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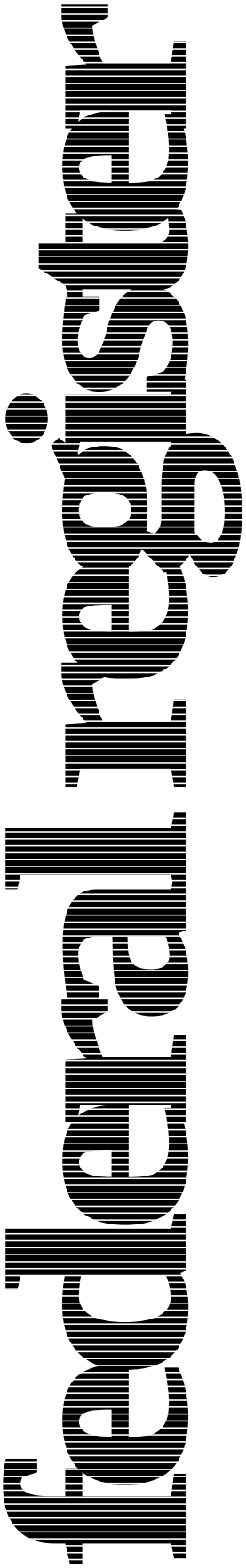
July 26, 1995



Briefings on How To Use the Federal Register
For information on briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 20 at 9:00 am

WHERE: Centers for Disease Control
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Atlanta, GA

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6811 of July 21, 1995

Parents' Day, 1995

By the President of the United States of America

A Proclamation

Parenthood is among the most difficult and most rewarding responsibilities in life. Balancing countless demands, parents must be firm yet loving, protective yet liberating. They are the nurturers of our dreams and the soothers of our fears. They instill in their children, by word and example, the importance of family and community involvement, the value of education and hard work.

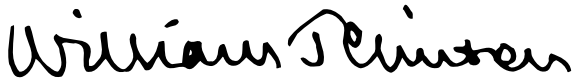
Parenting is a serious responsibility. All parents have an obligation to provide for the children they bring into the world. Parents must teach and sustain, helping to empower each new generation to meet the challenges and opportunities of life with confidence.

Today, across our country, parents give their time and energy to ensure a better future for their children. Teaching the lessons of honesty and caring in a way that no school or government can, America's parents pass on the spirit, values, and traditions that have made our Nation strong for more than two centuries. Whether stepparents or foster parents, biological or adoptive, parents provide the security, stability, and love that enable children to grow up healthy, happy, and strong.

Parents' Day is a welcome opportunity to celebrate the special and powerful bond between parent and child. On this occasion, let us remember and pay respect to those who give us the daily support and loving guidance that lead us to become responsible and contributing citizens.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 103–362, do hereby proclaim Sunday, July 23, 1995, as ''Parents' Day.'' I invite the States, communities, and the people of the United States to observe this day with appropriate ceremonies and activities expressing gratitude and abiding affection for parents.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of July, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



[FR Doc. 95–18506
Filed 7–24–95; 2:49 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Wednesday, July 26, 1995

DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD64 and AD65

1995 Marketing Quotas and Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Maryland (Type 32), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44 and 53–55), Cigar-Filler (Type 41), Cigar-Filler (Type 46), and Cigar Binder (Types 51–52) Tobaccos

AGENCIES: Consolidated Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify the national marketing quotas and price support levels for the 1995 crops for several kinds of tobacco announced by press release on March 1, 1995.

In accordance with the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), the Secretary determined the 1995 marketing quotas to be as follows: Fire-cured (type 21), 1.95 million pounds; fire-cured (types 22–23), 39.8 million pounds; Maryland (type 32), 6.45 million pounds; dark air-cured (types 35–36), 9.6 million pounds; Virginia sun-cured (type 37), 130,000 pounds; cigar-filler (type 41), 1.35 million pounds; cigar-filler and binder (types 42–44 and 53–55), 9.0 million pounds; cigar-filler (type 46), zero pounds; and cigar binder (types 51–52), 675,000 pounds.

This rule is necessary to adjust the production levels of certain tobacco to more fully reflect supply and demand conditions as provided by statute.

In accordance with the Agricultural Act of 1949 as amended (the 1949 Act), the Secretary determined the 1995 levels of support to be as follows (in cents per pound): Fire-cured (type 21), 143.0; fire-cured (types 22–23), 151.8; dark air-cured (types 35–36), 130.4; Virginia sun-cured (type 37), 127.6; cigar-filler and binder (types 42–44 and 53–55), 110.1; and cigar-filler (type 46), 86.1. Price support for Maryland (type 32), cigar-filler (type 41), and cigar binder (types 51–52) were not announced because producers of each of these kinds of tobacco had disapproved marketing quotas for many years and were not expected to approve quotas in separate referenda to be held March 27–30, 1995.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), room 3736, South Building, PO Box 2415, Washington, DC 20013–2415, 202–720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CFSA 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 of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain information collections that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Statutory Background

This final rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act.

On March 1, 1995, the Secretary determined and announced the national marketing quotas and price support levels for the 1995 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos. In addition the Secretary announced marketing quotas for Maryland (type 32), cigar-filler (type 41) and cigar-binder (types 51–52). A number of related determinations were made at the same time which this final rule affirms. On the same date, the Secretary also announced that referenda would be conducted by mail with respect to Maryland (type 32), Virginia sun-cured (type 37), cigar-filler (type 41), and cigar-binder (types 51–52) tobaccos.

During March 27–30, 1995, eligible producers of Maryland (type 32), Virginia sun-cured (type 37), cigar-filler (type 41), and cigar binder (types 51–52) tobacco voted in separate referenda to determine whether such producers disapprove marketing quotas for the 1995, 1996, and 1997 marketing years (MYs) for these tobaccos. Of the producers voting, 9.9 percent favored marketing quotas for Maryland tobacco; 93.6 percent favored marketing quotas for Virginia sun-cured tobacco; 11.5 percent favored marketing quotas for cigar-filler (type 41); and 12.2 percent favored marketing quotas for cigar binder (types 51–52). Accordingly, among these tobaccos, quotas and price supports for only Virginia sun-cured tobacco are in effect for the 1995 MY. For the other three kinds, neither marketing quotas nor price supports will be in effect for the next 3 MYs.

In accordance with section 312(a) of the 1938 Act, the Secretary of Agriculture was required to proclaim not later than March 1 of any MY with respect to any kind of tobacco, other than burley and flue-cured tobacco, a

national marketing quota for any such kind of tobacco for each of the next 3 MYs if such MY is the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect; or because marketing quotas previously proclaimed were last disapproved by producers in a referendum held 3 years previously. With respect to Virginia sun-cured (type 37) tobacco, the 1994 MY is the last year of 3 such consecutive years; for Maryland (type 32), cigar-filler (type 41), and cigar binder (types 51–52) 1995 represents the beginning of another 3-year cycle. Accordingly, subject to producer approved marketing quotas for Maryland (type 32), Virginia sun-cured (type 37), cigar-filler (type 41) and cigar binder (types 51–52) tobaccos have been proclaimed for each of the 3 MYs beginning October 1, 1995; October 1, 1996; and October 1, 1997. As indicated, however, type 37 producers approved the quotas.

Because of producer approval of quotas sections 312 and 313 of the 1938 Act require that the Secretary also announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), Maryland (type 32), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler (type 41), cigar-filler and binder (types 42–44 and 53–55), cigar-filler (type 46), and cigar binder (types 51–52) tobaccos for the MY beginning October 1, 1994, and for these tobaccos, the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (1) new farms and (2) making corrections and adjusting inequities in old farm allotments.

Under the 1949 Act, price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1995 crop of the nine kinds of tobacco which are the subject of this rule, the respective maximum level of support for six of those kinds is determined in accordance with section 106 of the 1949 Act. For the other three kinds of tobacco, price support was not calculated because producers of these kinds of tobacco had disapproved marketing quotas in previous referenda and were not expected to approve quotas in separate referenda to be held March 27–30, 1995.

The announcement of the price support levels for the 1995 crops of these six kinds of tobacco are made insofar as practicable before the beginning of the planting season.

Marketing Quotas

Section 312(b) of the 1938 Act provides, in part, that the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed such that a supply of such tobacco equal to its reserve supply level is made available during the MY.

Section 313(g) of the 1938 Act provides that the Secretary may convert the national marketing quota into a national acreage allotment for apportionment to individual farms.

Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments allow, it has been determined that a larger quota is necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the 1938 Act defines ''reserve supply level'' as the normal supply, plus 5 percent thereof, to ensure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. ''Normal supply'' is defined in section 301(b)(10)(B) of the 1938 Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover.

Normal year's domestic consumption is defined in section 301(b)(11)(B) of the 1938 Act as the average quantity produced and consumed in the United States during the 10 MYs immediately preceding the MY in which such consumption is determined, adjusted for current trends in such consumption. Normal year's exports is defined in section 301(b)(12) of the 1938 Act as the average quantity produced in and exported from the United States during the 10 MYs immediately preceding the MY in which such exports are determined, adjusted for current trends in such exports.

In accordance with section 313(g) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that the national reserve, noted herein, for the 1995 crop of each of these kinds of tobacco is adequate for these purposes.

On January 25, 1995, a proposed rule was published (60 FR 4871) in which interested persons were requested to comment with respect to setting quotas for the tobacco kinds addressed in the notice.

Discussion of Comments

Thirty-two written responses were received during the comment period which ended February 3, 1995. Some respondents discussed more than one kind of tobacco. A summary of these comments by kind of tobacco follows:

(1) *Fire-cured (type 21) tobacco.* Nine comments were received. Eight comments recommended that quotas be decreased by 15 percent. The other recommended that the marketing quotas be decreased by 10 percent from the 1994 MY.

(2) *Fire-cured (types 22–23) tobacco.* Six comments were received. Five recommended a 7-percent decrease from the 1994 marketing quota, while the sixth recommended no change in quota.

(3) *Dark air-cured (types 35–36) tobacco.* Seven comments were received. Six recommended a 15-percent decrease, and a seventh recommended a 10-percent decrease in the quota.

(4) *Virginia sun-cured (type 37) tobacco.* Eight comments were received, all recommended a 5-percent decrease in quota.

(5) *Cigar-filler and binder (types 42–44 and 53–55) tobacco.* Two comments were received, both recommending no change in quota.

(6) *Maryland (type 32), cigar filler (type 41), cigar filler (type 46) and cigar binder (type 51–52) tobaccos.* No comments were received.

Marketing quotas and the corresponding acreage allotments for Maryland (type 32), cigar filler (type 41), and cigar binder (types 51–52) tobaccos were proclaimed on March 1, 1995, but were each disapproved by producers in subsequent referenda. Accordingly, the following marketing quotas appear as a matter of record only: Maryland (type 32), 6.45 million pounds; cigar filler (type 41), 1.35 million pounds; and cigar binder (type 51–52), 675,000 pounds.

For the six kinds of tobacco for which marketing quotas have been approved the following determinations have been

made, based on a review of these comments and the latest available statistics of the Federal Government which appear to be the most reliable data available.

(1) Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 1.1 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was 2.7 million pounds (farm sales weight basis). Both domestic use and exports have trended sharply downward. Thus, a normal year's domestic consumption has been determined to be 0.7 million pounds, and a normal year's exports have been determined to be 1.65 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 4.83 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 3.3 million pounds. The 1994 crop is estimated to be 2.4 million pounds. Therefore, total supply for the 1994 MY is 5.7 million pounds. During the 1994 MY, it is estimated that disappearance will total approximately 2.5 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 3.2 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 1.63 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. Less than 85 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 1.95 million pounds is necessary to make available production of 1.63 million pounds. Thus, the national marketing quota for the 1995 MY is 1.95 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 1.95 million pounds by the 1990–94, 5-year national average yield of 1,482 pounds per acre results in a 1995 national acreage allotment of 1,315.79 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.85 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 5.7 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(2) Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 years preceding the 1994 MY, was approximately 17.8 million pounds. The average annual quantity produced in the United States and exported during the 10 MYs preceding the 1994 MY was 16.4 million pounds (farm sales weight basis). Both domestic use and exports have trended upward recently. Thus, normal year's domestic consumption has been determined to be 25.0 million pounds, and a normal year's exports have been determined to be 20.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 108.1 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 69.6 million pounds. The 1994 crop is estimated to be 41.9 million pounds. Therefore, total supply for the 1994 MY is 111.5 million pounds. During the 1994 MY, it is estimated that disappearance will total approximately 35.0 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 76.5 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 31.6 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. About 95 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 33.2 million pounds is necessary to make available production of 31.6 million pounds.

In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1995 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. Thus, the national marketing quota for the 1995 MY is 39.8 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 39.8 million pounds by the 1990–94, 5-year average yield of 2,412 pounds per acre results in a 1995 national acreage allotment of 16,500.83 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.93 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 26 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(3) Dark Air-Cured (Types 35–36) Tobacco

The yearly average quantity of dark air-cured (types 35–36) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 10.3 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was 1.9 million pounds (farm sales weight basis). Domestic use has been erratic while exports have trended downward. Thus, a normal year's domestic consumption has been determined to be 10.5 million pounds, and a normal year's exports have been determined to be 1.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 33.0 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 24.7 million pounds. The 1994 crop is estimated to be 10.8 million pounds. Therefore, total supply for the 1994 MY is 35.5 million pounds. During the 1994 MY, it is estimated that disappearance will total approximately 10.0 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 25.5 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 7.5 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. More than 90 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a national marketing quota of 8.0 million pounds is necessary to make

available production of 7.5 million pounds.

In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1995 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1995 MY of 9.6 million pounds. In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 9.6 million pounds by the 1990–94, 5-year average yield of 2,248 pounds per acre results in a 1995 national acreage allotment of 4,270.46 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.85 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 13.0 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(4) Virginia Sun-Cured (Type 37) Tobacco

The yearly average quantity of Virginia sun-cured (type 37) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 190,000 pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was approximately 120,000 pounds (farm sales weight basis). Both domestic use and exports have shown a sharp downward trend. Thus, a normal year's domestic consumption has been determined to be 60,000 pounds, and a normal year's exports have been determined to be 17,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 203,000 pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 110,000 pounds. The 1994 crop is estimated to be 110,000 pounds. Therefore, total supply for the 1994 MY is 220,000 pounds. During the 1994 MY, it is estimated that disappearance will total approximately 130,000 pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 90,000 pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1994, is 113,000 pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. Over 80 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 130,000 pounds is necessary to make available production of 113,000 pounds. Thus, the national marketing quota for the 1995 MY is 130,000 pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 130,000 pounds by the 1990–94, 5-year average yield of 1,303 pounds per acre results in a 1995 national acreage allotment of 99.77 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.95 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 0.34 acre, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(5) Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 16.2 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was less than 100,000 pounds (farm sales weight). Domestic use has trended downward and exports are very small. Thus, a normal year's domestic consumption has been determined to be 10.2 million pounds, and a normal year's exports has been determined to be 100,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 29.7 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 27.9 million pounds. The 1994 crop is estimated to be 5.8 million pounds. Therefore, total supply for the 1994 MY is 33.7 million pounds. During the 1994 MY, it is estimated that disappearance will total about 9.0 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 24.7 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 5.0 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. Slightly less than 70 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 7.5 million pounds is necessary to make available production of 5.0 million pounds. In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1995 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a 1995 national marketing quota of 9.0 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 9.0 million pounds by the 1990–94, 5-year average yield of 1,855 pounds per acre results in a 1995 national acreage allotment of 4,851.75 acres.

Pursuant to the provisions of section 313(g), of the 1938 Act, a national factor of 1.0 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 3.75 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(6) Cigar-Filler (Type 46) Tobacco

There is no demand for cigar-filler (type 46) tobacco. Accordingly, the reserve supply level is zero. The estimated carryover at the start of MY 1995 is 0.1 million pounds.

Because the estimated carryover exceeds the reserve supply level, the quantity of tobacco that may be marketed during MY 1995 and the 1995 acreage allotment are both zero.

(7) Referendum Results for Maryland (Type 32), Virginia Sun-Cured (Type 37), Cigar-Filler (Type 41) and Cigar Binder (Types 51–52) Tobaccos

Marketing quotas shall not be in effect for the 1995 MY for Maryland (type 32), cigar filler (type 41), and cigar binder (types 51–52) tobaccos. However, marketing quotas shall be in effect for Virginia sun-cured (type 37) tobacco. In referenda held March 27–30, 1995, only 9.9 percent of producers of Maryland

(type 32) tobacco, 11.5 percent of producers of cigar filler (type 41) tobacco, and 12.2 percent of producers of cigar binder (types 51–52) tobacco voted in favor of marketing quotas.

However, 93.6 percent of Virginia sun-cured producers voted in favor of marketing quotas.

The following is a summary of the results of the four separate referenda:

Kind of tobacco	Total votes	Yes votes	No votes	Percent yes votes
Maryland (type 32)	567	56	511	9.9
Virginia sun-cured (type 37)	47	44	3	93.6
Cigar-filler (type 41)	87	10	77	11.5
Cigar-binder (types 51–52)	41	5	36	12.2

Price Support

Section 106(f)(6)(A) of the 1949 Act provides that the level of support for the 1995 crop of a kind of tobacco (other than flue-cured and burley) shall be the level in cents per pound at which the 1994 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1995 crop, as determined under section 106(b) of the 1949 Act, is greater or less than (ii) the support level for the 1994 crop, as determined under section 106(d) of the 1949 Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, the support level for the 1995 crop of such kind of tobacco will be the 1994 level, adjusted by the difference (plus or minus) between the 1994 ''basic support level'' and the 1995 ''basic support level.''

Section 106(b) of the 1949 Act provides that the ''basic support level'' for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers, including wage rates, interest, and taxes (referred to as the ''parity index'') for the 3 previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year.

