter must be checked out of service by the licensing post office. That meter or another meter must be licensed at the new post office before it is reset or initial settings are made. For this standard, a post office includes all subordinate branches and stations of the licensing post office.

3.3 Location of Setting

Except as provided under 3.4 or 3.5, meter settings must be performed at the licensing post office. Meters may not be set at contract stations and branches.

Remote-set postage meters are subject to 3.10 through 3.13 and related standards.

3.4 Alternative Meter Setting Location

The postmaster serving a licensee's location may set a meter used to pay postage on mail presented at another post office, subject to these conditions:

a. The licensee must obtain a meter license from the post office where the mailing is to be deposited, and must present it to the licensee's local post office with the meter and Form 3602–A (or electronic equivalent) for setting.

b. The postmark die must show the name of the post office of mailing (licensing post office).

c. A separate meter must be used for mailings made at each post office.

d. Mail matter sent to another post office for mailing must be shipped on private transportation, to be deposited at the time and place designated by the postmaster. It may not be consigned to the USPS in bulk by freight, express, or other carrier. The USPS has no responsibility for the metered matter before it is accepted in the mail.

e. When a meter is no longer used, the licensee must return the meter to the manufacturer's representative or

licensing post office to have it checked out of service.

3.5 On-Site Meter-Setting Program

The on-site meter-setting program allows USPS employees to set or examine postage meters at a licensee's place of business within the area served by the licensing post office. Only meters of licensees participating in the program are set or examined at that location. The program also provides for checking meters into or out of service at the meter manufacturer's branch offices, including meters set for use at another post office. A fee is charged for each meter set, examined, or checked into or out of service at a licensee's place of business or at a manufacturer's offices, unless a USPS employee (qualified to set postage meters) is regularly assigned to that licensee's location for postal administrative duties. Licensees must pay on-site setting or examination fees and postage by check or advance deposit account at the time of the setting or examination. For fees, see R900.

3.6 Payment for Postage

Payment must be made for postage when the meter is set. Payment may be in cash or by check, money order, or withdrawal from an advance deposit account established with the post office. Advance deposit accounts may be established when the licensee's monthly metered postage is $500 or more. Payment by check or advance deposit account is subject to USPS standards and procedures.

3.7 Transferring and Refunding Postage

Upon verification by the USPS, unused postage in a meter being checked out of service may be transferred to another of the licensee's meters licensed at the same post office, or the licensee may request a refund, which may include a refund for unused meter stamps according to applicable standards. The meter and the Form 3602–A or system-generated register documentation must be examined by the USPS before a refund or credit is initiated for unused postage or additional postage is collected, based on what is found.

3.8 Postage Adjustments, Misregistering Meters

To request a postage adjustment for a faulty misregistering meter, the licensee must present the meter and the licensee's Form 3602–A to the manufacturer. After examining a meter checked out of service for apparent faulty operation affecting registration, the manufacturer must furnish a report explaining the malfunction to the licensing post office. That report must include all applicable meter documentation (including a copy of the licensee's Form 3602–A and the licensee's Form 3610 provided by the USPS), and a recommendation about the appropriate postage adjustment. If the electronic redundant memory data, as examined by the manufacturer, is inconclusive about the appropriate postage adjustment, the manufacturer must include an analysis of the licensee's recent mailing history supporting the recommended postage adjustment. In the absence of a completed Form 3602–A, the licensee must submit some other reliable evidence showing that a postage adjustment is warranted. A licensee may appeal a postage adjustment according to the procedures in 1.9.

3.9 Computerized Meter Resetting System

The Computerized Meter Resetting System (CMRS) allows certain postage meters to be reset electronically at the licensee's place of business. CMRS meters must be set at the licensee's place of business, except under 3.11. Before delivery to the licensee, the manufacturer must bring the meter and a completed Form 3601–C to the licensing post office to have it checked into service, unless the meter is initially checked into service at the manufacturer's office under 3.5.

3.10 Postage Transfer for CMRS Meters

No postage is set by the licensing post office unless a CMRS meter is checked out of service and the unused postage in it is transferred to another CMRS meter leased by the same licensee for use at the same post office.

3.11 Periodic Examination of CMRS Meters

CMRS meters must either be reset or examined every 3 months. CMRS meters set at least once every 3 months need be presented only annually for examination by a USPS employee. The licensee must bring a CMRS meter and applicable Form 3602–A to the licensing post office when notified by the manufacturer that an examination is required. Licensees who do not comply with examination requirements may not reset their meters via CMRS. Failure to have a meter examined on notification can result in revocation of the licensee's meter license.

3.12 Resetting CMRS Meters

The following steps must be taken to reset a CMRS meter:

a. The licensee's account must have sufficient funds to cover the desired postage increment or the manufacturer must agree to advance funds to the licensee.

b. The licensee may deposit funds by check, electronic funds, or automated clearinghouse transfer.

c. The licensee must provide the manufacturer or designated meter resetting company (MRC) with the meter serial number, licensee's account number, and the meter's ascending and descending registers.

d. After a meter is reset, the manufacturer must provide the licensee with documentation of the transaction and the balance remaining in the licensee's account, unless the manufacturer provides a monthly statement documenting all transactions for the period and the balance after each transaction.

3.13 CMRS Refunds

The USPS issues a refund to a licensee for any unused postage in a meter. Refunds of licensee balances maintained by the USPS in the USPS fund are made directly to the licensee by the USPS lockbox bank within 48 hours after receipt of a licensee's request.

4.0 METER STAMPS

4.1 Designs

Meter stamp designs (types, sizes, and styles) must be those specified when a meter is approved by the USPS for manufacture (see Exhibit 4.1).

* * * * *

6.0 METER MANUFACTURE AND DISTRIBUTION

Title 39, Code of Federal Regulations, part 501, contains information about the authorization to manufacture and distribute postage meters; the suspension and revocation of such authorization; performance standards required in postage meters, test plans, testing, and approval of postage meters; required manufacturing security measures; and standards for the distribution and maintenance of postage meters. Further information may be obtained from Mailing Systems Development, USPS Headquarters.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment

on the following proposed amendments to the Code of Federal Regulations.

3. For the reasons set out in this document, the Postal Service proposes to add 39 CFR 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

Sec.
501.1 Manufacturer authorization.
501.2 Manufacturer qualification.
501.3 Changes in ownership or control.
501.4 Burden of proof standard.
501.5 Suspension and revocation of authorization.
501.6 Specifications.
501.7 Test plans.
501.8 Submission of each model.
501.9 Security testing.
501.10 Meter approval.
501.11 Conditions for approval.
501.12 Suspension and revocation of approval.
501.13 Reporting.
501.14 Administrative sanction on reporting.
501.15 Materials and workmanship.
501.16 Breakdown and endurance testing.
501.17 Protection of printing dies and keys.
501.18 Destruction of meter stamps.
501.19 Inspection of new and rebuilt meters.
501.20 Keys and setting equipment.
501.21 Distribution facilities.
501.22 Distribution controls.
501.23 Administrative sanction.
501.24 Meter replacement.
501.25 Inspection of meters in use.
501.26 Meters not located.
501.27 Repair of internal mechanism.
501.28 Computerized remote postage meter resetting.
501.29 Notice of proposed changes in regulations.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2610, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

§ 501.1 Manufacturer authorization.