In addition, section 106(f)(6)(B) of the 1949 Act provides that to the extent requested by the board of directors of an association, through which price support is made available to producers (producer association), the Secretary may reduce the support level determined under section 106(f)(6)(A) of the 1949 Act for the respective kind of tobacco to more accurately reflect the market value and improve the marketability of such tobacco. Accordingly, the price support level for a kind of tobacco set forth in this rule could be reduced if such a request is made.

Determinations

The following levels of price support for the 1994 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A) of the 1949 Act, are as follows:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	140.7
KY-TN fire-cured (types 22–23)	148.3
Dark air-cured (types 35–36)	127.3
Virginia sun-cured (type 37)	124.5
Cigar-filler and binder (types 42–44 and 53–55)	108.4
Cigar-filler (type 46)	84.4

For the 1995 crop year:

(1) Average parity indexes for calendar year periods 1991–1993 and 1992–1994 are as follows:

Year	Index	Year	Index
1991	1,316	1992	1,329
1992	1,329	1993	1,355
1993	1,355	1994	1,394
Average	1,333	Average	1,359

(2) Average parity index, calendar year 1959=298.

(3) 1994 ratio of 1,333 to 298=4.47; 1995 ratio of 1,359 to 298=4.56.

(4) Ratios times 1959 support levels and 1995 increase in basic support levels are as follows:

Kind and type	1959 support level	Basic support level [1]		Increase from 1994 to 1995	
	(¢/lb.)	1994 (¢/lb.)	1995 (¢/lb.)	100% (¢/lb.)	65% (¢/lb.)
VA 21	38.8	173.4	176.9	3.5	2.3
KY-TN 22–23	38.8	173.4	176.9	3.5	2.3
KY-TN 35–36	34.5	154.2	157.3	3.1	2.0
VA 37	34.5	154.2	157.3	3.1	2.0
Cigar-filler and binder 42–44, 54–55	28.6	127.8	130.4	2.6	1.7
Cigar-filler 46	29.7	132.8	135.4	2.6	1.7

[1] 1994 ratio is 4.47, 1995 ratio is 4.56.

Section 106(d) of the 1949 Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota

tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall consider the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity, and stalk position of such tobacco.

For MY 1995, the flue-cured support level was increased by 65 percent of the formula increase to within about 7 percent of 1994's average market price. For the kinds of tobacco subject of this rule, MY 1994 prices were further above the support level, and overall loan receipts remained low. Only Virginia Fire-Cured (type 21) and Virginia sun-cured (type 37) had loan placements that were significant relative to production for MY 1994. Although all loan stocks of cigar filler and binder (types 42–44 and 53–55) have just recently been sold, loan associations accept the lower price support levels to remain competitive with imports and tobaccos not under support. Therefore, for fire-cured tobacco (type 21), Virginia sun-cured tobacco (type 37), and cigar-filler and binder tobacco (types 42–44 and 53–55), the MY 95 support levels consist of the 1994 support levels increased by 65 percent of the difference between the 1995 ''basic support level'' and the 1994 ''basic support level.'' The supply-use ratios for Kentucky-Tennessee fire-cured (types 22–23) and dark air-cured (types 35–36) suggest adequate supplies. Accordingly, for these tobaccos, the MY 1995 support level consists of the MY 1994 level of support increased by the difference between the MY 1995 ''basic support level'' and the MY 1994 ''basic support level.'' Also, chewing tobacco, smoking tobacco, and snuff manufacturing formulas limit the substitutability of one of these kinds of tobacco for another. Cigarettes, the principal outlet for flue-cured and burley tobaccos, do not require any of these six kinds of tobacco in their blends.

Accordingly, the following determinations were announced by the Secretary of Agriculture on March 1, 1995, in accordance with section 106(f)(6)(A) of the 1949 Act are established for MY 1995 for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos.

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	143.0
Kentucky-Tennessee fire-cured (types 22–23)	151.8
Dark air-cured (types 35–36)	130.4
Virginia sun-cured (type 37)	126.5
Cigar-filler and binder (types 42–44 and 53–55)	110.1
Cigar-filler (type 46)	086.1

List of Subjects in 7 CFR Part 723

Acreage allotments, marketing quotas, penalties, reporting and recordkeeping requirements, Tobacco.

Accordingly, 7 CFR parts 723 and 1464 are amended to read as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (c) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 1.95 million pounds.

3. Section 723.114 is amended by adding paragraph (c) to read as follows:

§ 723.114 Fire-cured (types 22–23) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 39.8 million pounds.

4. Section 723.115 is amended by adding paragraph (c) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 9.6 million pounds.

5. Section 723.116 is amended by adding paragraph (c) to read as follows:

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 130,000 pounds.

6. Section 724.117 is amended by adding paragraph (c) to read as follows:

§ 723.117 Cigar-filler and cigar binder (types 42–44; 53–55) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 9.0 million pounds.

7. Section 723.118 is amended by adding paragraph (c) to read as follows:

§ 723.118 Cigar filler (type 46) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 0.0 million pounds.

PART 1464—TOBACCO

8. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1; 15 U.S.C. 714b and 714c.

9. Section 1464.13 is amended by adding paragraph (c) to read as follows:

§ 1464.13 Fire-cured (type 21) tobacco.

* * * * *

(c) The 1995-crop national price support level is 143.0 cents per pound.

10. Section 1464.14 is amended by adding paragraph (c) to read as follows:

§ 1464.14 Fire-cured (types 22–23) tobacco.

* * * * *

(c) The 1995-crop national price support level is 151.8 cents per pound.

11. Section 1464.15 is amended by adding paragraph (c) to read as follows:

§ 1464.15 Dark air-cured (types 35–36) tobacco.

* * * * *

(c) The 1995-crop national price support level is 130.4 cents per pound.

12. Section 1464.16 is amended by adding paragraph (c) to read as follows:

§ 1464.16 Virginia sun-cured (type 37) tobacco.

* * * * *

(c) The 1995-crop national price support is 126.5 cents per pound.

13. Section 1464.17 is amended by paragraph (c) to read as follows:

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(c) The 1995-crop national price support level is 110.1 cents per pound.

14. Section 1464.18 is amended by paragraph (c) to read as follows:

§ 1464.18 Cigar-filler (type 46) tobacco.

* * * * *

(c) The 1995-crop national price support level is 86.1 cents per pound.

Signed at Washington, DC, on July 20, 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–18308 Filed 7–25–95; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 70, and 72

RIN 3150–AE95

Clarification of Decommissioning Funding Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations applicable to decommissioning funding assurance and the expiration and termination of licenses for nonreactor licensees. These amendments clarify requirements that financial assurance must be in place during licensed operations and updated when the licensee decides to cease operations and begin decommissioning. These regulations require that licensees who have been in timely renewal since the promulgation of the earlier decommissioning funding rule or who have ceased operation without having adequate decommissioning funding arrangements in place must provide the NRC with certification of adequate financial assurance for decommissioning by the effective date of this rule.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6230, E-mail MLT1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

In 1983, the Commission amended 10 CFR parts 30, 40, and 70 to add requirements addressing ''Expiration and Termination of Licenses'' (10 CFR 30.36, 40.42, and 70.38 (48 FR 32324; July 15,1983)). Similar provisions were added to 10 CFR part 72 (10 CFR 72.54 (53 FR 24018; June 27, 1988)). These requirements set out the procedures to be followed by a licensee who decides to decommission a facility and seek termination of the applicable license. If a part 30, 40, 70, or 72 licensee has more than a modest amount of radioactive contamination to remediate, the licensee is required to submit a decommissioning plan that sets out the methods and measures for decontamination of the property and equipment.

In the final rule published June 27, 1988, the Commission addressed ''Financial Assurance and Recordkeeping for Decommissioning'' (10 CFR 30.35, 40.36, 70.25 and 72.30 (53 FR 24018; June 27,1988)). The rule established a graded structure for financial assurance that is based on the assumption that the kinds and quantities of radioactive materials authorized in the license provide a reasonably good correlation to the amount of contamination that has to be remediated. Before the license is issued or renewed, the applicant shall provide financial assurance in one or more of the forms required by the rule (prepayment, surety, insurance or other guarantee, or external sinking fund with a backup surety).

The June 27, 1988, rule also required that certain licensees, upon their decision to cease operations, must submit decommissioning plans that include an updated detailed cost estimate for decommissioning, a comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for the completion of decommissioning.

II. Summary of Requirements and Discussion of Comments

At the time the decommissioning funding rules were promulgated, it was not anticipated that a licensee would move to decommissioning without having complied with the financial assurance requirements. Since that time a number of licensees who were in timely renewal when the June 27, 1988, rule became effective have decided to terminate their activities and begin decommissioning. Other licensees who only provided certification for the minimum amounts of financial assurance have also decided to terminate activities and begin decommissioning. In both situations, insufficient funding was in place when the licensee ceased operations and began decommissioning. These amendments require that financial assurances must be in place and updated when the licensee decides to cease operations and begin decommissioning to assure that adequate funding is available in the event the licensee is no longer financially viable.

Six comment letters were received on the proposed rule. This section presents a summary of the requirements in the proposed rule and a discussion of the significant issues raised by public comment and how they were resolved. The bases and origins of the requirements are also explained. The proposed rule was discussed during the October 25–27, 1993 Agreement States meeting in Tempe, Arizona. No additional comments were received from the Agreement States during the public comment period. In addition, the draft final rule was sent out to the Agreement States for comment regarding the division of compatibility assigned on April 14, 1995. The comment period ended May 15, 1995. Five comment letters were received. These comment letters are addressed in section III, Agreement State Compatibility, of the **Federal Register** Notice. Copies of the public comments received on the proposed rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037.

1. Submission of an Executed Original Copy of the Financial Instrument

As proposed, §§ 30.35(b)(2), 40.36(b)(2), 70.25(b)(2) would require each licensee to submit an executed original copy of the financial instrument obtained to satisfy the requirements of §§ 30.35(f), 40.36(e), or 70.25(f) respectively. Sections 30.35(c) (2 and 3), 40.36(c) (2 and 3), and 70.25(c) (2 and 3) would require that the licensee submit a decommissioning funding plan as described in paragraph (e) of these sections. Sections 30.35(e), 40.36(d), and 70.25(e) would require the decommissioning funding plan to include a cost estimate and a signed original of the financial instrument obtained to satisfy the requirements of §§ 30.35(f), 40.36(e), or 70.25(f) respectively.

Comments: One commenter stated that the requirement means that every time a licensee restructures the finances that support the decommissioning funding requirement, it would have to file a report with the NRC. Another commenter stated that the requirement to submit an executed original of the financial instrument obtained to satisfy the decommissioning funding requirement is overly burdensome and can easily lead to confusion and excess paper work. In addition, this commenter stated that some licensees may have multiple funding sources with different renewal dates and that every time a

licensee restructures financially, it will have to submit new documentation that the funding for decommissioning is provided. Both commenters suggested that the licensee should be able to provide a single certification to the NRC stating the funding is available to cover the decommissioning costs.

Response: Submittal of this information will only be necessary in the event the old instruments would no longer be valid. The language of the final rule has been changed to state that licensees will be required to submit a signed original rather than an executed original copy of the financial instrument to make it clear that the signed original is sufficient provided that it contains the appropriate signatures.

2. Decommissioning Funding Plan

As proposed, §§ 30.35(c)(4), 40.36(c)(4), and 70.25(c)(4) would require licensees who have submitted a renewal application before June 27, 1990, to submit a decommissioning funding plan.

Comments: One commenter believes this is a retroactive requirement and that licensees who have applied for renewal should not be required to have funding in place.

Response: Although this requirement was not included in the June 27, 1988, decommissioning rule the Commission anticipated that few licensees would not have funding in place within the normal license renewal frequency of 5 years. A small number of licensees who were in timely renewal when the rule became effective still have not provided assurance that they have adequately addressed the issue of decommissioning funding. The licensees who have not provided a decommissioning funding plan may have only submitted a certification based on the table amounts listed in the June 27, 1988, rule which may underestimate the actual cost to decommission their facility. This requirement will ensure that these licensees will have adequate funding in place through submittal of a decommissioning funding plan. The requirement does not apply retroactively to make some prior conduct improper. Rather, it provides that at a future date November 24, 1995 licensees currently in a ''timely renewal'' status must provide financial assurance in accordance with these regulations.

3. Expiration and Termination of Licenses—90-Day Time Period

As proposed, §§ 30.36(b)(2), 40.42(b)(2), 70.38(b)(2) and 72.54(b)(2) would require licensees, on providing a notice of termination of activities and request to terminate the license, to maintain in effect all decommissioning financial assurances and to increase or decrease the amount of the financial assurance, as appropriate, within 90 days of the above notice, to cover the detailed cost estimate for decommissioning submitted with the proposed decommissioning plan.

With the publication of the final rule, ''Timeliness in Decommissioning of Materials Facilities,'' on July 15, 1994; 59 FR 36026, these sections were revised to require licensees to submit a proposed decommissioning plan within 12 months of the time that they notify the Commission that they have not conducted licensed activities for 24 months or to commence decommissioning if they are not required to submit a decommissioning plan. These requirements are now located in §§ 30.35(e), 40.42(e), 70.38(e) and 72.54(e) in this final rule.

Comments: Four commenters stated that they did not understand the 90-day time period to obtain financial assurance as discussed in the proposed rule. One asked why a 90-day time period was chosen as opposed to 180 days. Another indicated that the time period presumes that the licensee's proposed decommissioning plan will be approved by the NRC without modification.

Response: The final rule was modified to permit some additional time for licensees who have already submitted a decommissioning plan to update their financial assurance to meet the detailed cost estimate included in the proposed decommissioning plan. The final rule will require licensees to increase, or allow them to decrease, the amount of financial assurance to correspond to the detailed cost estimate submitted with the decommissioning plan. The NRC lengthened the time period for obtaining financial assurance from 90 days to 120 days, but did not adopt the comment to lengthen the time period to 180 days. Because this requirement only addresses licensees who have already submitted a decommissioning plan with an updated cost estimate, a period of 120 days to acquire the funding seems to be a reasonable amount of time and lowers the risk that any change in the licensee's financial status could jeopardize their ability to provide for adequate funding. For the aforementioned reason, the Commission did not adopt the comment to permit time for NRC approval of the decommissioning plan. It should be noted that a provision is included that would permit a reduction in the amount of financial assurance following decommissioning plan approval.

4. Frequency for Applying for Reduction in Funds

As proposed, §§ 30.36(b)(2)(ii), 40.42(b)(2)(ii), 70.38(b)(2)(ii), and 72.54(b)(2)(ii) would allow licensees to apply for a reduction in decommissioning funds with a reduction in radioactive contamination levels as decommissioning proceeds. The proposed rule would have established a semiannual frequency for these reductions.

Comments: One commenter stated that permitting access to the funds only on a semiannual basis seemed unnecessarily restrictive. Another commenter stated that this aspect of the rule appears to require that funds be accessed prior to the performance of previously approved decommissioning tasks for which the funds were intended to be used, and that licensees be allowed to access the funds as they are needed.

Response: In response to comments, the NRC has revised the final rule to remove restrictions in frequency for these requests. Currently, a set amount of money is required in advance that must be available through the end of decommissioning and could result in an unnecessary burden on the licensee. This modification permits a reduction in these funds provided the radioactive contamination has been reduced at the site. Because licensees must obtain approval from the Commission to reduce funds, there will be adequate assurance that the licensee has sufficient funds available to cover the cost to complete decommissioning of the facility. These requirements are now located in §§ 30.35(e)(2), 40.42(e)(2), 70.38(e)(2) and 72.54(e)(2) in this final rule.

5. Small Entities

Comment: One commenter and the State of New York asked that small entities be exempt from decommissioning financial assurance.

Response: The majority of small entities are already excepted from the decommissioning funding requirements because they possess limited quantities of radioactive materials. These amendments would not impact the remainder of small entities that have already complied with the applicable funding requirements.

III. Agreement State Compatibility

The draft final rule was sent out to the Agreement States on April 14, 1995 for comment. Five comment letters were received. The State of Tennessee suggested that each individual State be allowed to establish its own

methodology. The State of New York suggested that the rule give the States the latitude to accomplish the rule's intent by other means such as licensing actions. The State of Washington suggested that the rule should be made Division 3 compatibility because the rule is addressing financing, not health and safety; the rule overlooks other mechanisms for protecting the public, such as whatever means necessary to effect decommissioning; and the specific changes are applicable to NRC licensees and not Washington licensees. The States of Nebraska and Maryland suggested that the rule remain Division 2 compatibility.

The NRC has reviewed the definitions of divisions of Agreement State compatibility and has considered the comments from the States and has determined that the rule should be a matter of Division 2 compatibility between the Federal and State because these requirements are the minimum requirements necessary to ensure adequate protection of the public health and safety. Under this level of compatibility, the Agreement States would be expected to adopt decommissioning funding assurance requirements that are as stringent as NRC's, but would be permitted flexibility to apply more stringent requirements if deemed appropriate by the State.

IV. Implementation

This rule will become effective 120 days after publication in the **Federal Register**. Thus, licensees who do not currently have sufficient financial assurance for decommissioning, but who currently have submitted decommissioning plans or are in timely renewal, have 120 days to revise and submit to NRC their financial arrangements for funding decommissioning.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment was prepared for this rule.

VI. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0009, -0017, -0020, and -0132.

The public reporting burden for this collection of information is estimated to average 6 hours per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestion for reducing the burden, to the Information Records and Management Branch (T–6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017, 3150–0020, 3150–0009, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

VII. Regulatory Analysis

The Commission has prepared this regulation to clarify its decommissioning funding requirements for persons licensed under Parts 30, 40, 70, and 72. Although it does alter existing requirements, the regulatory analyses developed in support of prior decommissioning regulations remain valid and appropriate for this rulemaking because these analyses assumed that all licensees would submit a certification of financial assurance to the NRC of a rule prescribed amount, or licensee estimated and NRC approved amount, necessary to provide adequate funds to decommission the licensed facility and that licensees would have complied with the decommissioning funding requirements prior to ceasing operations and commencing decommissioning. These prior analyses, developed for the rules on expiration and termination of licenses and financial assurances for decommissioning, remain available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. This discussion constitutes the regulatory analysis for this rule.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC carefully considered the effect on small entities in developing the final rule on decommissioning funding and scaled the requirements to reduce the impact on small entities to the extent possible while adequately protecting health and safety. Because this action imposes no new financial burden, it is not expected to have an impact on licensees not already considered in the regulatory flexibility analysis for the decommissioning funding rule as published in the **Federal Register** on June 27, 1988 (53 FR 24018).

Accordingly, the Commission certifies that this rule will not have any additional significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required for this rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials - transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers. Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, and Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30, 40, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.35 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (e) and by adding a new paragraph (c)(4) to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section must be submitted to NRC before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described, in paragraph (e) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 30.37 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

* * * * *

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

3. Section 30.36 is amended by redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e) to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 30.35 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e2, 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234), Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. Section 40.36 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (d) and by adding a new paragraph (c)(4) to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $150,000 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial

instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, as described in paragraph (d) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 40.43 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

* * * * *

6. Section 40.42 is amended by redesignating paragraphs (e) through (k) as (f) through (l) and adding a new paragraph (e) to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 40.36 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); Secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841), 5842, 5845, 5846).

Sections 70.1(c) and 70.20(b) also issued under secs. 135, 141 Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 86 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 106, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. Section 70.25 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (e) and by adding a new paragraph (c)(4) to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section must be submitted to NRC before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, described in paragraph (e) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 70.33 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

* * * * *

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a

certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

9. Section 70.38 is amended by redesignating paragraph (e) through (j) as (f) through (k) and adding a new paragraph (e) to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 30.35 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

10. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853) (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134 Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

11. Section 72.54 is amended by redesignating paragraph (e) through (l) as (f) through (m) and adding a new paragraph (e) to read as follows:

§ 72.54 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 72.30 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(5) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

* * * * *

Dated at Rockville, MD., this 20th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–18315 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 931

[Docket No. 950616158–5158–01]

RIN 0648–AI04

Coastal Energy Impact Program

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final Rule; removal.

SUMMARY: This final rule removes regulations implementing the Coastal Energy Impact Program (CEIP), which was established in 1976 under then-section 308 of the Coastal Zone Management Act (CZMA) to provide coastal states and units of general purpose local governments (local governments) in such states with Federal financial assistance to meet certain needs that result from specified energy development activities. In the 1990 amendments to the CZMA the CEIP was terminated and, therefore, the implementing regulations are, for the most part, obsolete. Further, for those particular coastal states and local governments with outstanding CEIP loans, NOAA will continue to apply relevant provisions to such CEIP loan holders by providing actual and timely notice of their continued applicability. Therefore, the regulations need no longer be retained in the Code of Federal Regulations (CFR).

EFFECTIVE DATE: July 26, 1995.

FOR FURTHER INFORMATION CONTACT: James Lawless, Deputy Director, Office of Ocean and Coastal Resource Management, at (301) 713–3155.

SUPPLEMENTARY INFORMATION: In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations—with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This final rule represents one of the first steps in NOAA's response to this new directive.

Coastal Energy Impact Program

The CEIP was established in 1976 under then-section 308 of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456a, to provide coastal states and local governments in such states with Federal financial assistance to meet certain needs that result from specified energy development activities. In the 1990 amendments to the CZMA (Pub. L. 101–508), section 308 was amended by: (1) Terminating any future CEIP loans, although obligations of any coastal state or local government to repay loans made prior to the 1990 amendments remain in effect; and (2) establishing the Coastal Zone Management Fund as, *inter alia*, the repository for such CEIP loan repayments. As the CEIP has been terminated, the administrative regulations, Part 931, for this program are, for the most part, obsolete and need not be retained in the CFR. For the particular coastal states and local governments that have outstanding CEIP loans and therefore must repay the loans to the Coastal Zone Management Fund, NOAA will continue to apply the applicable provisions of Part 931. However, although such provisions shall continue to apply, it is not necessary to retain them in the CFR because, in part, such provisions have particular applicability to only those coastal states and local governments with outstanding CEIP loans. Accordingly, NOAA will provide copies of the relevant provisions of Part 931, with instructions that they continue to apply, directly to those particular coastal states and local governments that have outstanding CEIP loans. Therefore, the particular coastal states and local governments with outstanding CEIP loans will have, in addition to the constructive notice provided by this final rule, actual and timely notice of the continued application of the repayment provisions of Part 931, and such coastal states and local governments shall continue to comply with all the terms and conditions of such provisions of part 931. See 5 U.S.C. 552(a). Accordingly, NOAA is removing part 931, the CEIP regulations, from Title 15 of the CFR.

NOAA has determined that because this rule is a matter relating to loans, grants, benefits or contracts, it is not subject to the Administrative Procedure Act (APA) requirements of prior notice, opportunity for comment, or delayed effective date (5 U.S.C. 553). Accordingly, this rule is being made effective immediately upon publication.

Executive Order 12866

For purposes of Executive Order 12866, this final rule is determined to be not significant.

Regulatory Flexibility Act

Notice and comment for this rule are not required by the APA or any other law. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3500 *et seq.*).

Authority: Coastal Zone Management Act of 1972, is amended, 16 U.S.C. 1451 *et seq.*

List of Subjects in 15 CFR Part 931

Coastal zone, Grant programs—natural resources, Natural resources, and Reporting and recordkeeping requirements.

Dated: June 28, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth in the preamble and under the authority of 16 U.S.C. 1451 et seq., Chapter IX of Title 15 of the Code of Federal Regulations is amended as follows:

PART 931—[REMOVED]

1. Part 931 is removed.

[FR Doc. 95–17745 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 70

[OJP No. 1004; AG Order No. 1980–95]

RIN 1121–AA18

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

January 23, 1995.

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On November 29, 1993, the Office of Management and Budget (OMB) published a revision of OMB Circular A–110. The Circular is applicable to awards made by Federal agencies and subawards made by States to nongovernmental entities. This rule implements the OMB Circular A–110.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Director, Financial Management Division, Office of the Comptroller, Office of Justice Programs at 202–307–3186.

EFFECTIVE DATE: July 26, 1995.

SUPPLEMENTARY INFORMATION: This final rule amends 28 CFR by setting forth a new part 70 to enact the changes established by revised OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Institutions,'' published by OMB on November 29, 1993 (58 FR 62992).

In November 1990, OMB established an interagency task force to revise Circular A–110. The task force developed a proposed revision of the Circular, which OMB published with a request for comments on August 27, 1992 (57 FR 39018). After considering the over 200 comments from a wide variety of Federal and non-Federal respondents, OMB published the final revised Circular in the **Federal Register** on November 29, 1993 (58 FR 62992).

OMB Circular A–110 sets forth government-wide standards governing Federal agency administration of grants and other agreements with institutions of higher education, hospitals and other non-profit organizations. Federal agencies must apply the provisions of the Circular in making awards to the covered entities; all primary recipients (including governments) of Federal awards must also apply the Circular's provisions to any subawards they make to such entities. Those provisions that affect Federal agencies were effective on December 29, 1993 (58 FR 62992–93). With respect to the Circular's application to recipients of Federal agency awards, OMB's notice directed each agency to promulgate its own rules adopting the provisions of the Circular (58 FR 62992–93).

Agency specific rules must follow the provisions of the Circular unless OMB has granted the agency an exception for classes of recipients of awards from a particular requirement of the Circular (58 FR 62992, 62995). The terms of the Circular, however, permit Federal awarding agencies to make exceptions on an award-by-award basis without prior OMB approval and to apply less restrictive requirements in the case of small awards. Where a conflict exists between a provision of the Circular and

a statute, the statute governs (58 FR 62992–93, 62995).

With respect to our implementation of the Circular, in general, we have faithfully followed its provisions. However, in several instances we have either elaborated on a provision or modified it to make it pertain more clearly to the Department of Justice's (the Department) environment. Directives made strictly to the Federal agencies and not to grantees have been deleted.

A notice of proposed rulemaking is not necessary for this regulation because OMB obtained public comments in the development of the Circular, and the Circular was written in a regulatory format. Furthermore, OMB requires that Federal agencies implement the Circular within six months of its publication.

Impact Analysis

1. Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, 1(b), Principles of Regulation. This rule is not a significant regulatory action under Executive Order 12866, 3(f), Regulatory Planning and Review, and accordingly, this rule has not been reviewed by OMB.

2. Regulatory Flexibility Act

This rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) The Attorney General has determined that compliance with the rule would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

3. Paperwork Reduction Act

The information collection requirements contained in this rule are cleared by OMB as Standard Forms.

Catalog of Federal Domestic Assistance

This rule affects all of the grant programs administered by the Department.

List of Subjects in 28 CFR Part 70

Accounting; Administrative practice and procedures; Grant programs—health; Grant programs—social programs; Grants administration; and Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 28, Chapter I of the Code of Federal Regulations is amended by adding the new part 70 as set forth below.

PART 70—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS (INCLUDING SUBAWARDS) WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Subpart C—Post-Award Requirements

Financial and Program Management

Property Standards

Procurement Standards

Reports and Records

Termination and Enforcement

Subpart D—After-the-Award Requirements

Appendix A to Part 70—Contract Provisions

Authority: 5 U.S.C. 301; the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042, 4351–4353.

Subpart A—General

§ 70.1 Purpose and applicability.

This part establishes uniform administrative requirements for the Department grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. It also establishes rules governing how State, local and Indian tribal governments shall administer subawards to nongovernmental entities.

§ 70.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall

be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Department to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which the Department determines that all applicable administrative actions and all required work of the award have been completed by the recipient and the Department.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means the portion of project or program costs not borne by the Federal Government.

(j) *The Department* refers to the United States Department of Justice awarding agencies, which include the Office of Justice Programs (OJP), Community Relation Service (CRS), United States Marshals Service (USMS), National Institute of Corrections (NIC), Office of Special Counsel (OSC), and the Civil Rights Division (CRD).

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which the Department sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the Department determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(n) *Excess property* means property under the control of the Department that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(o) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Department has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Independent Research and Development costs* means research and development conducted by an organization which is not sponsored by Federal or non-Federal awards, contracts, or other agreements.

(t) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(u) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(v) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(w) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(x) *Prior approval* means written approval by an authorized official evidencing prior consent.

(y) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 70.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, interest on loans made with award funds, and income from asset forfeitures accounted for from the time of seizure. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in the Department regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(z) *Project costs* means all allowable costs, as set forth in the applicable Federal costs principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(aa) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(bb) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(cc) *Real property* means land, including land improvements, structures and appurtenances thereto,

but excludes movable machinery and equipment.

(dd) *Recipient* means an organization receiving financial assistance directly from the Department to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Department. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designed as Federally-funded research and development centers.

(ee) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ff) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(gg) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in § 70.2(e).

(hh) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Department.

(ii) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(jj) *Suspension* means an action by the Department that temporarily withdraws the Department sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Department. Suspension of an award is a separate action from suspension under the Department regulations implementing Exec. Order No. 12549 and 12689, ''Debarment and Suspension.''

(kk) *Termination* means the cancellation of the Department sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(ll) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(mm) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(nn) *Unobligated balance* means the portion of the funds authorized by the Department that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(oo) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(pp) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 70.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 70.4.

§ 70.4 Deviations.

OMB, after consultation with the Department's Division of Financial Management and Grants Administration may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The Department shall apply more restrictive requirements to a class of recipients when approved by OMB. The Department may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Department.

§ 70.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, all of the Department's recipients, including State and local governments, shall apply the provisions of this part to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' published at 28 CFR part 66 (3/11/88).

Subpart B—Pre-Award Requirements

§ 70.10 Purpose.

Sections 70.11 through 70.17 prescribe forms and instructions and other pre-award matters to be used in applying for the Department's awards.

§ 70.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Department shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The Department shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 70.12 Forms for applying for Federal assistance.

(a) The Department shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Department as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series and instructions prescribed by the Department.

(c) For the Department's programs covered by Exec. Order No. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the ''Catalog of Federal Domestic Assistance.'' The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

§ 70.13 Debarment and suspension.

Recipients shall comply with the nonprocurement debarment and suspension common rule implementing Exec. Order No. 12549 and 12689, ''Debarment and Suspension.'' This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 70.14 Special award conditions.

If an applicant or recipient: Has a history of poor performance, Is not financially stable, Has a management system that does not meet the standards prescribed in this part, Has not conformed to the terms and conditions of a previous award, or Is not otherwise responsible, the Department will impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions will be promptly removed once the conditions that prompted them have been corrected.

§ 70.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of Federally-funded activities. The Department will follow the provisions of Exec. Order No. 12770, ''Metric Usage in Federal Government Programs.''

§ 70.16 Resource Conservation and Recovery Act (RCRA) (Pub. L. No. 94–580 codified at 42 U.S.C. 6962).

Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 70.17 Certifications and representations.

Unless prohibited by statute or codified regulation, the Department will allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations must be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 70.20 Purpose of financial and program management.

Sections 70.21 through 70.28 prescribe standards for financial management systems, methods for making payments and rules for: Satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 70.21 Standards for financial management systems.

(a) Recipients must relate financial data to performance data and development unit cost information whenever practical.

(b) Recipients' financial management systems must provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each Federally-sponsored project or program in accordance with the reporting requirements set forth in § 70.52. When the Department requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient will not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for Federally-sponsored activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients must adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents must be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) The Department, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Department will require adequate fidelity bond coverage when the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 70.22 Payment.

(a) Payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities must be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients may be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 70.21. Cash advances to a recipient organization will be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances will be consolidated to cover anticipated cash needs for all awards made by the Department to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients may be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment must be submitted on SF–270, ''Request for Advance or Reimbursement.''

(e) Reimbursement is the method that will be used when the requirements in paragraph (b) of this section cannot be met. The Department may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Department will make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients will be authorized to submit requests for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Department has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Department may provide cash on a working capital advance basis. Under this procedure, the Department will advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Department will reimburse the recipient for its actual cash disbursements. The working capital advance method of payment will not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients must disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the Department will not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or the Department's reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, DOS may, upon reasonable notice, inform the recipient that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, the Department will not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of the Department funds must be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients are encouraged to use women-owned and minority-owned banks (a bank which is owned at least fifty percent by women or minority group members).

(k) Recipients must maintain advances of the Department's funds in

interest bearing accounts, unless paragraphs (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts must be remitted annually to Department of Health and Human Services, (HHS), Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals must comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Department, it waives its right to recover the interest under CMIA. In keeping with Electronic Funds Transfer rules, (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit System. Recipients which do not have this capability should use a check.

(m) Recipients must use the SF–270, Request for Advance or Reimbursement or other standard form for all nonconstruction programs when electronic funds transfer is not used.

§ 70.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, will be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other Federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget.

(7) Conform to other provisions of this Part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Department.

(c) Values for recipient contributions of services and property must be established in accordance with the applicable cost principles. If the Department authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraph (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Department may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services must be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skills for which the employee would normally be paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and must not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Department has approved the charges.

(h) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land must be documented.

§ 70.24 Program income.

(a) The standards set forth in this section requiring recipient organizations to account for program income related to projects financed in whole or in part with Department funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in

accordance with the Department regulations or the terms and conditions of the award, must be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Department and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Department authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), of this section, program income in excess of any limits stipulated must be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Department does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3), of this section applies automatically to all projects or programs.

(e) Unless the Department's regulations or the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property must be handled in accordance with the requirements of the Property Standards (See §§ 70.30 through 70.37).

(h) Unless the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(i) Recipients must account for seized assets from the date of seizure until forfeiture and liquidation of funds occur.

§ 70.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon the Department's requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients must request in writing prior approval from the Department for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, approval is required by the Department.

(6) The inclusion, unless waived by the Department, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR Part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) The Department restricts the transfer of funds among direct cost categories or programs, functions and activities, without prior written approval for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed ten percent of the total budget as last approved by the Department. The Department will not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(e) All other changes to nonconstruction budgets, except for the changes described in paragraph (h) of this section, do not require prior approval.

(f) For construction awards, recipients must request prior written approval promptly from the Department for budget revisions whenever paragraph (e)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Department funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 70.27.

(g) When the Department makes an award that provides support for both construction and nonconstruction work, the Department will require the recipient to request prior approval from the Department before making any fund or budget transfers between the two types of work supported.

(h) For both construction and nonconstruction awards, the Department will require recipients to notify the Department in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the award, whichever is greater. This notification will not be required if an application for additional funding is submitted for a continuation award.

(i) When requesting approval for budget revisions, recipients must use the budget forms that were used in the application unless the Department indicates a letter of request suffices.

(j) Within thirty of the request for budget revisions, the Department will review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of thirty calendar days, the Department will inform the recipient in writing of the date when the recipient may expect the decision.

§ 70.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations are subject to the audit requirements contained in OMB Circular A–133, ''Audits of Institutions of Higher

Education and Other Non-Profit Institutions.''

(b) State and local governments are subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and the Department's regulations implementing OMB Circular A–128, ''Audits of State and Local Governments.''

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 and commercial organizations must follow the audit thresholds in OMB Circular A–133 in determining whether to conduct an audit in accordance with Government Auditing Standards.

§ 70.27 Allowable costs.

(a) For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs must be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

(b) OMB Circular A–122 does not cover the treatment of bid and proposal costs or independent research and development costs. The following rules apply to these costs for non-profit organizations subject to the Circular.

(1) *Bid and proposal costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for Federal and non-Federal awards, contracts, and agreements, including the development of scientific, costs, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are all allowable as indirect costs. Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the recipient's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs covered by paragraph (b)(2) of this section, or preaward costs covered by Attachment B, Paragraph 33 of OMB Circular A–122.

(2) *Independent Research and Development costs.* Independent research and development shall must be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

§ 70.28 Period of availability of funds.

Where a funding period is specified, a recipient must charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Department.