Any person or concern seeking authorization to manufacture and distribute postage meters must submit a request to the Postal Service in person or in writing. Upon qualification and approval, the applicant is authorized in writing to manufacture postage meters and to lease them to persons licensed accordingly by the Postal Service. The Postal Service may specify the functional area charged with processing the application and administering its meter program. [Currently, that area is Mailing Systems Development, USPS Headquarters.]

§ 501.2 Manufacturer qualification.

Any concern wanting authorization to manufacture and/or lease postage meters for use by licensees under Domestic Mail Manual (DMM) P030.1.2 must:

(a) Satisfy the Postal Service of its integrity and financial responsibility;

(b) Obtain approval of at least one postage meter model incorporating all the features and safeguards specified in § 501.6;

(c) Have, or establish, and keep under its supervision and control adequate manufacturing facilities suitable to carry out the provisions of §§ 501.15 through 501.20 to the satisfaction of the Postal Service (such facilities must be subject to unannounced inspection by representatives of the Postal Service); and

(d) Have, or establish, and keep adequate facilities for the control, distribution, and maintenance of postage meters and their replacement when necessary.

§ 501.3 Changes in ownership or control.

Any person or concern wanting to acquire ownership or control of an authorized meter manufacturer must provide the Postal Service with satisfactory evidence of that person's or concern's integrity and financial responsibility.

§ 501.4 Burden of proof standard.

The burden of proof is on the Postal Service in adjudications concerning suspension and revocation under §§ 501.5 and 501.12 and administrative sanctions under §§ 501.14 and 501.23. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance-of-evidence standard.

§ 501.5 Suspension and revocation of authorization.

(a) The Postal Service may suspend and/or revoke authorization to manufacture and/or distribute any or all of a manufacturer's postage meters if the manufacturer engages in any unlawful scheme or enterprise, fails to comply with any provision in this part 501, or fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over the meter program.

(b) The decision to suspend or revoke a manufacturer's authorization will be based on the nature and circumstances of the violation, whether the violation was willful, whether the manufacturer voluntarily admitted to the violation, whether the manufacturer cooperated with the Postal Service, whether the manufacturer implemented successful remedial measures, and the manufacturer's performance history. Prior to determining whether a manufacturer's authorization to manufacture and/or distribute postage meters should be revoked, the procedures in paragraph (c) of this section will be followed.

(c) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a manufacturer is in violation of the provisions in this part 501, the Postal Service will issue a written notice of proposed suspension citing deficiencies for which suspension of authorization to manufacture and/or distribute a specific meter or class of meters may be imposed under paragraph (c)(2) of this section. Except in cases of willful violation, the manufacturer will be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the manufacturer has failed to correct cited deficiencies within the specified time limit, the Postal Service will issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) If upon consideration of the defense as provided in paragraph (e) of this section, the Postal Service deems that the suspension is warranted, the suspension will remain in effect for up to 90 days unless withdrawn by the Postal Service.

(4) At the end of the 90-day suspension period, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the manufacturer to correct the problem;

(ii) Make a determination to revoke authorization to manufacture and/or distribute the manufacturer's meters in part or in whole; or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem.

(d) The manufacturer may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days of receiving the written notice (unless a shorter time frame is deemed necessary). The defense must include all supporting evidence and state with specificity the reasons for which the order should not be imposed.

(e) After receipt and consideration of the defense, the Postal Service shall advise the manufacturer of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the

manufacturer that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter time frame is deemed necessary), as specified therein. The appeal must include all supporting evidence and state with specificity the reasons the manufacturer believes the decision is erroneous.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person.

§ 501.6 Specifications.

Postage meters must incorporate all the following features and safeguards:

(a) A postage meter is the postage printing die and postage registering mechanism of a mailing machine. It may be integral with the mailing machine or separable. In either case, the licensee must be able to bring the meter to the post office for setting or examination.

(b) A postage meter may be capable of printing one denomination of postage and registering the number of such impressions made (single denomination), or it may be capable of printing varying denominations and registering either multiples of the smallest unit printed (multidenomination) or the currency value of the impressions made (omnidenomination). The printing die or dies, counters, and counteractuating mechanism must be inseparable from the meter, except by the manufacturer.

(c) In each postage meter, there must be two accurate and dependable counting devices: one ascending and registering the total imprinted, the other descending and registering the unused postage balance. The descending register must actuate a locking mechanism, preventing further operation of the meter after the register has reduced to an amount less than the largest denomination printable in one operation or to zero. In electronic meters, the locking device must prevent printing if the amount that would be printed would reduce the descending register to less than zero. The descending register must be so constructed as to be easily set at the post office for any amount of postage or number of impressions within its capacity, prepaid by the licensee.

(d) The entire meter must be encased in a substantial housing to which unauthorized access cannot be gained without creating obvious damage. The descending register must be accessible to the post office by a door equipped with a suitable lock and with provision for a post office seal. The requirement that accessibility to the descending register be restricted does not apply to Computerized Remote Postage Meter Resetting System electronic meters that have no access to the descending register of the meter. Descending registers on this type of meter are reset electronically by coded input only. The ascending register and all other components must be so shielded as not to be accessible even when the door is open. The readings of both registers must be easily obtainable at any time between operations, by visibility through closed windows, or by imprint on tape or card, or by a combination of the two methods. The housing must be of such construction that it is impossible to alter the readings of the ascending register except by normal operation or to gain access to the internal components, except for setting the descending register under § 501.20(c), without mutilation.

(e) The printing die must either conform in design to one already in use or be approved by the Postal Service. The die must include the serial number of the meter and identification of the manufacturer, and the die must be so constructed or shielded that it is not practically possible without proper registration in the ascending and descending register to obtain imprints fraudulently. The die must be attached to the meter in a manner (such as with breakoff screws) that it is not practicable to remove or replace the die fraudulently.

(f) The meter die must include a postmark to print the name of the city and state from which mail is dispatched and the date of mailing, except as specified by the Postal Service. Information that must appear in the meter postmark and the location of that postmark must be as specified by the Postal Service.

(g) A meter may be designed to print a ''meter slogan'' or ''ad plate'' to the left of, and next to, the postmark. The size and position of a slogan or meter ad must be such that it does not interfere with or obscure the meter stamp or postmark, and it must be possible to install the plate easily without exposing the meter stamp die. Plates must be made of suitable, durable material that does not soften or disintegrate while in use. Plates must be well fitted and so securely fastened to the printing mechanism that they do not become loose or detached or otherwise interfere with proper operation of a meter.

(h) The entire meter must be of sufficiently solid, substantial, and dependable construction that protects the Postal Service amply against loss of revenue from fraud, manipulation, misoperation, or breakdown.

(i) In addition to the features and safeguards above, electronic meters must:

(1) Have either nonvolatile ascending and descending registers or a solid-state memory that stores the data for the ascending and descending registers. Solid-state memories that rely on applied voltage for memory retention must be powered by batteries with a minimum support life of 5 years from date of battery renewal with no external power applied and with sufficient redundancy to be self-checking.

(2) Be able to display the amounts in both the ascending and the descending registers (not necessarily at the same time).

(3) Be able to display, free from accidental changes, the next amount of postage to be printed.

(4) Be resettable by Postal Service employees, preferably without customized equipment.

(5) Contain a fault-detection device for computational security that automatically locks out the meter and prevents printing of additional postage in the event of malfunction.

(6) Meet Postal Service test specifications in United States Postal Service Specification, Postage Meters, Electronic, USPS-M–942 (RCD). Persons wanting to manufacture electronic postage meters may obtain a copy of this Postal Service test specification from USPS Headquarters.

(j) Auxiliary equipment required for the operation of the postage meters must be part of the final production models submitted for Postal Service approval. Failure of the auxiliary equipment, which could cause malfunction in postage meter operation, is considered the same as a postage meter failure.

§ 501.7 Test plans.

To receive Postal Service approval, a postage meter must be tested. Manufacturers of electronic meters must submit a detailed test plan to the Postal Service for approval at least 60 days before the conduct of the tests.

The test plan must include tests that, if passed by a meter, prove compliance by the meter with all postal requirements. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes of all special test equipment and nonstandard or noncommercial instrumentation.

§ 501.8 Submission of each model.

Each meter model proposed for manufacture must be approved by the Postal Service after testing at the manufacturer's expense. A preliminary working model that meets the specifications in § 501.6 may be submitted for tentative approval. No meters of any model may be distributed or used for postage payment until a complete unit made to production drawings and specifications is submitted, tested, and approved, except as may be authorized for preliminary field testing.

§ 501.9 Security testing.

The Postal Service reserves the right at any time to require or conduct additional examination and testing, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

§ 501.10 Meter approval.

As provided in § 501.13, the manufacturer has a duty to report security weaknesses to the Postal Service to ensure that each meter model and every meter in service protects the Postal Service against loss of revenue at all times. A grant of approval of a model does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue protection capabilities of the model. After approval is granted to manufacture and distribute a meter, no changes affecting the basic features or safeguards of a meter may be made except as authorized or ordered by the Postal Service in writing.

§ 501.11 Conditions for approval.

(a) The Postal Service may require, and reserves future rights to require, that production models of approved meters be deposited with the Postal Service.

(b) The manufacturer must provide copies of resetting and inspection media to each licensing post office prior to distribution. The contents of this media must include an explanation of how the meter is reset and an explanation of any special or unique features of the meter. The manufacturer must also provide a training video for any new metering product that includes an explanation of how the device is reset as well as recommended methods for detecting evidence of tampering.

(c) As a condition of approval, the manufacturer has a continuing obligation to provide the Postal Service with copies of service manuals and updates to setting instructions. The manufacturer must also promptly provide Mailing Systems Development, USPS Headquarters, with any additional documentation on request.

(d) Additional meters must be submitted to the Postal Service for testing, at the expense of the manufacturer, on request by the Postal Service.

§ 501.12 Suspension and revocation of approval.

(a) The Postal Service may suspend approval under § 501.10 if the Postal Service has probable cause to believe that a manufacturer's meter or class of meters poses an unreasonable risk to postal revenues. Suspension of approval to manufacture or distribute a meter or class of meters in whole or in part will be based on the potential risk to postal revenues. Prior to determining whether approval of a meter or class of meters should be revoked, the procedures in paragraph (b) of this section shall be followed.

(b) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a meter poses an unreasonable risk to postal revenues, the Postal Service will issue a written notice of proposed suspension citing deficiencies for which suspension may be imposed under paragraph (b)(2) of this section. The manufacturer will be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) If the Postal Service determines that the manufacturer has failed to correct cited deficiencies within the specified time limit, the Postal Service will issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (c) of this section.

(3) If upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension will remain in effect for up to 90 days unless withdrawn by the Postal Service.

(4) At the end of the 90-day suspension period, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the manufacturer to correct the problem;

(ii) Make a determination to revoke the approval of the manufacturer's meter or class of meters; or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem.

(c) The manufacturer may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days of receiving the written notice (unless a shorter time frame is deemed necessary). The defense must include all supporting evidence and state with specificity the reasons for which the order should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the manufacturer of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the manufacturer that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter time frame is deemed necessary), as specified therein. The appeal must include all supporting evidence and state with specificity the reasons the manufacturer believes the decision is erroneous.

(e) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person.

§ 501.13 Reporting.

(a) For purposes of this section, ''manufacturer'' refers to the authorized postage meter manufacturer in § 501.1 and its foreign affiliates, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each authorized postage meter manufacturer in § 501.1 must submit a preliminary report to notify the Postal Service promptly (in no event more than 21 calendar days of discovery or 21 calendar days of the effective date of this regulation) of the following:

(1) All findings or results of any testing known to the manufacturer concerning the security or revenue protection-related features, capabilities, or failings of any meters sold, leased, or distributed by the manufacturer that have been approved for sale, lease, or distribution by the Postal Service or any foreign postal administration; or have been submitted for approval by the manufacturer to the Postal Service or other foreign postal administration(s); and

(2) All potential security weaknesses or methods of meter tampering of the meters the manufacturer distributes of which the manufacturer knows or should know, and the meter(s) or model(s) subject to each method. These potential security weaknesses include but are not limited to suspected equipment defects, suspected abuse by

a meter licensee or manufacturer employee, suspected security breaches of CMRS information systems, occurrences outside normal performance, or any repeatable deviation from normal meter performance (within the same model family and/or by the same licensee).

(c) Within 45 days of the preliminary notification of the Postal Service under § 501.13(b), the manufacturer must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The manufacturer must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The manufacturer must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses. The manufacturer is required to submit a copy of internal reporting procedures and instructions to the Postal Service for review.

§ 501.14 Administrative sanction on reporting.

(a) Notwithstanding any act, admission, or omission by the Postal Service prior to the effective date of this section, an authorized postage meter manufacturer may be subject to an administrative sanction for failing to comply with § 501.13.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the manufacturer knew or should have known of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any meter(s) for which the manufacturer failed to comply with any provision in § 501.13. The Postal Service shall recover any and all such costs and losses (net of any amount collected by the Postal Service from the licensees or meter users) with interest by issuing a written notice to the manufacturer setting forth the facts and reasons on which the determination to impose the sanction is based. The notice shall advise the manufacturer of the date that the action will take effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(c) The manufacturer may present the Postal Service with a written defense to the proposed action within 30 calendar days of receipt. The defense must include all supporting evidence and state with specificity the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the manufacturer of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the manufacturer that it may, within 30 calendar days of receiving written notice, appeal that determination as specified therein.

(e) The manufacturer may submit a written appeal to the Postal Service within 30 calendar days of receipt of the decision. The appeal must include all supporting evidence and state with specificity the reasons that the manufacturer believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(f) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person.

§ 501.15 Materials and workmanship.

All meters must adhere to the quality in materials and workmanship of the approved production model and must be manufactured with suitable jigs, dies, tools, etc., to ensure proper maintenance and interchangeability of parts.