Property Standards

§ 70.30 Purpose of property standards.

Sections 70.31 through 70.37 sets forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The Department will require recipients to observe these standards under awards and will not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 70.31 through 70.37.

§ 70.31 Insurance coverage.

Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 70.32 Real property.

(a) Title to real property will vest in the recipient subject to the condition that the recipient use the real property for the authorized purpose of the project as long as it is needed and will not encumber the property without approval of the Department.

(b) The recipient must obtain written approval by the Department for the use of real property in other Federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects will be limited to those under Federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Department.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient must request disposition instructions from the Department. The Department will observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Department and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures must be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 70.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to Federally-owned property remains vested in the Federal Government. Recipients may be required by the terms and conditions of the award, to submit annually an inventory listing of Federally-owned property in their custody to the Department. Upon completion of the award or when the property is no longer needed, the recipient must report the property to the Department for further Federal agency utilization.

(2) If the Department has no further need for the property, it will be declared excess and reported to the General Services Administration, unless the Department has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15

U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Exec. Order No. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by the Department.

(b) *Exempt property.* The Department will vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government when such property is ''exempt property.''

§ 70.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds will vest in the recipient, subject to conditions of this section.

(b) The recipient must not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient must use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and must not encumber the property without approval of the Department. When no longer needed for the original project or program, the recipient must use the equipment in connection with its other Federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Department which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use must be given to other projects or programs sponsored by the Department. Second preference must be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government may be permissible if authorized in writing by the Department. User charges must be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the written approval of the Department.

(f) The recipient's property management standards for equipment acquired with Federal funds and Federally-owned equipment must include all of the following:

(1) Equipment records must be maintained accurately and must include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Department for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records annually. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment must be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient must promptly notify the Department.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the Department or its successor. The amount of compensation must be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient must request disposition instructions from the Department. The Department will determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment must be reported to the General Services Administration by the Department to determine whether a requirement for the equipment exists in other Federal agencies. The Department will issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures will govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient may sell the equipment and reimburse the Department an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient may be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient may be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient may be reimbursed by the Department for such costs incurred in its disposition.

(4) The Department reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer will be subject to the following standards.

(i) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Department will issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and Federally-owned equipment. If the Department fails to issue disposition instructions within the 120 calendar day period, the recipient may apply the standards of this section, as appropriate.

(iii) When the Department exercises its right to take title, the equipment is subject to the provisions for Federally-owned equipment.

§ 70.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property vests in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federally-sponsored project or program, the recipient may retain the supplies for use on non-Federal sponsored activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computer in the same manner as for equipment.

(b) The recipient must not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 70.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Department reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) The Department, unless expressly waived by the Department, has the right to paragraphs (c) (1) and (2) of this section.

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient must use that property for the originally-authorized purpose, and the recipient must not encumber the property without approval of the Department. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions of § 70.34(g).

§ 70.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Recipients are required to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 70.40 Purpose of procurement standards.

Sections 70.41 through 70.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards will be imposed by the Department upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 70.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 70.42 Codes of conduct.

The recipient must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 70.43 Competition.

All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient must be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals must be excluded from competing for such procurements. Awards must be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient,

price, quality and other factors considered.

Solicitations must clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 70.44 Procurement procedures.

(a) All recipients must establish written procurement procedures. These procedures must provide for, at a minimum, that paragraphs (a) (1), (2), and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description must not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts must be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards must take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) must be determined by the recipient and must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting must not be used.

(d) Contracts must be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration must be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Exec. Order No. 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients must, on request, make available for the Department, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Department's regulation.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 70.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 70.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold must include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 70.47 Contract administration.

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients must evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 70.48 Contract provisions.

The recipient must include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold must contain suitable provisions for termination by the recipient, including the manner by

which termination must be effected and the basis for settlement. In addition, such contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Department may accept the bonding policy and requirements of the recipient, provided the Department has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements are to be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder must, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients must include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of Appendix A to this part as applicable.

Reports and Records

§ 70.50 Purpose of reports and records.

Sections 70.51 through 70.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 70.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients must monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 70.26.

(b) Performance reports must be submitted based on each calendar quarter. Reports are due thirty days after the reporting period, unless stated differently in the terms and conditions of the award. The final performance reports are due ninety calendar days after the expiration or termination of the award.

(c) Performance reports must contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(d) Recipients are required to submit the original and two copies of performance reports.

(e) Recipients must immediately notify DOS, in writing, of developments that have a significant impact on the award-supported activities. Also, written notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(f) The Department will make site visits, as needed.

(g) The Department will comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 70.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Recipients are required to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs.

(ii) Reports must be on an accrual basis. Recipients are not required to convert their accounting system, but must develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Department requires the SF–269, SF–269A, or turnaround document to be submitted no later than forty days after the calendar quarter. The final report is due ninety days from the end date of the award.

(b) When the Department needs additional information or more frequent reports, the following will be observed.

(1) When additional information is needed to comply with legislative requirements, the Department will issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When the Department determines that a recipient's accounting system does not meet the standards in § 70.21, additional pertinent information to further monitor awards will be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Department, in obtaining this information, will comply with report clearance requirements of 5 CFR part 1320.

(3) The Department will accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(4) The Department will provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 70.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The Department will not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Department. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the three year period, the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.

(3) When records are transferred to or maintained by DOS, the three year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 70.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Department.

(d) The Department will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the Department will make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Department, its Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

(f) Unless required by statute, the Department will not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Department can demonstrate that such records must be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Department.

(g) Indirect cost rate proposals, cost allocation plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Department or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the three year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Department or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the three year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 70.60 Purpose of termination and enforcement.

Sections 70.61 and 70.62 set forth uniform suspension, termination and enforcement procedures.

§ 70.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) of this section apply.

(1) By the Department, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Department with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Department written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Department determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 70.71(a), including those for property management as applicable, must be considered in the termination of the award, and provision must be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 70.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Department will, in addition to imposing any of the special conditions outlined in § 70.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Department.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the Department will provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Exec. Order No. 12549 and 12689 and DOS implementing regulations (see § 70.13).

Subpart D—After-the-Award Requirements

§ 70.70 Purpose.

Sections 70.71 through 70.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 70.71 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Department may approve extensions when requested in writing by the recipient.

(b) Unless the Department authorizes an extension, a recipient must liquidate all obligations incurred under the award not later than ninety calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Department will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient must promptly refund any balances of unobligated cash that the Department has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Department will make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 70.31 through 70.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 70.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 70.26.

(4) Property management requirements in §§ 70.31 through 70.37.

(5) Records retention as required in § 70.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Department and the recipient, provided the responsibilities of the recipient referred to in § 70.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 70.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Department may reduce the debt by paragraph (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Department may charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

Appendix A to Part 70—Contract Provisions

All contracts, awarded by a recipient including small purchases, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with Exec. Order No. 11246, ''Equal Employment Opportunity,'' as amended by Exec. Order No. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient must report all suspected or reported violations to the Department.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors must be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract must be conditioned upon the acceptance of the wage determination. The recipient must report all suspected or reported violations to the Department.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or

agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to the DOS and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Exec. Order No. 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Exec. Order No. 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Exec. Order No. 12549. Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees.

Dated: July 18, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–18157 Filed 7–25–95; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AG14

Loan Guaranty: Implementation of Public Laws 102–547, 103–66, 103–78, 103–325, 103–353, and 103–446

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations to implement certain provisions of various public laws. VA is amending its regulations to provide for loans to Reservists and members of the National Guard, loans with negotiated interest rates, adjustable rate mortgages, restoration of entitlement in certain cases, energy efficient mortgages, and flood zone determination fees. VA is also amending its regulations in the areas of manufactured housing certifications, certain interest rate reduction refinancing loans, and conveyance of properties notwithstanding overbids. In addition, the regulations are amended to reflect a reduced funding fee for interest rate reduction refinancing loans and an increase in the maximum guaranty amount. These changes increase the types of loans available to veterans and the categories of veterans eligible for VA home loans.

EFFECTIVE DATE: This final rule is effective on August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: On February 24, 1994, VA published in the **Federal Register** (59 FR 8881) proposed regulatory amendments implementing Public Laws 102–547, 103–66, and 103–78. The proposed amendments were published to change: [1] 38 CFR 36.4312, to add a funding fee structure for loans to members of the Selected Reserves; [2] §§ 36.4212 and 36.4311, to allow VA guaranteed loans to bear interest at rates agreed upon by the veteran and the lender; [3] §§ 36.4212(b) and 36.4311(b), to provide that discount points cannot be financed, except for interest rate reduction refinancing loans; [4] §§ 36.4212 and 36.4311, to provide for VA guaranteed loans with adjustable interest rates; [5] §§ 36.4302 and 36.4336, to provide for energy efficient mortgages; [6] §§ 36.4232, 36.4254, and 36.4312, to reduce the funding fee for interest rate reduction refinancing loans to 0.50 percent of the total loan amount; [7] § 36.4312, to increase the funding fee on most guaranteed loans and for the second and subsequent use of the loan guaranty benefit, except for interest rate reduction refinancing loans; and [8] §§ 36.4223 and 36.4302, to revise the guaranty percentage for certain interest rate reduction refinancing loans. Please refer to the February 24, 1994, **Federal Register** for a complete discussion of the proposed amendments. This document adopts the regulatory amendments as originally proposed, except for a technical change discussed below, revisions of authority citations, amendments reflecting statutory changes made by Public Laws 103–325, 103–353, and 103–446, and non-substantive changes.

VA received three comments on the proposed amendments. Two commenters noted that the veteran is permitted to finance discount points on interest rate reduction refinancing loans, and suggested that the veteran be allowed to finance discount points on purchase loans as well. This suggestion cannot be adopted because the financing of discount points on purchase loans is prohibited by statute; see 38 U.S.C. 3703(c).

A third commenter supported the amendments which allow VA to guarantee a loan above the reasonable value of the property for the purpose of adding energy efficient improvements to the home. This commenter recommended that language be added to the regulations requiring ''that financed energy improvements meet efficiency standards that exceed, by some pre-determined level, those otherwise applicable in the jurisdiction.''

We do not believe it would be appropriate to require specific standards for energy efficient improvements. Local variations in climate, energy sources and energy efficiency requirements would make it difficult to implement and monitor the use of such standards. Furthermore, standards for energy efficient improvements could be perceived by program participants as unnecessarily complicating the lending process and have an adverse impact on this area of VA's home loan program.

This commenter also suggested that prior to the closing of a VA guaranteed loan the purchaser be required to obtain an energy audit which would provide an estimate of home energy consumption and information about potential cost-effective improvements to reduce that consumption. VA is

opposed to a mandatory energy audit. At this time, it is uncertain whether reliable energy audits can be obtained by home purchasers in all parts of the country for an affordable cost. Furthermore, the requirement could be perceived by program participants as unnecessarily complicating the lending process and increasing the cost of homeownership. However, the Certificate of Reasonable Value (VA Form 26–1843) or the lender's Notice of Value is issued for each property to be purchased with a VA guaranteed loan. These notices do recommend that the veteran purchaser obtain such an audit.

A technical change is being made to 38 CFR 36.4212(f)(2) and 36.4311(d)(2) by adding a new sentence to each. The proposed regulations failed to specify what would be the effective date of the new interest rate on an adjustable rate mortgage. The additional sentence provides that when the rate is adjusted, the new rate will become effective the first day of the month following the adjustment date; the corresponding change in the monthly payment of principal and interest will occur one month later, because interest is collected in arrears. These changes reflect standard practice in the industry.

This final rule also contains new provisions to incorporate changes made by Public Laws 103–325, 103–353 and 103–446.

First, 38 CFR 36.4203(a) and 36.4302 are amended to reflect the change by Public Law 103–446 to 38 U.S.C. 3702 to permit a veteran's home or manufactured home loan entitlement to be restored, on a one-time basis, if the veteran has repaid the prior VA loan in full, but has not disposed of the property securing that loan. After one such restoration, any future restoration of that entitlement will require the veteran to have disposed of all property previously financed with a VA loan using that entitlement.

The manufactured home warranty requirements of § 36.4231(b) are amended to reflect the provisions of Public Law 103–446 abolishing the requirement for VA inspections of the manufacturing process and onsite inspections of manufactured homes sold to veterans. Also, as required by Public Law 103–446, the provisions of § 36.4231(b) are amended to provide that any manufactured home properly displaying a certificate of conformity with all applicable Federal manufactured home construction and safety standards is eligible for VA financing.

Public Law 103–353 increased the maximum guaranty amount on loans greater than $144,000 from $46,000 to $50,750. This final rule accordingly amends 38 CFR 36.4302(a) and (d) to incorporate the increased guaranty amount for VA loans over $144,000.

38 CFR 36.4306a(a) is amended to incorporate the changes made by Public Law 103–446 with regard to energy efficient improvement costs to be included in interest rate reduction refinancing loans (IRRRLs). Under the provisions of the new law, IRRRLs may now include additional funds for energy efficient improvements.

This final rule also adds new provisions at the end of §§ 36.4212(a) and 36.4311(a). Public Law 103–446 amended 38 U.S.C. 3710(e) to provide that, for an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) by a fixed rate mortgage, the interest rate on the new loan may be higher than the current rate on the adjustable rate loan. The new language merely reflects the statutory change.

This document amends 38 CFR 36.4320(a)(1)(ii)(B) to conform with new statutory language regarding the conveyance of property. Public Law 103–446 amended 38 U.S.C. 3732(c)(7) to provide that VA may now accept conveyance of property securing a guaranteed loan from the loan holder notwithstanding the holder's overbid at the liquidation sale. This was previously allowed only where State law requirements resulted in an overbid. This change extends to all overbids, including those caused by lender or attorney error.

Finally, the National Flood Insurance Reform Act of 1994, title V of Public Law 103–325, permits lenders to charge borrowers a reasonable fee for certain costs of determining whether the home or manufactured home is located in an area having special flood hazards. 38 CFR 36.4232, 36.4254, and 36.4312 are amended accordingly.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule essentially restates statutory provisions and reflects statutory requirements. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: July 17, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287 is revised to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, unless otherwise noted.

2. Section 36.4203 is amended by revising the remainder of paragraphs (a)(2) and (a)(3 and adding new paragraph (a)(4) to read as follows:

§ 36.4203 Eligibility of the veteran for the manufactured home loan benefit under 38 U.S.C. 3712.

(a) * * *

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or

(ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally, and the veteran-transferee otherwise meets the requirements of 38 U.S.C. chapter 37.

(3) In a case in which the veteran still owns a property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement if:

(i) The loan has been repaid in full, or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(ii) The Secretary has been released from liability as to the loan and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(4) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (a)(1) and (a)(2)(i) of this section.

(Authority: 38 U.S.C. 3702, 3712)

3. Section 36.4212 is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in

excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the **Federal Register**. Provided, however, that the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3712(a)(1)(F) must be less than the interest rate of the VA loan being refinanced. This paragraph (a) does not apply in the case of an adjustable rate mortgage being refinanced with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3712)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3712(a)(1)(F).

(Authority: 38 U.S.C. 3703, 3712)

(c) The rate of interest in instruments securing the indebtedness for all loans may be expressed in terms of add-on or discount.

(Authority: 38 U.S.C. 3710, 3712)

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default; *Provided*, that a late charge not in excess of an amount equal to 4 percent of any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3712)

(e) Adjustable rate mortgage loans which comply with the requirements of this paragraph are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 week) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at ''constant maturity'' are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H.15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur not sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (e)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8⅛ percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3712)

4. Section 36.4223 is amended by revising paragraph (a)(4) to read as follows:

§ 36.4223 Interest rate reduction refinancing loan.

(a) * * *

(4) The dollar amount of the guaranty of the 38 U.S.C. 3712(a)(1)(F) loan may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the loan; and

(Authority: 38 U.S.C. 3703, 3712)

* * * * *

5. Section 36.4231 is amended by revising paragraph (b) to read as follows:

§ 36.4231 Warranty requirements.

* * * * *

(b) Any manufactured housing unit properly displaying a certification of conformity to all applicable Federal manufactured home construction and safety standards pursuant to 42 U.S.C. 5415 shall be acceptable as security for a VA guaranteed loan.

(Authority: 38 U.S.C. 3712)

* * * * *

6. In § 36.4232, paragraph (a)(2) is amended by removing the period at the end thereof and by adding in its place a semi-colon; paragraphs (a)(5) and (a)(6) are amended by removing ''; and'' and by adding to each paragraph at the end thereof a semi-colon; and paragraph (a)(7) is amended by removing the period at the end thereof and adding in its place ''; and''. Section 36.4232 is also amended by adding a new paragraph (a)(8) and by revising paragraph (e)(1), to read as follows:

§ 36.4232 Allowable fees and charges; manufactured home unit.

(a) * * *

(8) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)

* * * * *

(e)(1) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total amount must be paid in a manner prescribed by the Secretary before a manufactured home unit loan will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender shall disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

* * * * *

7. Section 36.4254 is amended by redesignating paragraph (a)(7) as paragraph (a)(8); and is further amended by adding a new paragraph (a)(7), by adding an authority citation following paragraph (a)(8), and by revising paragraph (d)(1), to read as follows:

§ 36.4254 Fees and charges.

(a) * * *

(7) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination, and

(8) * * *

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)

* * * * *

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total loan amount must be paid to the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

* * * * *

8. The authority citation for part 36, §§ 36.4300 through 36.4375 is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701–3704, 3710, 3712–3714, 3720, 3279, 3732, unless otherwise noted.

9. In § 36.4302, paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) are redesignated as paragraphs (d), (e), (f), (g), (h), (i), (j) and (l), respectively; and § 36.4302 is further amended by revising paragraph (a)(4), by revising paragraph (b), by adding a new paragraph (c), by revising the newly redesignated paragraph (e), by revising newly redesignated paragraphs (j)(2), (j)(3), and (j)(4), and by adding a new paragraph (k), to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) * * *

(4) The lesser of $50,750 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

(b) With respect to an interest rate reduction refinancing loan guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11), the dollar amount of guaranty may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the refinancing loan amount.