§ 501.16 Breakdown and endurance testing.

Each meter model proposed for manufacturing must pass without error or breakdown the following described printing cycle endurance test, which includes operation of the printing mechanism with proper registration of the selected postage value in both the ascending and descending registers. At reasonably frequent intervals, the manufacturer must take meters at random from production and subject them to breakdown tests to make certain that quality and performance standards are maintained.

(a) For meters that operate at 100 or more printing cycles per minute—4 million cycles. For meters that operate at less than 100 printing cycles per minute (and cannot be used interchangeably on power-base machines that operate at 100 or more printing cycles per minute)—2 million cycles.

(b) For multidenomination and omnidenomination meters, postage value selection elements must be tested for one-half million operations. A complete operation includes selection of a value and return to zero.

(c) Balance register lockout operation must be done at the start of, at intervals during, and after the printing cycle test.

§ 501.17 Protection of printing dies and keys.

During the process of fabricating parts and assembling postage meters, the manufacturer must exercise due care to prevent loss or theft of keys or of serially numbered postage-printing dies or component parts (such as denomination-printing dies, or auxiliary power supply and meter-setting equipment for electronic meters) that might be used in some manner to defraud the Postal Service of revenue. All serially numbered printing dies produced should be accounted for by assembly into meters or by evidence of mutilation or destruction. Postage printing dies removed from meters and not suitable for reassembly must also be mutilated so that they cannot be used or they must be completely destroyed.

§ 501.18 Destruction of meter stamps.

All meter stamps printed in the process of testing dies or meters must be collected and destroyed daily.

§ 501.19 Inspection of new and rebuilt meters.

All new and rebuilt meters must be inspected carefully before leaving the manufacturer's meter service station.

§ 501.20 Keys and setting equipment.

The meter manufacturer must furnish keys and other essential equipment for setting the meters to all post offices under whose jurisdiction its meters are licensed for use. These items must be protected and must not be furnished to persons not authorized by the Postal Service to possess them. The Postal Service will maintain control over the procurement, manufacture, and distribution of meter security seals. Manufacturers must reimburse the Postal Service promptly for the costs of the seals. All costs associated with meter security seals will be apportioned twice annually to the meter manufacturers by the installed base of each manufacturer.

§ 501.21 Distribution facilities.

Authorized manufacturers must keep adequate facilities for and records concerning the distribution, control, and maintenance of postage meters. All such facilities and records are subject to inspection by Postal Service representatives.

§ 501.22 Distribution controls.

Each authorized manufacturer must do the following:

(a) Hold title permanently to all meters of its manufacture except those purchased by the Postal Service.

(b) On behalf of applicants, transmit electronically copies of completed PS Forms 3601–A, Application for a License to Lease and Use Postage Meters, to the designated Postal Service central processing facility.

(c) Lease meters only to parties that have valid licenses issued by the Postal Service.

(d) Supply only those meter slogan or ad plates that meet the requirements of the Postal Service for suitable quality and content.

(e) Have all meters set, sealed (if applicable), and checked into service by the appropriate Postal Service representative prior to delivering them to licensees. Meters must be checked into service at the licensing post office, unless the meter is serviced under the on-site meter-setting program. The meter manufacturer must present the meter and a completed PS Form 3601–C, Postage Meter Installation, Withdrawal, or Replacement, to the appropriate Postal Service representative when checking a meter into service. A postage meter should show a zero in the descending register before being checked into service. If it does not, the initial payment must include the residual amount the locked-out meter could not imprint.

(f) Notify CMRS licensees of the dates on which meter examinations are due, and notify the licensing post offices of CMRS meters that have not been reset during the previous 3 months and/or are due for an annual examination. Resetting transactions must not be completed by the manufacturer if the meters are not brought to the post office for examination by the due date. Licensees who do not bring in their meters after the initial manufacturer notification must be approached again within 15 days, preferably by personal contact. If no response is received within another 15 days, the Postal Service shall notify the licensee that the meter is to be removed from service and the meter license revoked, following the procedures for revocation specified by regulation. The Postal Service shall notify the manufacturer to remove the meter from the licensee's location and present it to the licensing post office to be checked out of service within 15 days.

(g) Present meters to the licensing post office to be checked out of service if the licensee no longer wants the meter, or if the meter is to be removed from service for any other reason. Take the meter to the licensing post office for withdrawal, with a completed PS Form 3601–C, Postage Meter Installation, Withdrawal, or Replacement, and copy of the applicable PS Form 3602–A, Record of Meter Register Readings.

(h) Retrieve any misregistering, faulty, or defective meter and present it to the licensing post office to have the meter checked out of service within 3 business days of being notified by the licensee of the defect. After examining a meter withdrawn for apparent faulty operation affecting registration, the manufacturer must furnish a report explaining the malfunction to the licensing post office. That report must include all applicable meter documentation and a recommendation for the appropriate postage adjustment, if applicable, as follows:

(1) Mechanical meters. The manufacturer's postage adjustment recommendation for a misregistering mechanical meter must be accompanied by a refund request; a copy of the licensee's PS Form 3610, Record of Postage Meter Settings, and PS Form 3602–A; and the manufacturer's analysis of the licensee's recent mailing history supporting the recommended postage adjustment.

(2) Electronic meters. The manufacturer's postage adjustment recommendation for a misregistering electronic meter must be accompanied by a manufacturer-generated summary report of the appropriate redundant electronic register memory readouts for the meter, clearly indicating the register readings; a letter of instruction explaining the summary report; a copy of the licensee's PS Form 3610, PS Form 3602–A, and applicable system-generated register documentation (if the PS Form 3602–A is not maintained); and an explanation of the meter malfunction that resulted in inaccurate registration, if determined. If a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved, the manufacturer's recommendation must be accompanied by a refund request; a copy of the licensee's PS Form 3610, PS Form 3602–A, and applicable system-generated register documentation (if the PS Form 3602–A is not maintained); and the manufacturer's analysis of the licensee's recent mailing history supporting the recommended postage adjustment.

(i) Report the loss or theft of any meter or the recovery of any lost or stolen meter promptly. The manufacturer must complete a standardized lost and stolen meter incident report notifying the Postal Service of lost, stolen, or recovered meters within 30 calendar days of the manufacturer's determination of a meter loss, theft, or recovery. The manufacturer must complete all preliminary location activities specified in § 501.26 prior to submission of a Lost and Stolen Meter Incident Report to the Postal Service.

(j) Provide the designated ISSC with a compatible computer magnetic tape, computer diskette, or electronic transmission, listing all licensee meters in service, at the close of business each postal quarter. Include in each file record the meter serial number, model number, the user's name and address, the date that the meter was placed in service, and the ZIP Code or finance number of the licensing post office. Manufacturers are responsible for reconciling differences and keeping accurate records. This includes reconciliation of differences with licensing post offices by the manufacturer's branches or dealers, which results from meters that are not in Postal Service or manufacturer records.

(k) Keep at manufacturer's headquarters a complete record by serial number of all meters manufactured, showing all movements of each from the time that the meter is produced until it is scrapped, and the reading of the ascending register each time the meter is checked into or out of service through a post office. These records must be available for inspection by officials of the Postal Service at any time during business hours. These records may be destroyed 3 years after the meter is scrapped.

(l) Cancel a lease agreement with any lessee whose meter license is revoked by the Postal Service, remove the meter within 15 calendar days, and have the meter checked out of service.

(m) Promptly remove from service any meter that the Postal Service indicates should be removed from service. When a meter license is canceled, all meters in use by the licensee must be removed from service.

(n) Keep a permanent record by serial number of all meter keys issued to postmasters, as well as those sections of the manufacturer's establishment in which their use is essential, preferably in the form of signed receipt cards. The record must include the date, location, and details of any losses, thefts, or recoveries of such keys.

(o) Examine each meter withdrawn from service for failure to record its operations correctly and accurately, and report to the Postal Service the mechanical condition or fault that caused the failure.

(p) Provide the designated ISSC with a compatible computer tape of lost or stolen meters, monthly. The file is due on the first of each month (for the preceding month's activity).

(q) Take reasonable precautions in the transportation and storage of meters to prevent their reaching the hands of unauthorized individuals. Manufacturers must ship all postage meters by Postal Service registered mail unless given specific written permission to use another carrier by the Postal Service. The manufacturer must demonstrate that the alternative delivery carrier employs security procedures equivalent to those for registered mail.

(r) Affix to all postage meters a cautionary label providing the meter user with basic reminders on leasing, meter movement, and misuse and a barcoded label containing a barcoded representation of the meter serial number.

(1) The cautionary meter label must be placed on all meters in a conspicuous and highly visible location. Words printed in capital letters should be highlighted, preferably in red. The minimum width of the label should be 3.25 inches, and the minimum height should be 1.75 inches. The label should read as follows:

RENTED POSTAGE METER—NOT FOR SALE

PROPERTY OF [NAME OF MANUFACTURER]

Use of this meter is permissible only under U.S. Postal Service license. Call [Name of Manufacturer] at (800) ###-#### to relocate/return this meter.

WARNING! METER TAMPERING IS A FEDERAL OFFENSE

IF YOU SUSPECT METER TAMPERING,

CALL POSTAL INSPECTORS AT 1–800–654–8896 OR (202) 484–5480.

REWARD UP TO $50,000 for information leading to the conviction of any person who misuses postage meters resulting in the Postal Service not receiving correct postage payments.

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(2) The barcode label must be placed near the stamped serial number and must meet the following specifications: Code 3 of 9, ten digits long, with the first two digits being the manufacturer code (01—Ascom Hasler, 02—Pitney Bowes, 03—Francotyp-Postalia, 04—Friden Neopost) and the next eight digits being the meter serial number, zero-filled right-justified. Additional barcode digits may be used for manufacturer purposes if the Postal Service is notified of the information to be encoded thereby.

(3) Exceptions to the formatting of required labeling will be determined on a case-by-case basis. Any deviations from standardized meter labeling requirements must be approved in writing by the Postal Service.

§ 501.23 Administrative sanction.

(a) ''Meter'' for purposes of this section means any meter manufactured by an authorized postage meter manufacturer under § 501.1 that is not owned or leased by the Postal Service.

(b) An authorized manufacturer that, without just cause, fails to conduct or perform adequately any of the controls in § 501.22, fails to follow standardized lost and stolen meter incident reporting in § 501.26, or fails to conduct any of the inspections required by § 501.25 in a timely fashion may be subject to an administrative sanction based on the investigative and administrative costs and documented revenue losses (net of any amount collected by the Postal Service from the licensee or meter user) with interest per occurrence measured from the date on which the cost/loss occurred, as determined by the Postal Service. Sanctions will be based on the costs and revenue losses that result from the manufacturer's failure to comply with these requirements.

(c) The Postal Service may impose an administrative sanction under this section by issuing a written notice to the manufacturer setting forth the facts and reasons on which the determination to impose the sanction is based. The Postal Service shall determine all costs and losses. The notice shall advise the manufacturer of the date the action will take effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(d) The manufacturer may present a written defense to the proposed action within 30 calendar days of receipt of the notice to the Postal Service. The defense must include all supporting evidence and state with specificity the reasons for which the sanction should not be imposed.

(e) After receipt and consideration of the defense, the Postal Service shall advise the manufacturer of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it provides otherwise.

(f) The manufacturer may submit a written appeal of the decision within 30 calendar days of receipt of the decision, addressed to the manager of Customer Service Support, USPS Headquarters. The appeal must include all supporting evidence and state with specificity the reasons that the manufacturer believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(g) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person.

§ 501.24 Meter replacement.

The manufacturer must keep its meters in proper operating condition for licensees by replacing them when necessary or desirable to prevent mechanical breakdown.

§ 501.25 Inspection of meters in use.

(a) The manufacturer must have all its meters in service with licensees inspected according to the following schedule:

Meter type	Monthly	Quarterly	Semiannually	Annually
Mechanical	Special Circumstances	High-Volume Licensees Using System Meters.	Other Licensees Using System Meters.	Stand-Alone Meters.
Electronic	Special Circumstances		High-Volume Licensees Using Non-CMRS System Meters.	All CMRS and Other Electronic Meters.

(b) Manufacturer inspections must be sufficiently thorough to determine that each meter is clean, in proper operating condition, and recording its operations correctly and accurately. The manufacturers must:

(1) Compare the meter serial number on the meter with the serial number on the source document (manufacturer's records).

(2) Record the ascending and descending register readings and calculate the total readings. Record the locking seal identification number.

(3) Obtain the licensee's PS Form 3602–A and a copy of the most recent

PS Form 3603, Receipt for Postage Meter Setting, and verify the control total after the last setting with the control total calculated during the proof of register procedure.

(4) Verify the accuracy of postage selection, denomination indicator wheels or electronic display, and denomination printing wheels following the proof of registers by printing a .00 meter stamp and comparing the register readings after printing with the recorded register readings.

(5) Check to determine that the post office locking seal is in place and properly sealed and that the seal wire is properly wound and tightly gripped by the seal-locking mechanism, and tightly pulled up to the lock cover or post. Ensure that the locking seal identification number matches the seal number recorded at the time of the last meter resetting.

(6) Check to determine that the lock cover properly protects the lock and has not been loosened, bent, or tampered with.

(7) Complete the following, as applicable to the specific meter model:

(i) Check to ensure that the meter fits properly on the meter base.

(ii) Check all breakoff screws to determine that none is missing or loose or shows signs of removal.

(iii) Operate the dater and meter ad selector dials to test the dater, postmark die, and meter ad plate.

(iv) Check the alignment and condition of engraving on the denomination printing wheels, when visible.

(v) Check the descending register door for damage, pry marks, or scarring. Make certain that the door cannot be opened without unlocking it.

(vi) Examine the meter drum for damage, pry marks, or scarring.

(vii) Examine the meter cover for pry marks or scarring near the post office lock or breakoff screws, any drilled holes, or any signs of attempted entry into the internal mechanism of the meter.

(viii) Examine the postage meter stamp die for excessive wear, damage, breakage, or scars from prying, and the postage die retaining screws for signs of wear to ensure that none is missing or shows signs of removal.