(Authority: 38 U.S.C. 3703, 3710)

(c) With respect to a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d), the amount of the guaranty shall be in the same proportion as would have been provided if the energy efficient improvements were not added to the loan amount, and there shall be no additional charge to the veteran's entitlement as a result of the increased guaranty amount.

(Authority: 38 U.S.C. 3703, 3710)

* * * * *

(e) Subject to the provisions of § 36.4303(g), the following formulas shall govern the computation of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to $14,750 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to $14,750 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 3712, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans and the sum remaining may be increased by up to $14,750 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 3712, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 3712.

(Authority: 38 U.S.C. 3703, 3712)

* * * * *

(j) * * *

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or

(ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally; or

(3) The loan has been repaid in full, and the loan for which the veteran seeks to use entitlement is secured by the same property which secured the fully repaid loan; or

(4) In a case in which the veteran still owns the property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement used on that loan if:

(i) the loan has been repaid in full or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(ii) the Secretary has been released from liability as to the loan, and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(k) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (j)(1) and (j)(2)(i) of this section.

(Authority: 38 U.S.C. 3702(b), 3710)

* * * * *

10. In § 36.4306a, the introductory text of paragraph (a) and paragraph (a)(3) are revised, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), a veteran may refinance an existing VA guaranteed, insured, or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

* * * * *

(3) The amount of the refinancing loan may not exceed:

(i) An amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed a dollar amount determined in accordance with § 36.4312(d)(7)(i); or

(ii) In the case of a loan to refinance an existing VA guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, an amount equal to the sum of the amount referred to with respect to the loan under paragraph (a)(3)(i) of this section and the amount authorized by § 36.4336(a)(4);

(Authority: 38 U.S.C. 3710(a))

* * * * *

11. Section 36.4311 is revised to read as follows:

§ 36.4311 Interest rates.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the **Federal Register**. However, the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) must be less than the interest rate of the VA loan being refinanced. This paragraph does not apply in the case of an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3710)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11). For loans bearing an interest rate agreed upon by the veteran and the lender, the provisions of § 36.4312(d)(6) and (d)(7) do not apply.

(Authority: 38 U.S.C. 3703, 3710)

(c) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: *Provided*, that a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3710)

(d) Adjustable rate mortgage loans which comply with the requirements of this paragraph (d) are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 weeks) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at ''constant maturity'' are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H. 15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (d)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8⅛ percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3710)

12. Section 36.4312 is amended by redesignating paragraph (d)(1)(viii) as paragraph (d)(1)(ix), and by removing from paragraph (e)(3) ''in paragraphs (e)(4) and (e)(5)'' and replacing it with ''in paragraph (e)(4)''. Section 36.4312 is further amended by adding a new paragraph (d)(1)(viii), by revising the authority citation following paragraph (d)(7)(iv), by adding introductory text to paragraph (e), and by revising paragraph (e)(1), to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(d) * * *

(1) * * *

(viii) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

* * * * *

(7) * * *

(iv) * * *

(Authority: 38 U.S.C. 3703, 3710; 42 U.S.C. 4001 note, 4012a)

* * * * *

(e) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary.

(1) The fee on loans to veterans shall be as follows:

(i) On all interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), the fee shall be 0.50 percent of the total loan amount.

(ii) On all refinancing loans other than those described in paragraph (e)(1)(i) of this section, the funding fee shall be 2.75 percent of the loan amount for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), and 2 percent of the loan amount for loans to all other veterans; provided, however, that if the veteran is using entitlement for a second or subsequent time, the fee shall be 3 percent of the loan amount.

(iii) Except for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2 percent of the total loan amount for all loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which the veteran makes a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 1.50 percent of the total loan amount. On purchase or construction loans on which the veteran makes a down payment of 10 percent or more, the amount of the funding fee shall be 1.25 percent of the total loan amount.

(iv) On loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2.75 percent of the total loan amount on loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which veterans whose entitlement is based on service in the Selected Reserve make a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 2.25 percent of the total loan amount. On purchase or construction loans on which such veterans make a down payment of 10 percent or more, the amount of the funding fee shall be 2 percent of the total loan amount.

(v) All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729)

* * * * *

13. Section 36.4320 is amended by revising paragraph (a)(1)(ii)(B) to read as follows:

§ 36.4320 Sale of security.

(a) * * *

(1) * * *

(ii) * * *

(B) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder may elect to convey the property to the Secretary under the terms of paragraph (a)(1)(ii)(A) of this section, unless a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section.

(Authority: 38 U.S.C. 3732(c))

* * * * *

14. Section 36.4336 is amended by revising paragraph (a)(2)(i) and by adding a new paragraph (a)(4), to read as follows:

§ 36.4336 Eligibility of loans; reasonable value requirements.

(a) * * *

* * * * *

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), (a)(11), or (b)(7) and energy efficient mortgages pursuant to 38 U.S.C. 3710(d), the loan (including any scheduled deferred interest added to principal) does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Secretary, and

* * * * *

(4) A loan guaranteed under 38 U.S.C. 3710(d) which includes the cost of energy efficient improvements may exceed the reasonable value of the property. The cost of the energy efficient improvements that may be financed may not exceed $3,000; provided, however, that up to $6,000 in energy efficient improvements may be financed if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficient improvements.

(Authority: 38 U.S.C. 3710)

* * * * *

[FR Doc. 95–18182 Filed 7–25–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300386A; FRL–4966–4]

RIN 2070–AB78

Polymethylene Polyphenylisocyanate, Polymer with Ethylene Diamine, Diethylene Triamine and Sebacoyl Chloride, Cross-Linked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d) to replace and delete the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer under 40 CFR 180.1028. Elf Atochem North America, Inc., requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 26, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300386A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300386A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8811; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 24, 1995 (60 FR 27469), EPA issued a proposed rule that gave notice that Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 10103-3222, had submitted pesticide petition (PP) 5E4447 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by replacing the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer listed under 40 CFR 180.1028 with an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceouse earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol

dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

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

A record has been established for this rulemaking under docket number [OPP-300386A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300386A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: July 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
* * *	* * *	* * *
Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked; minimum number average molecular weight 100,000.	.....	Encapsulating agent
* * *	* * *	* * *

* * * * *

[FR Doc. 95–18365 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 185 and 186

[FAP 9H5587/R2144; FRL–4960–8]

RIN 2070–AB78

Tralomethrin; Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited food and feed additive regulations for residues of the synthetic pyrethroid tralomethrin in or on the processed commodity tomato puree and animal feed tomato pomace, wet and dry. AgrEvo USA Co. (formerly Hoechst Roussel Agri-Vet Co.) requested these regulations pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) that would establish the maximum permissible levels for residues of the pesticide in or on the processed food commodity and animal feed.

EFFECTIVE DATE: This regulation becomes effective July 26, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9H5587/R2144], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [FAP 9H5587/R2144]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1995 (60 FR 24815), EPA issued a proposed rule that gave notice that Hoechst-Roussel Agri-Vet Co. had submitted to EPA pursuant to section 409 of the FFDCA, 21 U.S.C. 348, food/feed additive petition (FAP) 9H5587 proposing to amend 40 CFR 185.5450 and 40 CFR part 186 by establishing time-limited food/feed additive regulations to permit residues of the insecticide tralomethrin, (S)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(RS)-1,2,2,-tetrabromoethyl]-cyclopropanecarboxylate, and its metabolites in or on the processed commodity tomato puree at 1.00 part per million (ppm) and the animal feed tomato pomace, wet and dry, at 1.50 ppm and 4.00 ppm, respectively.

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

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited food and feed additive regulations will protect the public health. Therefore, the time-limited food and feed additive regulations are established as set forth below.

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

A record has been established for this rulemaking under docket number [FAP 9H5587/R2144] (including any objections and hearing requests submitted electronically as described

below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [FAP 9H5587/R2144], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Parts 185 and 186

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

Dated: July 6, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 185 and 186 are amended as as follows:

PART 185—[AMENDED]

1. In part 185:

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

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

b. By revising § 185.5450, to read as follows:

§ 185.5450 Tralomethrin.

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

Commodity	Parts per million	Expiration date
Cottonseed oil .	0.20	Nov. 15, 1997.

(b) A time-limited food additive regulation is established permitting residues of the pesticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodity resulting from application of the insecticide to tomatoes in accordance with an experimental program (34147-EUP-2). The conditions set forth in this section shall be met.

Commodity	Parts per million	Expiration date
Tomato puree .	1.00	June 1, 1997

(1) Residues in the food not in excess of the established tolerance resulting from the use described in paragraph (b) of this section remaining after expiration of the experimental program will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(2) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

PART 186—[AMENDED]

2. In part 186:

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

Authority: 21 U.S.C. 348.

b. By adding new § 186.5450, to read as follows:

§ 186.5450 Tralomethrin.

(a) A time-limited feed additive regulation is established permitting residues of tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following feed resulting from application of the insecticide to tomatoes in accordance with an experimental program (34147-EUP-2). The conditions set forth in this section shall be met.

Feed	Parts per million	Expiration date
Tomato pomace, wet.	1.50	June 1, 1997
Tomato pomace, dry.	4.00	June 1, 1997

(b) Residues in the feed not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(c) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 95–18002 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[BPD–709–FC]

RIN 0938–AF01

Medicare Program; Allowing Certifications and Recertification by Nurse Practitioners and Clinical Nurse Specialists for Certain Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period authorizes nurse practitioners and clinical nurse specialists, working in collaboration with a physician, to certify and recertify that extended care services are needed or continue to be needed. In addition, it sets forth the qualification requirements that a nurse practitioner or clinical nurse specialist must meet in order to sign certification or recertification statements. This final rule is necessary to implement section 6028 of the Omnibus Budget Reconciliation Act of 1989.

DATES: Effective Date: These regulations are effective on August 25, 1995.

Comment Date: Comments regarding the qualification requirements will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 25, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–709–FC, P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–709–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Jim Kenton, (410) 966–4607.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Before the enactment of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239), section 1814(a)(2) of the Act required that, in the case of post-hospital extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a skilled nursing facility (SNF) on an inpatient basis.

The physician certification requirements were included in the law to ensure that patients require a level of care that is covered by the Medicare program and because the physician is a key figure in determining utilization of health services.

OBRA '89 was enacted on December 19, 1989. Section 6028 of OBRA '89 amended section 1814(a)(2) of the Act to allow, in the case of extended care services, a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility, but is working in collaboration with a physician, to certify and recertify that extended care services are needed or continue to be needed. This provision took effect upon enactment.

Current regulations located at 42 CFR part 424, concerning conditions for Medicare payments, specify that a physician must certify and recertify the need for services. Regulations located at § 424.20 provide Medicare Part A coverage for post-hospital SNF care furnished by a SNF or a swing-bed hospital only if a physician certifies and recertifies the need for those services. Section 424.20(a)(2) contains certification requirements for certain swing-bed hospital patients under which a physician must certify that transfer to a SNF is not medically appropriate. Also, § 424.20(e) provides that certification and recertification statements may be signed by the physician responsible for the case or, with his or her authorization, by a

physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case.

II. Provisions of the Proposed Rule

On June 28, 1991, we published a proposed rule (56 FR 29609) that would authorize nurse practitioners and clinical nurse specialists working in collaboration with a physician to certify and recertify that extended care services are needed or continue to be needed. In the preamble to that proposed rule, we described our policies concerning requirements for certification and recertification of need for extended care services, and proposed the following changes to the regulations:

- We proposed to revise §§ 424.1(b)(1) and 424.5(a)(4), concerning the general provisions of part 424, by deleting the statement that only a physician can certify and recertify the need for extended care services.
- We proposed to revise § 424.10(a), which specifies that certifications and recertifications must be made only by a physician, to permit a nurse practitioner or clinical nurse specialist to certify and recertify the need for services.
- We proposed to revise § 424.11(b), which specifies procedures for obtaining certifications and recertifications, to remove the requirement that only a physician can certify and recertify the need for services.
- We proposed to add a new § 424.11(e)(4) to specify that a nurse practitioner or clinical nurse specialist could certify and recertify that extended care services are needed or continue to be needed.
- We proposed to revise § 424.20(e), which pertains to the requirements for post-hospital SNF care, by adding a new provision to specify that the signer of the certification and recertification may be a nurse practitioner or clinical nurse specialist, provided that neither has a direct or indirect employment relationship with the facility, but is working in collaboration with a physician. In this section we also proposed that ''collaboration'' means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. We further proposed that the services must be delivered within the scope of the practitioner's professional expertise as defined and as licensed by the State, with medical direction and appropriate supervision as provided for in guidelines jointly developed by the practitioner and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

III. Analysis of and Response to Public Comments

In response to the June 28, 1991 proposed rule, we received 16 timely items of correspondence. The comments, submitted by or on behalf of long term care facilities, hospitals, providers of rehabilitative services, and nursing associations, and our responses, are presented below.

A. The Conditions and Scope of Practice Under Which a Nurse Practitioner or Clinical Nurse Specialist May Certify or Recertify the Need for Extended Care Services

Section 6028 of OBRA '89 amended section 1814(a)(2) of the Act to allow, in the case of extended care services, a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility, but is working in collaboration with a physician, to certify and recertify that extended care services are needed or continue to be needed.

1. Comments and Responses

Comment: One commenter stated that before residents are certified or recertified for post-hospital SNF care for rehabilitation services only, the nurse practitioner or clinical nurse specialist should be required to consult with a rehabilitation professional in one or more of the relevant disciplines of physical therapy, occupational therapy, and speech-language pathology. The commenter believes that this should be made a requirement because assessment of the rehabilitative needs of the residents requires the input of professionals with specialized clinical training.

Response: Current law does not provide for the requirement of such a consultation. However, this type of consultation may result from the collaborative arrangements currently in place between the nurse practitioner or clinical nurse specialist and the physician. Collaborative arrangements provide for discussion of patient diagnosis and concerns related to case management to ensure the best care possible for the patient. The nurse practitioner or clinical nurse specialist, while working under clearly defined guidelines developed with the physician, may determine in certain instances that consultation with a rehabilitation professional is necessary.

In addition, under the SNF requirements for participation at § 483.20(b)(5), each resident must receive a comprehensive assessment upon admission and a review of that assessment at least once every 3 months. The assessment must be conducted by a nurse and involve other practitioners as needed. A nurse practitioner or clinical nurse specialist who is performing a certification or recertification will have access to the assessment and will thus have the benefit of any assessment done by rehabilitation specialists.

Also, under the SNF requirements for participation at § 483.20(d), the SNF must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must be prepared by an interdisciplinary team that includes the attending physician, a registered nurse, and ''other appropriate staff in disciplines as determined by the resident's needs.'' Accordingly, for a resident certified for SNF care for rehabilitation services, we expect that the interdisciplinary team that prepares a care plan would include a rehabilitation professional.

Comment: Three commenters stated that allowing nurse practitioners and clinical nurse specialists to certify and recertify that extended care services are needed or continue to be needed is an extremely narrow function when it is delegated only to those who work directly with attending physicians. The commenters believe that this provision should be expanded to include facility-employed nurse practitioners and clinical nurse specialists.

Response: Facility-employed nurse practitioners and clinical nurse specialists are prohibited by section 1814(a)(2) of the Act from providing certification and recertification services for a facility; therefore, we cannot adopt the commenter's suggestion. However, the requirements for certification and recertification authorizations are not limited to those individuals who work directly with attending physicians. The nurse practitioner or clinical nurse specialist is free to engage in independent practice (if allowed by State law) so long as he or she works in collaboration with a physician. This process allows each professional to retain responsibility for his or her respective services and engage in those services independently.

Comment: One commenter expressed concern that the prohibition that the nurse practitioner or clinical nurse specialist cannot work for the facility will have adverse effects on small rural hospitals. The commenter noted that, in rural areas, skilled nursing facilities are

often faced with dual problems. First, facilities in rural areas have a difficult time recruiting physicians. Since not many physicians live near the facility, it is difficult to find a physician who will make the long-distance visits to certify (or supervise) the care of residents in SNFs. Second, a nurse practitioner or clinical nurse specialist who lives close enough to the SNF is likely to already be employed by the SNF, since that is likely the only employment that would be available in that area. Thus, not only are nurse practitioners and clinical nurse specialists a less costly alternative for the facility to employ, but they generally must be an employee if the facility wishes to retain their services. The commenter suggested that a waiver be considered to allow nurse practitioners and clinical nurse specialists who are employed by rural facilities to certify and recertify the need or continued need for extended care services.

Response: The statute does not authorize us to grant a waiver to allow nurse practitioners and clinical nurse specialists who are employed by rural facilities to perform certification and recertification. However, those who are authorized by section 1861(s)(2)(K)(iii) of the Act to engage in independent practice, and are working in collaboration with a physician, can provide the service of certifying and recertifying extended care services in a high quality, cost-effective manner. Similarly, nurse practitioners and clinical nurse specialists who work directly for a physician who is not an employee of the facility can also provide this service. These types of arrangements will reduce the need for visits to the nursing facility by a physician solely for the purpose of meeting the signature requirements, and thus free physicians to deliver medical care that only they can furnish. We believe that such arrangements can provide some relief to those rural areas where it is often difficult to recruit and retain physicians.

Comment: One commenter noted that many smaller facilities would have to pay an outside nurse to certify and recertify patients, which would result in a direct or indirect employment relationship with the facility.