(ix) Check the register, counter, and display windows for breakage or cloudiness.

(x) Obtain the signature of the licensee to show that a meter inspection has taken place.

(8) Report immediately to the licensee's licensing postmaster any irregularities in the operation of the meter or signs of improper use, and take steps to replace or remove the meter.

§ 501.26 Meters not located.

Upon learning that one or more of its meters in service cannot be located, the manufacturer must undertake reasonable efforts to locate the meter or meters by following a series of Postal Service-specified actions designed to locate the postage meter. If these efforts are unsuccessful and the meter is determined to be lost or stolen, the manufacturer must notify the Postal Service within 30 days through submission of a Lost and Stolen Meter Incident Report.

(a) If a licensee cannot be located, the manufacturer must, at a minimum, complete the following actions:

(1) Call the licensee's last known telephone number.

(2) Call directory assistance for the licensee's new telephone number.

(3) Contact the licensee's local post office for current change of address information.

(4) Contact the local post office for a copy of the applicable PS Form 3610 and PS Form 3601–C. Verify the location of the meter or licensee currently maintained in those meter records.

(5) Contact the rental agency responsible for the property where the licensee was located (if applicable).

(6) Visit the licensee's last known address to see whether the building superintendent or a neighbor knows the meter licensee's new address.

(7) Check the centralized meter inspection file for change of address notation.

(8) Mail a certified letter to the licensee at the last known address with the notation ''Forwarding and Address Correction Requested'' with a return receipt requested.

(9) If new address information is obtained during these steps, any scheduled meter inspections must be completed promptly.

(b) If a meter is reported to be lost or stolen by the licensee, the manufacturer must, at a minimum, complete the actions listed below:

(1) Ensure that the meter licensee has filed a police report and that copies have been provided to the appropriate Inspection Service Contraband Postage Identification Program (CPIP) specialist.

(2) Withhold issuance of a replacement meter until the missing meter has been properly reported to the police and to the appropriate Inspection Service CPIP specialist.

(3) If the manufacturer later learns that the meter has been located and/or recovered, the manufacturer must update lost and stolen meter activity records, inspect the meter promptly, initiate a postage adjustment or transfer if appropriate, and check the meter out of service if a replacement meter has been supplied to the meter licensee.

(c) If a meter reported to the Postal Service as lost or stolen is later located, the manufacturer is responsible for submitting a new lost and stolen meter incident report that references the initial report and outlines the details of how the meter was recovered. This report must be submitted to the Postal Service within 30 days of recovery of the meter. The meter manufacturer is also responsible for removing located meters from the lost and stolen meter reports provided on a periodic basis to the Postal Service ISSC.

(d) Any authorized manufacturer that fails to comply with standardized lost and stolen reporting procedures and instructions may be subject to an administrative sanction under § 501.23, as determined by the Postal Service.

§ 501.27 Repair of internal mechanism.

Repair or reconditioning of meters involving access to internal mechanisms must be done only within a factory or suitable meter repair department under the manufacturer's direct control and supervision. Meters must be checked out of service by the post office of setting before they are opened or any internal repairs are undertaken.

§ 501.28 Computerized remote postage meter resetting.

(a) Description. The Computerized Meter Resetting System (CMRS) permits postal licensees using specially designed postage meters to reset their meters at their places of business via telephonic communications. Authorized meter manufacturers that offer CMRS services are known as meter resetting companies (MRCs). To reset a meter, the licensee telephones the MRC and provides identifying data. Prior to proceeding with the setting transaction, the MRC must verify the data and ascertain from its own files whether the licensee has sufficient funds available on deposit with the Postal Service. If the funds are available, or the manufacturer opts to provide a funds advance in accordance with paragraph (b)(4) of this section, the MRC may complete the setting transaction.

(b) Deposits with the Postal Service.

(1) A CMRS licensee is required to have funds available on deposit with the Postal Service prior to resetting a meter or the manufacturer may opt to provide a funds advance in accordance with paragraph (b)(4) of this section. The details of this deposit requirement are

covered within the Acknowledgment of Deposit Requirement document. By signing this document, the licensee agrees to transfer funds to the Postal Service through a lockbox bank, as specified by the MRC, for the purpose of prepayment of postage. The MRC representative must provide all new CMRS licensees with this document when a new account is established. The document must be completed and signed by the licensee and sent to the licensing post office by the MRC.

(2) The MRC is required to incorporate the following language into its postage meter rental agreements:

Acknowledgment of Deposit Requirement

By signing this meter rental agreement, you represent that you have read the Acknowledgment of Deposit Requirement and are familiar with its terms. You agree that, upon execution of this Agreement with [the MRC], you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement, as it may be amended from time to time.

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(3) The licensee is permitted to make deposits in one of three ways: check, electronic funds transfer (or wire transfer), or automated clearinghouse (ACH) transfer. These deposits are to be processed by the lockbox bank. The lockbox bank must wire all available balances to the Postal Service daily.

(4) If the MRC chooses to offer advancement of funds to licensees, it is required to maintain a deposit with the Postal Service equal to at least 1 day's average funds advanced. The total amount of funds advanced to licensees on any given day may not exceed the amount the manufacturer has on deposit with the Postal Service. The MRC is not authorized to perform settings in excess of the licensee's balance in any other circumstances. The Postal Service shall not be liable for any payments made by the MRC on behalf of a licensee that are not reimbursed by the licensee because the MRC is solely responsible for the collection of advances.

(c) Revenue protection. The Postal Service shall conduct periodic assessments of the revenue protection safeguards of each MRC system and shall reserve the right to revoke an MRC's authorization if the CMRS system does not meet all requirements set forth by the Postal Service. In addition, the Postal Service shall reserve the right to suspend the operation of the MRC for any serious operational deficiencies that are likely to result in the loss of funds to the Postal Service as provided in § 501.12.

(d) Equipment. The postage meters used in the computerized resetting system must conform to the specifications in § 501.6. They must be tested under § 501.7, and conform to the safeguards, distribution, and maintenance requirements of §§ 501.15 through 501.23 to protect the Postal Service against loss of revenue from fraud, manipulation, misoperation, or breakdown.

(e) Financial operation.

(1) Prior to the Postal Service's selection of a lockbox provider, the MRC must establish a lockbox account in the name of the Postal Service at a bank or banks approved by the Postal Service to handle the deposits of licensees. The MRC must make arrangements with such banks under which the banks are to inform the manufacturer of the amounts of licensee funds received each banking day.

(2) The Postal Service lockbox bank(s) will process the CMRS deposits daily, consolidate the data, and perform a direct file transmission to each of the MRCs. The daily deposit processing cutoff times and the automated file transmission times will be coordinated independently with each of the MRCs. Manufacturers must ensure that their data center computer is programmed to reflect each licensee deposit and tracks all licensee activity.