Response: When nurse practitioners or clinical nurse specialists are employees of qualified legal entities, under the common law test of section 210(j) of the Act (more fully set forth in 20 CFR 404.1005, 404.1007, and 404.1009, which set forth definitions of employers and employees for purposes of social security benefits), they are considered for the purposes of this provision to have a direct or indirect employment relationship. Qualified legal entities may include the facility or someone working on the medical staff of the facility. These provisions set forth a number of factors that indicate whether a nurse practitioner or clinical nurse specialist has a direct or indirect employment relationship including, but not limited to the following:

- The facility or someone on its medical staff has the authority to hire or fire the nurse;
- The facility or someone on its medical staff furnishes the equipment and the place to work, sets the hours, and pays the nurse by the hour, week or month;
- The facility or someone on its medical staff restricts the nurse's ability to work for someone else or provides training and requires the nurse to follow instructions.

However, even though a facility may make direct payment to an independent practice nurse practitioner or clinical nurse specialist for the certification and recertification of extended care services, that individual is not considered to have a direct or indirect relationship with the facility as long as he or she does not perform other duties for the facility or someone on its staff, or is not under the control of the facility or someone on its staff.

Comment: One commenter stated that nurse practitioners and clinical nurse specialists should be given a wider scope of practice by the Federal Government in a manner similar to that in which States have used their services, that is, permit them to replace physician visits in the nursing home and have prescriptive authority within the nursing home.

Response: We understand the commenter's concerns, but note that the sole purpose of this rule is to implement section 1814(a)(2) of the Act, as amended by section 6028 of OBRA '89, which is relatively narrow in focus. Therefore, we do not have present legal authority to increase the scope of practice of nurse practitioners or clinical nurse specialists. However, it also should be noted that, in recent years, the Congress has continued to expand Medicare coverage of services furnished by nurse practitioners and clinical nurse specialists, which helps improve beneficiary access to medical services. For example, section 4155(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) amended section 1861(s)(2)(K) of the Act to authorize Medicare coverage for certain services performed by a nurse practitioner or a clinical nurse specialist working in a rural area. Those services were previously covered only if performed by a physician. In addition, § 483.40 permits a physician to delegate certain tasks, including some physician visits, to nurse practitioners or clinical nurse specialists (as well as to physician assistants) with certain limitations, providing they are within the scope of State law. In these cases, however, the expansion in coverage was the direct result of a change in law, not an administrative decision.

Comment: Another commenter believes that HCFA should extend the signature authority to certification and recertification of specific types of health services within the extended care setting. This could include the plan of treatment requirements for outpatient physical therapy and speech language pathology, and the certification and recertification of the comprehensive outpatient rehabilitation facility benefit.

Response: Again, section 1814(a)(2) of the Act, as amended by section 6028 of OBRA '89, applies only to the certification and recertification of extended care services, which is the only subject of this final rule. The certification and recertification signature requirements for the various outpatient services mentioned in the above comment are addressed in other sections of the law and regulations.

2. Weight Given to Physician's Opinions

Subsequent to the June 28, 1991 proposed rule concerning certifications by nurse practitioners and clinical nurse specialists, we published a HCFA Ruling (No. 93–1, May 1993) that clarified HCFA's position regarding the weight to be given to a treating physician's opinion in determining Medicare coverage of inpatient hospital and SNF care. Although this ruling focused on certifications by physicians, it has significant implications for certifications by nurse practitioners and clinical nurse specialists. Therefore, although no commenter explicitly raised this issue, we believe it is appropriate to make an additional clarification regarding the scope of authority of a nurse practitioner and clinical nurse specialist. Specifically, we wish to clarify that although completion of the required certification or recertification is a prerequisite for Medicare SNF coverage, it does not absolutely ensure coverage. In order to qualify for coverage, the care must also meet Medicare's overall requirement of being reasonable and necessary for diagnosing or treating the beneficiary's condition (section 1862(a)(1) of the Act). This aspect of the certification and recertification requirement is discussed in detail in HCFA Ruling No. 93–1. As

the ruling indicates, the treating physician's certification or recertification of the need for care is to be given great weight in determining SNF coverage, but coverage decisions are not made solely based on this certification: ''* * *if the attending physician's certification of the medical need for services is consistent with other records submitted in support of the claim for payment, the claim is paid. However, if the medical evidence is inconsistent with the physician's certification, the medical review entity considers the attending physician's certification only on a par with the other pertinent medical evidence'' (HCFAR 93–1–8).

Thus, although an attending physician's certification or recertification that care is needed is to be given great weight in determining SNF coverage, we do not consider a certification or recertification irrefutable in the face of medical evidence to the contrary. We do not believe that a certification or recertification should be considered more binding when completed by a nurse practitioner or clinical nurse specialist than it would have been if completed by the attending physician. Therefore, it is possible for a nurse practitioner or clinical nurse specialist's certification of the need for care to be superseded by medical evidence to the contrary, which can include the opinion of the attending physician. We do not anticipate that such a certification or recertification would be completed in direct contradiction to the attending physician's opinion. For example, if the attending physician disagrees with a nurse practitioner's or clinical nurse specialist's certification of the need for care, the medical review entity can deny coverage, provided that the attending physician's opinion is consistent with the medical evidence in the file.

B. The Definition of ''Collaboration''

In the proposed rule of June 28, 1991, we defined ''collaboration'' as a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services are delivered within the scope of the practitioner's professional expertise with medical direction and appropriate supervision as provided for in guidelines jointly developed by the practitioner and the physician, or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

Comment: One commenter maintained that HCFA's proposed definition of ''collaboration,'' which provides that appropriate supervision should be provided, implies that a physician should be physically present. The commenter believes this implication is overreaching and does not reflect the professional practice of these practitioners. The commenter contends that physicians are not physically present in the facility at the same time the services are performed.

Response: We do not believe that our proposed definition is overreaching. The requirement that collaboration entail medical direction and supervision does not imply that the physician be physically present in the facility or even that the physician be consulted on each patient. Our definition is meant to apply to the overall relationship between the physician and the nurse practitioner or clinical nurse specialist. Thus, we envision that collaboration would involve some systematic formal planning, assessment, and a practice arrangement that reflects and demonstrates evidence of consultation, recognition of statutory limits, clinical authority, and accountability for patient care, according to some mutual agreement that allows each professional to function independently.

C. The Limitation on Authorization To Sign Certification and Recertification Statements

In the June 28, 1991, proposed rule, we proposed to revise § 424.11(e) to specify that nurse practitioners and clinical nurse specialists be authorized to sign certifications and recertifications for extended care services. We defined these entities as individuals, licensed by the State, who meet the requirements in § 424.20(e).

Comment: One commenter suggested that regulations should provide that the physician assistant, as well as the nurse practitioner and clinical nurse specialist, be allowed to certify and recertify residents for Medicare benefits.

Response: Under current law, physician assistants are not allowed to perform these certifications and recertifications. Section 6028 of OBRA '89 extended the signature authorization for certification and recertification to nurse practitioners and clinical nurse specialists only.

Comment: One commenter indicated that the criteria in the proposed rule that require State licensure for the nurse practitioner and clinical nurse specialist to meet the signature authorization requirements place restraints on many of the nurse practitioners and clinical nurse specialists who are not formally recognized through their State practice acts (that is, formal licensure requirements), but who are not prevented from practicing in those same States. The commenter believes that the lack of a formal licensure program should not prevent this provision from being implemented in a State.

Response: We agree that the proposed qualifications requiring State licensure are unduly restrictive on those nurse practitioners and clinical nurse specialists who are in States that currently authorize them to practice under State law, even though no formal licensure exits. Therefore, we are revising proposed § 424.11(e) to eliminate the requirement for State licensure. Instead, we are setting forth the necessary qualifications that nurse practitioners and clinical nurse specialists must meet for purposes of this provision. As detailed below, these qualification requirements will ensure that the signature authority is extended to nurse practitioners and clinical nurse specialists who are currently authorized under State law to perform such services, even if no formal licensure exists.

Nurse practitioners and clinical nurse specialists are primary health care providers. As a primary health care provider, the nurse practitioner and/or clinical nurse specialist manages care under a framework that includes assessment of health status, diagnosis, development of a treatment plan, implementation of that plan, follow up, and patient education. The autonomous nature of advanced practice nursing requires accountability for outcomes in health care.

In the early years, many of the nurse practitioner and clinical nurse specialist programs were hospital based certificate programs that provided basic education and clinical requirements that were very similar to the requirements that Medicare established in regulations for rural health clinics in § 491.2. In the late 1970's, post-basic advanced practice programs began to evolve in response to societal and health care needs and are rapidly being phased out in favor of master's programs. Most of the educational preparation now required is defined by guidelines established by the profession to assure appropriate knowledge and clinical competency necessary for the delivery of primary health care.

A formal, graduate educational program provides the nurse practitioner and clinical nurse specialist the theoretical knowledge and clinical skills appropriate for their scope of practice that includes clinical, technical and ethical learning experiences for delivery of care and role development in advanced nursing practice. Formal graduate education also enables nurse

practitioners and clinical nurse specialists to achieve and maintain national certification and recognition. Currently, for the nurse practitioner, 47 States require at least national certification or a master's degree and/or completion of an advanced practice program. For the clinical nurse specialist, 29 States specify a graduate degree and/or national certification. For the remaining States, advanced practice nursing is not recognized, the authority to practice is covered under a broad Nurse Practice Act, or, in still others, the scope of practice is based on the registered nurse's own determination of education, experience and amount of physician supervision necessary to conduct practice safely.

The completion of a formal, graduate education program ensures that the nurse practitioner and clinical nurse specialist acquire and maintain the theoretical knowledge and clinical skills appropriate for the certification and recertification of extended care services. Therefore, in this final rule we are requiring master's preparation for entry level nurse practitioners and clinical nurse specialists who certify and recertify SNF residents. We believe that this requirement is consistent with the training requirement currently associated with advanced practice nursing specialties.

We also intend to allow nurse practitioners and clinical nurse specialists who are currently practicing under previously set standards, which may be less restrictive (for example, not requiring a master's degree in nursing), to certify and recertify SNF services. Consequently, we are providing that an individual may certify and recertify SNF residents if the individual: is a registered professional nurse currently licensed to practice nursing in the State where he or she practices; is authorized to perform the services of a nurse practitioner or clinical nurse specialist; and has received, within 36 months from the effective date of this final rule, a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

Accordingly, we are revising § 424.11(e)(5) to specify that, in order to qualify as a nurse practitioner, an individual must:

(1) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be legally authorized to perform the services of a nurse practitioner in accordance with State law; and have a master's degree in nursing;

(2) Be certified as a nurse practitioner by a duly recognized professional association that has, at a minimum, eligibility requirements that meet the standards in § 424.11(e)(5)(i) (that is, in item (1) immediately above); or

(3) Meet the requirements for a nurse practitioner set forth in § 424.11(e)(5)(i), except for the master's degree requirement, and have received before August 25, 1998 a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

We have chosen a 36-month period for two reasons. First, we note that most advanced nursing programs are from one to two years in length, and we want to be sure that students currently or soon to be enrolled in existing non-master's programs would be able to complete their training and be eligible for Medicare participation without the need to change programs. Secondly, we want to provide the institutions operating the programs with enough time to react to these regulations. Our research to date leads us to believe that non-master's advanced programs are steadily being converted to master's degree programs and we therefore believe that this requirement may well affect the timing of institutional decisions for conversion, rather than the nature of those decisions. We welcome comments on this particular issue.

In addition, under revised § 424.11(e)(6), in order to qualify as a clinical nurse specialist the individual must:

(1) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be legally authorized to perform the services of a clinical nurse specialist in accordance with State law; and have a master's degree in a defined clinical area of nursing;

(2) Be certified as a clinical nurse specialist by a duly recognized professional association that has, at a minimum, eligibility requirements that meet the standards in § 424.11(e)(6)(i) (that is, item (1)); or

(3) Meet the requirements for a clinical nurse specialist set forth in § 424.11(e)(6)(i), except for the master's degree requirement, and have received before August 25, 1998, a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

As noted above, we are adding the above provisions as a result of a public comment on our June 28, 1991 proposed rule. However, since it would have been difficult for readers to anticipate the changes that are necessary in this final rule, we are accepting public comments on the qualification requirements set forth in new § 424.11(e)(5) and (6).

D. Timing of the Recertification

Neither OBRA '89 nor the June 28, 1991 proposed rule addressed the timing of the recertification statements. However, current regulations in § 424.20(d) specify that the first recertification is required no later than the 14th day of post-hospital SNF care, and subsequent recertifications are required at least every 30 days after the first recertification.

Comment: One commenter suggested that HCFA change the requirement of recertification for medical and health services, from every 30 days to monthly.

Response: The timing requirements for certification and recertification were not addressed in the proposed rule and thus are not the subject of this regulation. We note, however, that the requirements are stated in regulations (§ 424.20(d)) in terms of days because they must relate to an admission, which may occur any time during a month. We do not believe that it would be appropriate to restate these requirements in terms of months. Such a change could result in extending the period between recertifications to 60 days if a recertification took place on the 1st day of one month and on the last day of the next month.

IV. Provisions of the Final Rule With Comment Period

For the most part, the final rule adopts the provisions of the proposed rule. Those provisions of the final rule that differ from the proposed rule follow.

In the proposed rule, we added a new § 424.11(e)(4) to extend to nurse practitioners and clinical nurse specialists the authority to sign statements that would certify and recertify that extended care services are needed or continue to be needed. We proposed that nurse practitioners and clinical nurse specialists must be licensed by the State in order to be authorized to sign these statements. As a result of public comment, in this final rule we are revising § 424.11(e)(4) of the proposed rule to delete the licensure requirement. Instead, as discussed above in section III.C. of this preamble, we are adding paragraphs (e)(5) and (e)(6) to § 424.11(e) to set forth specific qualification requirements for nurse practitioners and clinical nurse specialists, respectively, for purposes of the certification provisions. We are

accepting public comments on these provisions.

V. Impact Statement

Unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) . For purposes of the RFA, physicians are considered to be small entities. We also consider nurses who work on a consulting basis or who are self-employed to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As discussed in preceding sections of this preamble, this final rule implements section 6028 of OBRA '89 concerning the expansion of the certification and recertification authority for extended services to nurse practitioners and certified nurse specialists. In view of the specificity of the statutory provisions, we considered no alternatives beyond those raised by commenters. Any economic effects of this rule stem directly from the OBRA '89 provisions. However, we believe that economic effects of this rule are minimal. We do anticipate that the implementation of the provision to allow nurse practitioners and clinical nurse specialists to certify and recertify that extended care services are needed will be beneficial to physicians since this will free physicians to perform other procedures that require their professional expertise.

In the proposed rule (56 FR 29611), we stated that the proposed changes to the regulations would not produce any effects that would have a significant effect on the economy or on a substantial number of small entities. We received no comments on this assertion. The only change that we are making in this final rule is to clarify that these provisions will apply to nurse practitioners and clinical nurse specialists when they are authorized under State law to perform services even if no formal licensure exists. This change will have no significant economic effect.

We have determined, and the Secretary certifies, that this final rule will not have a significant effect on the operations of a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

Section 424.20 of the regulations contains information collection requirements. The information collection requirements concern the signatures for certification and recertification statements for extended care services. The respondents who will be responsible are physicians, nurse practitioners or clinical nurse specialists working in collaboration with a physician. Public reporting burden for this collection of information is estimated to be 1 hour per response.

The requirements contained in § 424.20 were approved by OMB on May 3, 1991, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB approval number is 0938–0454, and the expiration date is March 31, 1998.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive about the qualification requirements for nurse practitioners or clinical nurse specialists by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR chapter IV, part 424, is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 is revised to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870(e) and (f), 1871, 1872 and 1883(d) of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg(e) and (f), 1395hh, 1395ii and 1395tt(d)).

2. In § 424.1, the introductory text of paragraph (b) is republished and paragraph (b)(1) is revised to read as follows:

§ 424.1 Basis and scope.

* * * * *

(b) *Scope.* This part sets forth certain specific conditions and limitations applicable to Medicare payments and cites other conditions and limitations set forth elsewhere in this chapter. This subpart A provides a general overview. Other subparts deal specifically with—

(1) The requirement that the need for services be certified and that a physician establish a plan of treatment (subpart B);

* * * * *

3. In § 424.5, the introductory text of paragraph (a) is republished and paragraph (a)(4) is revised to read as follows:

§ 424.5 Basic conditions.

(a) As a basis for Medicare payment, the following conditions must be met:

* * * * *

(4) *Certification of need for services.* When required, the provider must obtain certification and recertification of the need for the services in accordance with subpart B of this part.

* * * * *

4. The heading for subpart B is revised to read:

Subpart B—Certification and Plan of Treatment Requirements

5. Section 424.10 is revised to read as follows:

§ 424.10 Purpose and scope.

(a) *Purpose.* The physician has a major role in determining utilization of health services furnished by providers. The physician decides upon admissions, orders tests, drugs, and treatments, and determines the length of stay. Accordingly, sections 1814(a)(2) and 1835(a)(2) of the Act establish as a condition for Medicare payment that a physician certify the necessity of the services and, in some instances, recertify the continued need for those services.

Section 1814(a)(2) of the Act also permits nurse practitioners or clinical nurse specialists to certify and recertify the need for post-hospital extended care services.

(b) *Scope.* This subpart sets forth the timing, content, and signature requirements for certification and recertification with respect to certain Medicare services furnished by providers.

6. In § 424.11, paragraph (b) is revised, the introductory text of paragraph (e) is revised, and new paragraphs (e)(4), (e)(5), and (e)(6) are added to read as follows:

§ 424.11 General procedures.

* * * * *

(b) *Obtaining the certification and recertification statements.* No specific procedures or forms are required for certification and recertification statements. The provider may adopt any method that permits verification. The certification and recertification statements may be entered on forms, notes, or records that the appropriate individual signs, or on a special separate form. Except as provided in paragraph (d) of this section for delayed certifications, there must be a separate signed statement for each certification or recertification.

* * * * *

(e) *Limitation on authorization to sign statements.* A certification or recertification statement may be signed only by one of the following:

* * * * *

(4) A nurse practitioner or clinical nurse specialist, as defined in paragraph (e)(5) or (e)(6) of this section, in the circumstances specified in § 424.20(e).