(3) The MRC must require each licensee requesting that its meter be reset to provide the meter serial number, the licensee account number, and the meter's ascending and descending register readings. The manufacturer must verify that the information provided to the licensee is consistent with its records. The MRC must also verify that there are enough funds in the licensee's account to cover the postage setting requested before proceeding with the setting transaction (unless the manufacturer opts to provide the licensee a funds advance). Immediately following each such resetting, the MRC must charge the licensee's account for the amount of the postage reset. After the completion of each transaction, the manufacturer must promptly provide the licensee with a statement documenting the transaction and the balance remaining in the licensee's account. As an alternative, the manufacturer may provide a statement monthly that documents all transactions for the period and that shows the balance in the licensee's account after each transaction.

(4) Each banking day, the lockbox bank(s) are to transfer, by 10 a.m. local lockbox bank time, amounts payable to the Postal Service from the transactions during the previous day to a designated Federal Reserve Bank. The MRC must maintain licensee service activity data to accept and respond to inquiries from licensees concerning the status of their payments. The lockbox bank must provide the MRCs with a nationwide, toll-free telephone number for licensee service. The Postal Service lockbox bank must assign a dedicated senior level licensee service representative to handle all inquiries and investigations.

(5) The Postal Service requires that the MRCs publicize to all CMRS licensees the following payment options (listed in order of preference):

(i) Automated clearinghouse (ACH) debits/credits.

(ii) Electronic funds transfer (wire transfer).

(iii) Checks.

(6) Licensee check deposits must be mailed to a predetermined post office box address specified by the lockbox bank and accompanied by a pre-encoded deposit ticket. The Postal Service will provide the MRCs with the deposit ticket format. The MRC must ensure that the deposit tickets are distributed to licensees for inclusion with check payments. At the time a new account is opened, a licensee not possessing a pre-encoded deposit slip must present the initial payment to the MRC representative who in turn assigns the licensee a new account number and manually prepares a deposit ticket to be mailed to the lockbox bank for processing.

(7) If a licensee prefers to use a payment form other than a check, the licensee must contact the MRC representative for instructions, and the MRC must provide the licensee with the appropriate information regarding the use of automated clearinghouse debits/credits and electronic funds transfers (wire transfers).

(8) Returned checks and ACH debits are the responsibility of the Postal Service. In the case of a returned check, the Postal Service lockbox bank, after an automatic second presentment, will advise the MRC of the account in question so that the MRC data file can be locked. The MRC must lock the licensee account immediately so that the licensee is unable to reset the meter until the Postal Service receives payment in full for the check returned. The lockbox bank will provide collection services for returned checks on behalf of the Postal Service. The Postal Service lockbox bank will notify the MRC once this item is paid. The MRC will then release the account for activity.

(f) Refunds. The Postal Service will issue a refund to a licensee for any unused postage in a meter. Refunds of

licensee balances maintained by the Postal Service in the Postal Service fund are intended to be made directly to the licensee by the lockbox bank within 48 hours after receipt of a licensee's request.

(g) Reports. The manufacturer must provide reports according to the following schedule:

Report description	Contents	Frequency	Media
MRC CMRS Daily Activity Report	Summary of Business Activity	Daily	Paper (facsimile)
Revenue Allocation Report	ZIP Code of Licensing Post Office; Amount of Resettings.	Postal Accounting Period	Electronic.
Postage Refunds Report	Customer ID; ZIP Code; Amount of Refund.	Daily (by request only)	Paper.
Funds Advanced Report	Customer ID; ZIP Code; Amount of Funds Advanced.	Daily (by request only)	Paper.

(h) Inspection of records and facilities. The manufacturer must make its facilities handling the operation of the computerized resetting system and all records about the operation of the system available for inspection by representatives of the Postal Service at all reasonable times.

§ 501.29 Notice of proposed changes in regulations.

Before changing the regulations in part 501, the Postal Service must give an advance notice of any proposed changes to enable persons who manufacture, or are interested in manufacturing, postage meters a chance to be heard and to adjust their operations to accord with the proposed changes if they are adopted.

Appropriate amendments to 39 CFR parts 111 and 501 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

Note: The following draft report and PS Forms are published for informational purposes only and will not be codified in the Code of Federal Regulations.

BILLING CODE 7710–12–P

Exhibit A

Lost and Stolen Meter Incident Report

(To be filed within 30 days of determining that a meter is lost, stolen, or recovered)

1. Report code: _____
2. Report number: _____
3. Report date: _____
4. Occurrence date: _____
5. Manufacturer's code: _____
6. Meter serial number: _____
7. Model number: _____
8. Licensing post office finance number: _____
9. Meter license number: _____

A. Administrative Details

10. Accountable district/branch/dealer: _____

11. Complete address (including 9-digit ZIP Code): _____

12. Complete name and last known address of licensee: _____

13. Indicate whether the licensee is a third-party mailer: _____

14. Police report number, if stolen: _____

Note: For stolen meters, a copy of the applicable police report must be attached to the stolen report. For recovered meters, a copy of the original lost or stolen report must be attached to the recovery report.

15. Name, precinct, and address of applicable police department:

_____

16. For **lost or stolen** meters:

Last known register readings:
- Ascending: _____
- Descending: _____
- Seal number: _____
- Date of last setting: _____

Date of last manufacturer's inspection: _____

17. For **found or recovered** meter:

Reference initial report number: _____
Meter date reading at time of recovery: _____

Lost and Stolen Meter Incident Report [DRAFT]

Exhibit A

B. Circumstances

18. Details of loss or recovery, include time, place, name of individual who reported incident, and all pertinent facts: _____

_____

_____

19. Indicate any history of other meters reported as lost or stolen by this customer and attach all reports relating to these instances: _____

_____

C. Report Distribution

Concurrent distribution of this report must be made to the licensing post office and the applicable Inspection Service Contraband Postage Identification Program (CPIP) specialist.

20. Name and address of licensing post office: _____

_____

_____

21. Name and address of applicable Inspection Service CPIP specialist: _____

_____

D. Report Certification

The following certify that this report was accurately completed and submitted after the actions specified in 39 CFR 501.26 were followed:

22. Name (*typed*) and signature of person completing the report:

_____

_____

23. Name (*typed*) and signature of supervisor:

_____

_____

The submission of false, fictitious, or fraudulent statements can result in imprisonment of up to 5 years and a fine of up to $10,000 (18 U.S.C. 1001).

Failure to report a lost or stolen meter according to standardized reporting procedures outlined in 39 CFR 501.26 and/or 39 CFR 501.22 can result in an administrative sanction. Additionally, lost and stolen meter activity reports must be submitted upon locating or recovering a meter that has been reported as lost or stolen. The submission of a lost and stolen meter activity report does not relinquish the manufacturer's responsibility to update input for the national computerized quarterly lost and stolen report.

Lost and Stolen Meter Incident Report [DRAFT]

Exhibit A

Missing Meters Required Actions
(39 CFR 501.26)

If a licensee cannot be located, do the following:

1. Call licensee's last known telephone number.
2. Call directory assistance for new telephone number.
3. Contact local post office for current change of address information.
4. Contact local post office for a copy of Form 3610 and Form 3601-C for indication of new address.
5. Contact rental agency responsible for property where licensee was located.
6. Visit licensee's last known address to see whether building superintendent or a neighbor knows licensee's new address.
7. Check centralized meter inspection file for change of address notation.
8. Mail a certified letter to licensee at last known address, with notation "Forwarding and Address Correction Requested" with a return receipt requested.