(5) For purposes of this section, to qualify as a nurse practitioner, an individual must—

(i) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be authorized to perform the services of a nurse practitioner in accordance with State law; and have a master's degree in nursing;

(ii) Be certified as a nurse practitioner by a professional association recognized by HCFA that has, at a minimum, eligibility requirements that meet the standards in paragraph (e)(5)(i) of this section; or

(iii) Meet the requirements for a nurse practitioner set forth in paragraph (e)(5)(i) of this section, except for the master's degree requirement, and have received before August 25, 1998 a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

(6) For purposes of this section, to qualify as a clinical nurse specialist, an individual must—

(i) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be authorized to perform the services of a clinical nurse specialist in accordance with State law; and have a master's degree in a defined clinical area of nursing;

(ii) Be certified as a clinical nurse specialist by a professional association recognized by HCFA that has at a minimum, eligibility requirements that meet the standards in paragraph (e)(6)(i) of this section; or

(iii) Meet the requirements for a clinical nurse specialist set forth in paragraph (e)(6)(i) of this section, except for the master's degree requirement, and have received before August 25, 1998 a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

7. In § 424.20, the introductory text and paragraph (e) are revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

Medicare Part A pays for posthospital SNF care furnished by a SNF, or a hospital or RPCH with a swing-bed approval, only if the certification and recertification for services are consistent with the content of paragraph (a) or (c) of this section, as appropriate.

* * * * *

(e) *Signature.* Certification and recertification statements may be signed by—

(1) The physician responsible for the case or, with his or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case; or

(2) A nurse practitioner or clinical nurse specialist, neither of whom has a direct or indirect employment relationship with the facility but who is working in collaboration with a physician. For purposes of this section, *collaboration* means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services are delivered within the scope of the nurse's professional expertise, with medical direction and appropriate supervision as provided for in guidelines jointly developed by the nurse and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 4, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: February 18, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–18282 Filed 7–25–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7621]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance in now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency

has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary MAP (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

The final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Iowa: Hancock County, unincorporated areas	190873	June 16, 1995	September 6, 1977.
South Carolina: Lamar, town of, Darlington County	450063	.....do	July 18, 1975.
Montana: Mineral County, unincorporated areas	300159	June 19, 1995	December 14, 1982.
Vermont: Sharon, town of, Windsor County	500300	.....do	February 4, 1977.
Nebraska: Duncan, village of, Platte County	310272	June 22, 1995	February 18, 1977.
Tennessee: Cumberland County, unincorporated areas.	470373	.....do	September 2, 1977.
Nebraska: Greeley, village of, Greeley County	310373	June 26, 1995	July 11, 1975.
New Eligibles—Regular Program			
Colorado: South Fork, town of, Rio Grande County[1]	080318	June 5, 1995	
Montana: Hardin, city of, Big Horn County	300115	.....do	
Oklahoma: Caddo County, unincorporated areas	400479	June 12, 1995	September 27, 1991.
Texas: Palisades, village of, Randall County[2]	481666	.....do	
North Carolina: Green County, unincorporated areas	370378	.....do	January 6, 1983.
California: Apple Valley, town of, San Bernardino County[3].	060752	June 16, 1995	
Ohio: Somerville, village of, Butler County	390046	June 21, 1995	February 18, 1981.
Reinstatements			
Pennsylvania: St. Clair, borough of, Schuylkill County	420789	November 24, 1972, Emerg.; March 15, 1977, Reg.; June 2, 1995, Susp.; June 9, 1995, Rein.	June 2, 1995.
Indiana: Springport, town of, Henry County	180347	February 23, 1976, Emerg.; September 4, 1987, Reg.; September 4, 1987, Susp.; June 22, 1995, Rein.	September 4, 1987.
West Virginia: Mercer County, unincorporated areas	540124	December 23, 1975, Emerg.; February 1, 1983, Reg., June 16, 1995, Susp.; June 27, 1995, Rein.	May 2, 1995.
Regular Program Conversions			
Region II			
New York: Southampton, village of, Suffolk County	365343	June 2, 1995, suspension withdrawn	June 2, 1992.
Region III			
Pennsylvania: Port Carbon, borough of, Schulykill County.	420783	.....do	June 2, 1995.

State/location	Community No.	Effective date of eligibility	Current effective map date
Region IV			
Alabama: Tuscaloosa, city of, Tuscaloosa County	010203	.....do	Do.
Region V			
Wisconsin: Oshkosh, city of, Winnebago County	550511	.....do	Do.
Region VI			
Louisiana: Leesville, city of, Vernon Parish	220229	.....do	Do.
Oklahoma:			
Pawnee, city of, Pawnee County	400163	.....do	Do.
McClain County, unincorporated areas	400538	.....do	Do.
Region VIII			
Colorado:			
Nederland, town of, Boulder County	080255	.....do	Do.
La Plata County, unincorporated areas	080097	.....do	Do.
Utah: Joseph, town of, Sevier County	490127	.....do	Do.
Region IX			
Hawaii: Hawaii County, unincorporated areas	155166	.....do	Do.
Region X			
Washington: Cowlitz County, unincorporated areas	530032	.....do	Do.
Region III			
Delaware:			
Bethany Beach, town of, Sussex County	105083	June 16, 1995, suspension withdrawn	June 16, 1995.
Bethel, town of, Sussex County	100055	.....do	Do.
Blades, town of, Sussex County	100031	.....do	Do.
Dagsboro, town of, Sussex County	100033	.....do	Do.
Dewey Beach, town of, Sussex County	100056	.....do	Do.
Fenwick Island, town of, Sussex County	105084	.....do	Do.
Greenwood, town of, Sussex County	100039	.....do	Do.
Laurel, town of, Sussex County	100040	.....do	Do.
Lewes, city of, Sussex County	100041	.....do	Do.
Milford, town of, Sussex County	100042	.....do	Do.
Millsboro, town of, Sussex County	100043	.....do	Do.
Millville, town of, Sussex County	100044	.....do	Do.
Milton, town of, Sussex County	100045	.....do	Do.
Ocean View, town of, Sussex County	100046	.....do	Do.
Rehoboth Beach, town of, Sussex County	105086	.....do	Do.
Slaughter Beach, town of, Sussex County	100050	.....do	Do.
South Bethany, town of, Sussex County	100051	.....do	Do.
Sussex County, unincorporated areas	100029	.....do	Do.
Pennsylvania: Upper Chichester, township of, Delaware County.	420439	.....do	Do.
Region IV			
Florida:			
Gulf Breeze, city of, Santa Rosa County	120275	.....do	Do.
Monroe County, unincorporated areas	125129	.....do	Do.
Region V			
Indiana: Bloomington, city of, Monroe County	180169	.....do	Do.
Region VI			
Oklahoma:			
Midwest City, city of, Oklahoma County	400405	.....do	Do.
Newcastle, city of, McClain County	400103	.....do	Do.
Region VII			
Iowa:			
Ames, city of, Storey County	190254	.....do	Do.
Mason City, city of, Cerro Gordo County	190060	.....do	Do.
Jackson County, unincorporated areas	190879	.....do	Do.
Kansas: Pittsburgh, city of, Crawford County	200072	.....do	Do.
Region X			
Washington: Thurston County, unincorporated areas	530188	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension,; Rein.—Reinstatement.

[1] The Town of South Fork has adopted Rio Grande County's Flood Insurance Study and Flood Insurance Rate Map (FIRM) dated May 19, 1987 for floodplain management and flood insurance purposes. Rio Grande County's Community Identification number is 080153; Panel 0007B.

[2] The Village of Palisades has adopted Randall County's Flood Insurance Study and Flood Insurance Rate Map dated September 30, 1982 for floodplain management and flood insurance purposes. Randall County's Community Identification number is 480532; Panels 110 and 300.

[3] The Town of Apple Valley has adopted San Bernadino County's Flood Insurance Study and Flood Insurance Rate Map (FIRM) dated September 28, 1990 and any revisions, for floodplain management and flood insurance purposes. The County's Community Identification number is 060270; Panels 5850B, 5175B, 5200B, and 5875B.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: July 20, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–18388 Filed 7–25–95; 8:45 am]

BILLING CODE 6718–21–M

44 CFR Part 65

[Docket No. FEMA–7144]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix	May 18, 1995, May 25, 1995, Arizona Republic.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	April 19, 1995.	040051
California: Santa Barbara.	Unincorporated areas.	May 18, 1995, May 25, 1995, Santa Barbara News-Press.	The Honorable Timothy J. Staffel, Chairperson, Santa Barbara County, Board of Supervisors, 401 East Cypress Avenue, Lompoc, California 93436.	April 13, 1995.	060331
California: Santa Barbara.	Unincorporated area	May 17, 1995, May 24, 1995, Santa Barbara News-Press.	The Honorable Tim Stoffel, Chairperson, Santa Barbara County, Board of Supervisors, 195 East Apanamu Street, Fourth Floor, Santa Barbara, California 93101.	April 21, 1995.	060331

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Santa Barbara.	City of Santa Maria .	May 17, 1995, May 24, 1995, Santa Maria Times.	The Honorable Roger G. Bunch, Mayor, CIty of Santa Maria, 110 East Cook Street, Santa Maria, California 93454.	April 21, 1995.	060336
Nevada: Clark	Unincorporated areas.	May 10, 1995, May 17, 1995, Las Vegas Review Journal.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County, Board of Commissioners, 225 Bridger Avenue, Las Vegas, Nevada 89155.	April 19, 1995.	320003
New Mexico: Bernalillo	City of Albuquerque	May 24, 1995, May 31, 1995, Albuquerque Journal.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	May 4, 1995	350002
Oklahoma: Comanche .	City of Lawton	May 24, 1995, May 31, 1995, Lawton Constitution.	The Honorable John T. Marley, Mayor, City of Lawton, 103 Southwest Fourth Street, Lawton, Oklahoma 73501.	April 26, 1995.	400049
Texas: Collin	City of Allen	May 24, 1995, May 31, 1995, McKInney Courier Gazette.	The Honorable Joe Farmer, Mayor, City of Allen, One Butler Circle, Allen, Texas 75002–2773.	April 26, 1995.	480131
Texas: Bexar	Unincorporated areas.	May 9, 1995, May 16, 1995, San Antonio Express News.	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Couurhouse, 100 Dolorosa, San Antonio, Texas 78205.	April 11, 1995.	480035
Texas: Tarrant	City of Colleyville	May 3, 1995, May 10, 1995, Fort Worth Star Telegram.	The Honorable Cheryl Seigel, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	March 30, 1995.	480590
Texas: Tarrant	City of Grapevine	May 3, 1995, May 10, 1995, Forth Worth Star Telegram.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76501.	March 30, 1995.	480598

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 11, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–18387 Filed 7–25–95; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 95–69, FCC 95–308]

Fees for Products and Services in Connection With Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order which establishes a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and bidder information packages. In establishing the fees, the Report and Order implements the Independent Offices Appropriations Act. The Commission's action in assessing the fees is to recoup the Federal Government's costs for providing such services and products.

EFFECTIVE DATE: July 26, 1995.

FOR FURTHER INFORMATION CONTACT: Bert Weintraub, Wireless Telecommunications Bureau, Tel. No. (202) 418–1316.

SUPPLEMENTARY INFORMATION: This is the complete text of the Report and Order which was adopted on July 21, 1995, and released on July 21, 1995.

I. Introduction

1. In this Report and Order, we amend Part 1 of the Commission's Rules to establish a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and for bidder information packages, We conclude that assessment of these charges is reasonable and necessary to recoup the Commission's costs for providing such services and products. Specifically, we will assess the following fees to bidders and other interested parties:

- $2.30 per minute for access via a 900 number telephone service to the Commission's Wise Area Network (FCC WAN) system that will enable users to bid electronically from remote locations and access licensing databases.
- $175.00 for remote bidding software package.
- No charge for the first bidder information package requested, and a $16.00 fee for each additional package that is subsequently requested by the same party.

II. Background

2. The Omnibus Budget Reconciliation Act of 1993, Public Law No. 103–66, Title VI, section 6002(b), 107 Stat. 312, authorized the Commission to award licenses by competitive bidding where mutually exclusive applications for initial licensing are received for subscriber-based services for compensation. Under this authority, the Commission, to date, has conducted three auctions for Personal Communications Service (PCS) licenses.[1] In previous Commission auctions, remote electronic bidding was provided by Business Information network (BIN). Bidders electing to bid electronically from remote locations (*i.e.*, not at the FCC auctions site) paid

[1] The three PCS auction conducted thus far are: (1) The Nationwide Narrowband PCS auction, held from July 25 through July 29, 1994; (2) the Regional PCS Narrowband auction held October 26 through November 8, 1994; and (3) the broadband PCS A and B block auction, held December 5, 1994, through March 13, 1995. All three of these auctions were conducted as simultaneous multiple round auctions. In a simultaneous multiple round auction, auction participants submit bids on specific licenses in each round of the auction. The auction closes when there are no new bids during a bidding round on any of the offered licenses. See Second Report and Order, PP Docket No. 93–253, 9 FCC Rcd 2348 (1994), 59 FR 22,980 (1994).

BIN a fee for the remote bidding software and an on-line computer access charge. The fee covered BIN's costs to develop and provide remote bidding access.

3. Due to the experience gained from these three auctions, the Commission has developed its own remote electronic access system that utilizes Wide Area Network or WAN technology. This system (FCC Wan) would allow bidders and other interested parties to file applications electronically, bid electronically, access auction round results, and query FCC licensing databases from their personal computers from remote locations The Commission has also developed a number of proprietary software applications to support the remote electronic access system. Bidders and other interested parties would utilize a 900 number telephone service to access the FCC Wan system. The Commission has incurred significant costs in developing this remote electronic access system. Such costs include: infrastructure design and implementation; software development and testing; and other administrative/personnel costs.

4. On May 16, 1995, we adopted a Notice of Proposed Rulemaking (Notice)[2] seeking comment on a proposed schedule of fees to be assessed in future auctions for access to certain on-line computer services, and for obtaining proprietary bidding software as well as multiple bidder information packages. In order to recoup our costs, we proposed to charge a fee to bidders and other interested parties for access to the FCC WAN system and for obtaining the proprietary bidding software needed to make use of the system's electronic bidding functions. We also proposed recouping some of the printing and production costs associated with providing bidder information packages to prospective auction participants. Specifically, we indicated that parties would continue to receive one complimentary bidder information package, but suggested charging a fee for additional packages that are requested.

5. We also observed that under government regulations any funds received from the sale of materials, software, or services must go directly to the U.S. Treasury. See 31 U.S.C. 3302(b); 69 Comp. 260, 262(1990). We noted that the Independent Offices Appropriation Act of 1952, as amended (IOAA), 31 U.S.C. 9701, permits the government to impose fees and charges for services and things of value. The IOAA authorizes agencies to prescribe regulations establishing charges for products and services provided by an agency. The charges must be fair and must be based on the costs to the government, the value of the service or product to the recipient, the public policy or interest served, and other relevant facts. See 31 U.S.C. 9701(b). In addition, we indicated that the Office of Management and Budget (OMB) has issued policy guidelines on use of fees in Circular A–25 (OMB Circular),[3] which was recently revised. We noted that the revised OMB Circular, encourages the assessment of fees for government-provided products and services, and provides that agencies must establish fees based on either a ''full-cost'' or ''market price'' analysis.

6. More specifically, we proposed in the Notice to calculate our fees on the basis of ''market price''[4] rather than utilizing a ''full cost'' pricing analysis.[5] In particular, we proposed to utilize prevailing price methodology to determine the fees for the FCC WAN system use, the proprietary bidding software, and the additional bidder information packages. We proposed the following fees: (1) $4.00 per minute for access via a 900 number to the FCC WAN system; (2) $200.00 for each remote bidding software package; and (3) $16.00 for each additional bidder information package (including postage) requested beyond the one complimentary copy that is made available. We sought comments on these charges, and on comparable market prices for similar products and services that are offered to the public.

7. BellSouth Corporation (BellSouth), Rural Telecommunications Coalition (RTC) and AirTouch Paging (AirTouch) filed formal comments and National Paging & Personal Communications Association (NPPCA) and Kennedy-Wilson International (KWI) filed informal comments by letter in response to the Notice.

III. Discussion

8. BellSouth questions whether the Commission can assess fees for its auction-related services under IOAA, when Section 309(j)(8)(B) of the Communications Act already authorizes the Commission to recover the cost of conducting auctions from auction revenues. We conclude that assessing fees for use of the Commission's FCC WAN system as described above is fully consistent with our competitive bidding obligations under the Communications Act and with other laws and regulations that govern fees. See 47 U.S.C. 309(j)(8)(B); 31 U.S.C. 9701(a). Assessing a fee to bidders using certain on-line computer services and bidding software is a reasonable and efficient means of recovering the costs associated with developing, maintaining, enhancing, and upgrading this important system and its companion software. Indeed, our proposal supports a congressional goal set forth in the IOAA, which is that ''each service or thing of value provided by an agency * * * to a person * * * be self-sustaining to the extent possible.'' See 31 U.S.C. 9701(a). Moreover, contrary to BellSouth's suggestion, nothing in Section 309(j)(8)(B) prohibits the Commission from imposing fees on auction participants under the IOAA.

A. On-Line Computer Access Charges

9. *Comments.* BellSouth, RTC, and AirTouch oppose the Commission's proposal to establish on-line access charges by comparing the FCC WAN system with the costs associated with access to Westlaw and Lexis-Nexis services, claiming the comparison is invalid. RTC contends that the fee for 900 service should be based upon ''full cost'' and not ''market price.'' In addition, BellSouth and NPPCA assert that there is no alternative to remote electronic bidding procedures. Additionally, NPPCA claims there is already a fee to file applications electronically.