If a meter is reported lost or stolen by licensee, do the following:

1. Ensure that meter licensee has filed a police report and that copies have been provided to appropriate Contraband Postage Identification Program (CPIP) Postal Inspector.
2. Do not issue a replacement meter without ensuring that missing meter has been properly reported to police and to Inspection Service.

Lost and Stolen Meter Incident Report [DRAFT]

Exhibit B

U.S. Postal Service

Application for a License to Lease and Use Postage Meters

(Complete and submit original signed form to the post office where metered mail will be deposited.)

Post Office Where Mail Is to Be Deposited:
Name: _____ State: ___ ZIP Code: _____

A. Applicant

1. Business Name: _____ 2. Telephone: ( ) -
3. Corporate Business Customer Information System (CBCIS) Number *(if known)*: _____
4. Business Tax Identification Number: _____
5. Corporate Business Agent *(if applicable)*: _____
6. Federal Agency Code (for U.S. official mail [penalty indicia]) _ _ _ - _ _ _ _ _
7. Mailing Address *(delivery)*:
   Address: _____
   City: _____ State: _____ ZIP+4: _____ Fax Number: _____
8. Physical Street Address *(if mailing address is a post office box or different from above)*:
   _____
   City: _____ State: _____ ZIP+4: _____

B. Business Profile

1. Company's primary business function: _____
2. Give us your best estimate of postage usage:

   a. Anticipated Annual Metered Postage:
   Less than $7,000 [ ]
   $7,000 to $12,000 [ ]
   $12,001 to $25,000 [ ]
   More than $25,000 [ ]

   b. Annual Percentage of Metered Mail:
   Letters ___ %
   Flats ___ %
   Parcels ___ %

3. Does your business anticipate mailing metered mail at discounted rates? [ ] Y [ ] N
4. Does your business have an authorization to use permit imprints at this or any other post office? [ ] Y [ ] N
5. Does your business prepare or process mail for other *(third)* parties? [ ] Y [ ] N
6. Does your business currently hold any other meter licenses at this or any other post office? [ ] Y [ ] N
   If yes, list:

Post Office City	State	ZIP Code	License Number

7. Have you or your business ever had a meter license revoked? [ ] Y [ ] N
   If yes, provide specific details *(including dates and licensing post office)*: _____
   _____
   _____

PS Form 3601-A [DRAFT]

Exhibit B

The collection of this information is authorized by 39 U.S.C. 401 and 404. This information will be used to administer postage meter activities. As a routine use, the information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the U.S. Postal Service is a party or has an interest; to a government agency in order to obtain information relevant to a Postal Service decision concerning employment, security clearances, contracts, licenses, grants, permits, or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants, or other benefits; to a congressional office at your request; to an expert, consultant, or other person under contract with the Postal Service to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of Postal Service finances; to a labor organization as required by the National Labor Relations Act; and to disclose the identity and address of user and identity of agent to any member of the public. Completion of this form is voluntary; however, if this information is not provided, you may not receive meter services.

The submission of a false, fictitious, or fraudulent statement can result in imprisonment of up to 5 years and a fine of up to $10,000 (18 U.S.C. 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 U.S.C. 3802).

C. Certification

The application must be signed and submitted to the U.S. Postal Service by a corporate officer or an individual within the business with the authority to sign checks.

I hereby certify that all information furnished on this form is accurate and truthful.

Applicant's Signature: _____ Date: _____

Printed Name: _____ Contact Telephone: ( ) - _____

Business Title: _____

PS Form 3601-A [DRAFT]

Exhibit C

U.S. Postal Service

Postage Meter Installation, Withdrawal, or Replacement

[ ] Installation **[ ] Withdrawal** **[ ] Replacement**

Reason for Meter Activity:

[ ] New Meter [ ] Model Change [ ] Mechanical Failure
[ ] Register Failure [ ] Cancellation of Lease [ ] USPS Revocation of License
[ ] Other: _____

Explanation: _____

A. Licensee Information

Meter License Number: _____

Licensee Business/Individual Name: _____

B. Meter Location

Address: _____

City: _____ State: _____ ZIP+4: _____

Contact Person: _____ Telephone: _____

Meter Indicia Option Requested:

1. City: _____ State: _____
2. Name of Classified Branch: _____ State: _____
3. ZIP Code Designation: _____
4. Military APO/FPO: _____

C. Meter Information

Withdrawn Meter		**Installed Meter**	
Meter Manufacturer:	_____	Meter Manufacturer:	_____
Model Number:	_____	Model Number:	_____
Serial Number:	_____	Serial Number:	_____
Locking Seal Number:	_____	Locking Seal Number:	_____
Ascending Register:	_____	Ascending Register:	_____
Descending Register:	_____	Descending Register:	_____
Control Total:	_____	Control Number:	_____

PS Form 3601-C [DRAFT]

3.3	3.3	Editorial changes.
3.4	3.4	Would be renamed from Alternate Locations to Alternative Meter Setting Location. Editorial changes.
3.5	3.6	Would be renumbered.
3.6	-	3.6, Manufacturer Withdrawal, would be moved to 39 CFR 501.22(g) and 501.22(i).
3.7	3.5	Renumbered.
3.8	3.7	Renumbered.
-	3.8	New 3.8, Postage Adjustments, Misregistering Meters. Requirements would be expanded to include new procedures for processing refunds for defective meters.
3.9	3.8	3.9, Manufacturer's Statement, would be incorporated into 3.8, Postage Adjustments, Misregistering Meters.
3.10	3.9	3.10, CMRS, would be renamed and renumbered as 3.9, Computerized Meter Resetting System. Requirement added for use of PS Form 3601-C, Meter Installation, Withdrawal, or Replacement.
3.11	3.10	3.11, Postage Transfer, would be renamed and renumbered as 3.10, Postage Transfer for CMRS. Editorial changes.
3.12	3.11	3.12, Periodic Examination, would be renamed and renumbered as 3.11, Periodic Examination of CMRS Meters. Examination requirements to be revised as discussed in III.D above.
3.13	3.12	3.13, Resetting CMRS Meters, would be renamed and renumbered as 3.12, Resetting CMRS Meters. Requirements changed, reference IV above.
-	3.13	New 3.13, CMRS Refunds, would outline CMRS refund procedures as discussed in IV above.
4.0	4.0	None.
4.1	4.1	Editorial changes.
4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 5.0, 5.1, 5.2, 5.3, 5.4	4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 5.0, 5.1, 5.2, 5.3, 5.4	None.
6.0	6.0	Would state that manufacturer requirements relating to the manufacture and distribution of meters are published in 39 CFR 501.
6.1	-	Section would be eliminated and requirements moved to 39 CFR 501.1 and 501.2.
6.2	-	Section would be eliminated and requirements moved to 39 CFR 501.3.
6.3	-	Section would be eliminated and requirements moved to 39 CFR 501.5.
6.4	-	Section would be eliminated and requirements moved to 39 CFR 501.5.
6.5	6.0	Section would be eliminated and requirements moved to 6.0.

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