10. *Decision.* After considering the record, we will charge $2.30 per minute for access to the FCC WAN system for purposes of bidding electronically, reviewing other applications (e.g., FCC Form 175 or FCC Form 600 applications), and obtaining available licensing database information. We emphasize, however, that we will not charge a user a fee for accessing this system for the purpose of filing a short- or long-form application electronically. There will be a clear delineation between services for which on-line access fees will be charged and services for which no on-line access fees will be charged. Users who download from the FCC's electronic bulletin board or from the Internet software specific to a service for which we intend to charge on-line access fees will receive clear notification that execution of this software will result in on-line access fees. In addition, when a caller executes software specific to a service for which

[2] WT Docket No. 95–69, 10 FCC Rcd 7066 (1995), 60 FR 26,860 (1995).

[3] See *FPC* v. *New England Power Co.*, 415 U.S. 345, 349–51 (1974) (citing the OMB Circular).

[4] ''Market price'' means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service. See OMB Circular at 58 Fed. Reg. 38,145.

[5] ''Full cost'' includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. See OMB Circular at 58 FR 38,145.

we intend to charge on-line access fees, there will be a grace period, free of charge to the caller. During the grace period, the caller will be advised of the associated pricing, basic program content, sponsor information, and provided the option to disconnect without being charged. Charges to the caller will not begin until the grace period has ended. Instructions on downloading and executing software specific to a particular service will be made available by Public Notice prior to the availability of that service.

11. In arriving at this $2.30 fee, we considered that the FCC WAN system will provide services that are similar to both the electronic bidding capabilities previously offered by BIN and to database services provided by Westlaw or Lexis-Nexis. For previous auctions, the cost for on-line electronic bidding through BIN was $23.00 per hour, which equals $.38 per minute (rounded). The average cost associated with access to on-line database services such as Westlaw or Lexis-Nexis is $4.23 per minute.

12. While our new remote electronic bidding system is similar to BIN, which charged $23.00 per hour, FCC WAN system access to the Commission's licensing databases is more like the services provided by Westlaw or Lexis-Nexis. Both Westlaw and Lexis-Nexis provide on-line database access for research purposes to legal and other research professionals. We have therefore averaged the costs of these two types of services to arrive at a fee of $2.30 per minute for on-line access to the FCC WAN system. BellSouth and AirTouch argue that the Commission should use other information service providers such as CompuServe, Prodigy, Internet and America On-line as comparisons in determining a price per minute for access to the FCC WAN system. According to the commenters, these particular services range in price from $10.00 to $30.00 per month for limited access and $3.00 to $10.00 per hour for special services. These providers market their products and services to the general public, however, and their fees obviously reflect the high volume of users that are serviced by them. By comparison, the Commission's auction and licensing databases are of interest to a relatively small number of potential users. Westlaw or Lexis-Nexis, however, do service a small number of users with information that is akin to the licensing database information we plan to offer. Consequently, their pricing provides a more relevant comparison for establishing our fees here.

13. We note that OMB guidelines provide that the price of the government-provided service must be adjusted to reflect the ''level of service and quality of the good or service'' when compared to a similar commercial service. OMB Circular at 58 FR 38145. In this regard, we believe it is reasonable to charge a higher per-minute fee for our remote bidding system than was charged by BIN because of the enhanced bidding functionality of the FCC WAN system. Specifically, electronic bidding via the FCC WAN system is expected to be faster and more efficient[6] than BIN. Bidders will have the option of uploading bids from a file that they have created off-line, which will reduce the time required to submit and verify bid submissions. Also, bidders will be able to develop round results files based on their individual needs. In addition to remote bidding and round results, the system also will provide for access to the Commission's licensing databases (*i.e.,* to locate and review other applications). Moreover, the FCC WAN system permits applications to be filed electronically (*e.g.,* the FCC Form 175 and the FCC Form 600).

14. In addition, we reject RTC's argument that charging for 900 number service should be based on ''full cost'' instead of ''market price.'' First, OMB has given us the discretion to choose either methodology. Second, based on our examination of the two methodologies, we conclude that application of a ''market price'' approach is more practical and efficient for our purposes here. In this regard, we note that the Commission will incur costs of approximately $700,000 for one year of service for the expanded telephone cabling required to implement the Commission's on-line bidding system.[7] This figure alone, however, does not reflect all of the cost components to be included within OMB's definition of ''full cost.'' Attempting to apportion ''full cost'' to individual auctions, which will each vary in duration, number of bidders and number of licenses, is administratively unworkable. Thus, we conclude that the ''full cost'' methodology is inappropriate in this context. This analysis answers BellSouth's concerns that we have not provided any estimate of Commission costs. We reiterate that market price remains the only viable methodology in establishing a fee for 900 service. Likewise, AirTouch's assertion that a $.15 to $.20 per minute charge for 900 service. Likewise, AirTouch's assertion that a $.15 to $.20 per minute charge for 900 service would recoup the Commission's costs is an attempt at the ''full cost'' recovery methodology, which we have declined to use.

15. Finally, we are not persuaded by BellSouth's or NPPCA's argument that there is no alternative to remote electronic bidding procedures and therefore no fee should be charged for this service. We note that bidders may continue to place bids through a 800 telephone number service free of charge.[8] In addition, contrary to NPPCA's belief, we have not established a fee for electronic filing of the FCC Form 175. In order to encourage auction participants to file their short-form applications electronically, as noted above, we do not plan to charge for this particular use.

B. Auction Bidding Software

16. *Comments.* BellSouth, RTC, and AirTouch generally argue that there are a number of comparable software packages on the market that are substantially cheaper than the $200.00 fee proposed by the Commission for fee proposed by the Commission for its bidding software package. They provided names of various computer companies, computer programs and protocols, as well as various dollar amounts in support of their arguments.

17. *Decision.* After reviewing the comments and alternative prices suggested, we have decided to assess a fee of $175.00 for the remote bidding software package made available to each user on the FCC WAN system. We will not, however, charge for software that is necessary for users to file applications electronically on the FCC WAN system. Also, we will not charge for software

[6] Our FCC WAN system is demonstrably faster than the BIN system used in previous auctions, according to our test results. For example, using BIN, the average amount of on-line time for the Regional Narrowband auction was 16 minutes, 37 seconds per bidding round whereas the average amount of time using the new system in a mock Regional Narrowband auction was 12 minutes, 26 seconds per bidding round (*i.e.,* using a comparison of 30 licenses).

[7] The Notice pointed out that the General Services Administration (''GSA'') was in the process of making arrangements to add 900 service to the Federal Telecommunications System (''FTS'') 2000 contract, which is the government-wide telephone system. The Notice should have additionally mentioned that point-to-point telephone cabling upgrades were also added to the FTS contract. Since release of the Notice, installation of the expanded telephone cabling has been ordered but addition of the 900 service is pending and will not be added until this Report and Order has been adopted and released.

[8] As in previous auctions, bidders still will have the option of placing their bids from remote locations via an 800 telephone number service at no charge. Round results information also will be available to bidders over the Internet and on a FCC electronic bulletin board at no charge.

that is needed for users to access the Commission's licensing databases (although as discussed *supra,* FCC WAN users will be charged $2.30 per minute for actually accessing the Commission's licensing database). We base our $175.00 price on the BIN bidding software which was made available to bidders in previous Commission auctions for a $200.00 charge. We will reduce this fee by $25.00, however, because our system does not include a communications component that was provided as part of the BIN software package. Specifically, the $25.00 reduction represents the cost of certain technical protocols that are necessary for remote electronic bidders and other interested parties to access the Commission's remote electronic system.[9]

18. AirTouch argues that computer software programs such as Procomm, Telix, Crosstalk and SLIP PPP are appropriate comparisons to the FCC remote bidding software and should be used in determining the market price of our bidding software. For two reasons, we do not believe these software packages are ''price comparable'' to the bidding software we plan to offer. First, the programs cited by AirTouch are produced for large numbers of users whereas our software is targeted to a small group of users. Second, these programs are more limited in scope and function than the FCC's software. Specifically, the cited programs are communications and technical protocols only whereas the FCC's software package is a more sophisticated logic-based program that will enable users to submit and withdraw bids electronically.

C. Bidder's Information Package

19. *Comments.* None of the commenting parties challenge the methodology used to calculate the $16.00 cost for each additional bidder information package. AirTouch nevertheless opposes a charge for additional bidder information packages, and claims it will be difficult to enforce the policy. KWI, on the other hand, states the Commission should charge $50.00 to $100.00 for bidder information packages to ensure they are distributed to persons with a serious interest in the auction process.

20. *Decision.* We conclude that it is both fair and reasonable to provide one complimentary bidder information package to each person or entity, and to charge $16.00 for each additional package (including postage) requested by the same person or entity. The $16.00 charge is based on the average direct costs incurred by the Commission to duplicate, bind and mail such packages.

21. We observe that nothing prevents a recipient of a complimentary bidder information package from making additional copies at his or her own expense. We are unpersuaded that charging for additional bidder information packages violates the public interest or will be unduly burdensome to enforce, as AirTouch suggests. We also reject KWI's suggestion that we charge $50.00 to $100.00 for bidder information packages since we think such charges would not be consistent with OMB guidelines.

D. Payment of Fees Methodology

22. *Comments.* None of the commenting parties object to the proposed inclusion of the FCC WAN on-line access charges on the user's long distance telephone bill. Moreover, none of the commenters express any opposition to having the fees for the bidding software and the bidder information packages collected by credit card or cashier checks. KWI suggests expanding the payment method to include personal and corporate checks.

23. *Decision.* Charges for on-line access to the FCC WAN system will be included in the form of 900 number service charges on each user's long distance telephone bill. Each user will pay its long distance telephone company directly for these charges. As for bidding software and additional bidder information packages, we will permit payment by credit card and cashier's check. Further, we agree that personal or corporate checks should be permitted and will permit payment in this manner as long as such checks sufficiently identify the payor. All checks should be made payable to the ''Federal Communications Commission'' or ''FCC.'' The Commission contracts with an auctioneer for each auction, and it is the auction contractor that will be responsible for administering payments of the bidding software and additional bidder information packages. Bidders may obtain the FCC's bidding software and bidder information packages from the FCC's auction contractor. Specific instructions for purchasing the software and bidder information packages will be made available by Public Notice prior to the start of each auction.

IV. Procedural Matters

24. Pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, Stat. 1165, 5 U.S.C. 601, *et seq.* (1981), the Commission attached an Initial Regulatory Flexibility Analysis (IRFA) as Appendix A to the Notice in WT Docket No. 95–69. Written comments on the IRFA were requested. The Commission's Final Regulatory Flexibility Analysis is as follows:

A. Need and Purpose of the Action. This rulemaking proceeding is taken to implement the Commission's establishment and collection of fees for the Commission's proprietary remote software packages, on-line communications service charges, and bidder's information packages in connection with auctionable services. The rules specifically set forth the amounts that are to be paid in connection with bidding for auctionable services. The objective of this proceeding is to collect the necessary amounts through the fees being adopted, with the funds going to the U.S. Treasury.

B. Issues Raised in Response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered and Rejected. All significant alternatives have been addressed in this Report and Order.

D. Description, Potential Impact, and Number of Small Entities Involved. Because the Commission will provide proprietary remote software packages, on-line communications services, and bidder's information packages directly, the fees assessed and collected will recover the Government's costs. While the number of small entities impacted by these fees is unknown, any such impact is likely to be insubstantial. Moreover, the Commission has provided alternative remote access options free of charge.

25. For further information on the assessment and collection of the charges established by the rules adopted herein, contact Bert Weintraub, Wireless Telecommunications Bureau, Auctions Division, at (202) 418–1316.

V. Ordering Clause

26. Accordingly, *it is ordered* That pursuant to the authority of Sections 4(i) and (j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 303(r), and 309(j), as well as the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. 9701, Part 1 of the Commission's Rules, 47 C.F.R. Part 1, is amended to assess and collect fees in connection with auctionable services as set forth below, effective upon publication in the **Federal Register.** Pursuant to 5 U.S.C.

[9] Such technical protocols are available ''off the shelf'' and can be purchased for approximately $25.00. Examples of these protocols are Trumpet, NetManage Chameleon and Wollongong Pathway Access.

553(d)(3), we conclude that ''good cause'' exists to have the rule amendments set forth in this Report and Order take effect immediately upon publication in the **Federal Register.** The Commission's next auction is presently scheduled to commence on August 29, 1995, and short-form applications for that auction are due on July 28, 1995.[10] In order to provide for a smooth transition to the new computer system and software discussed in this Report and Order, it is necessary to institute our fee schedule prior to the start of this upcoming auction.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Sections 1.1181 and 1.1182 are added to Subpart G to read as follows:

§ 1.1181 Authority to prescribe and collect fees for competitive bidding-related services and products.

Authority to prescribe, impose, and collect fees for expenses incurred by the government is governed by the Independent Offices Appropriation Act of 1952, as amended , 31 U.S.C. 9701, which authorizes agencies to prescribe regulations that establish charges for the provision of government services and products. Under this authority, the Federal Communications Commission may prescribe and collect fees for competitive bidding-related services and products as specified in § 1.1182.

§ 1.1182 Schedule of fees for products and services provided by the Commission in connection with competitive bidding procedures.

Product or service	Fee amount	Payment procedure
On-line remote access 900 Number Telephone Service).	2.30 per minute	Charges included on customer's long distance telephone bill.
Remote Bidding Software	$175.00 per package	Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.)
Bidder Information Package	First package free; $16.00 per additional package (including postage) to same person or entity.	Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.)

[FR Doc. 95–18451 Filed 7–25–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–52; RM–8604]

Radio Broadcasting Services; Roann, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Roann, Indiana, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Roann Broadcasting. *See* 60 FR 22022, May 4, 1995. Roann is located within 320 kilometers (199 miles) of the United States-Canadian border and therefore, concurrence of the Canadian government in this proposal was obtained. Coordinates used for Channel 270A at Roann are 40–55–18 and 85–55–30. With this action, the proceeding is terminated.

DATES: Effective September 5, 1995. The window period for filing applications will open on September 5, 1995, and close on October 6, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 270A at Roann should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–52, adopted July 13, 1995, and released July 20, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Roann, Channel 270A.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 95–18280 Filed 7–25–95; 8:45 am]

BILLING CODE 6712–01–F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 34)]

Rail General Exemption Authority—Exemption of Hydraulic Cement

AGENCY: Interstate Commerce Commission.

ACTION: Final rule with request for comments.

[10] See Public Notice, DA 95–1420, released June 23, 1995.

SUMMARY: The Commission is exempting from regulation the transportation by rail of hydraulic cement (STCC No. 32–4). Except for those shipments from the South Dakota State Cement Plant Commission (herein ''Dacotah'') cement plant in Rapid City, SD, as to which further comment is sought, this commodity is added to the list of exempt commodities, as set forth below. This exemption does not embrace exemptions from regulation of car hire and car service.

DATES: This final rule is effective on August 25, 1995. Comments are due on August 25, 1995. Replies to comments are due on September 14, 1995.

ADDRESSES: Comments referring to Ex Parte No. 346 (Sub-No. 34) to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

On October 21, 1993, at 58 FR 54317, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of hydraulic cement. The comments have been received and analyzed. We are approving AAR's proposal except for those shipments of hydraulic cement from the Dacotah cement plant at Rapid City, SD.

The Commission seeks comments on (1) whether the Dacotah Cement facility at Rapid City, SD is rail captive and (2) the extent to which the Commission's decision in *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company,* Finance Docket No. 32133 (ICC served Mar. 7, 1995) has an impact on the Commission's consideration on this matter. Comments shall be due August 25, 1995. Replies to the comments are due September 14, 1995.

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources. We also reaffirm our initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1039.

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: July 14, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, the table in paragraph (a) is amended by adding the following new entry in the correct numerical order to STCC tariff 6001–V to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
* *	* *	* *
32–4	6001–V, eff.1–1–94.	Hydraulic cement, except shipments from the Dacotah Cement plant at Rapid City, SD.
* *	* *	* *

* * * * *

[FR Doc. 95–18403 Filed 7–25–95; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 60, No. 143
Wednesday, July 26, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AD83

Revision of Specific Exemptions Under the Privacy Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations implementing the Privacy Act of 1974, as amended (Privacy Act), to reflect the addition of exemptions in subsections (j)(2) and (k)(5) to an existing system of records and to update the list of exemptions that apply to specific NRC systems of records.

DATES: Submit comments by September 5, 1995. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Examine comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Privacy Act Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION: The proposed amendments to 10 CFR Part 9 would add exemptions authorized by subsections (j)(2) and (k)(5) of the Privacy Act to those that are currently in place for NRC–18, Office of the Inspector General (OIG) Investigative Records—NRC, under subsections (k)(1), (k)(2), and (k)(6). Under subsection (j)(2), the head of an agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records is maintained by an agency or component thereof that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws and that consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

NRC–18 contains information of the type described above and is maintained by the Office of the Inspector General (OIG), a component of NRC which performs as one of its principal functions investigations into violations of criminal law in connection with NRC's programs and operations in accordance with the Inspector General Act of 1978, as amended. Therefore, pursuant to subsection (j)(2), NRC proposes to exempt information maintained in this system of records from all provisions of the Privacy Act except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11), and (i).

The disclosure of information contained in NRC–18, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of these investigations could enable suspects to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants and witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel, and their families. The imposition of certain restrictions on the way investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity. The exemption is needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following specific reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at the individual's request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and that they are subjects of the investigation. The release of this information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is being exempted from subsection (d) concerning access to records, this section is inapplicable to the extent that the system of records will be exempted from subsection (d) of the Privacy Act.

(3) 5 U.S.C. 552a (d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in these

records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Permitting the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in agency records only ''relevant and necessary'' information about an individual. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The general rule that information be collected ''to the greatest extent practicable'' from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. It is often necessary to conduct an investigation so the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also prevent an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with the evidence or information. In certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. It is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term ''to the greatest extent practicable'' is a subjective standard. It is impossible to define the term adequately so that individual OIG investigators can consistently apply it to the many fact patterns present in OIG investigations.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information on a form that can be retained by the person of the authority under which the information is sought and whether disclosure is mandatory or voluntary, of the principal purposes for which the information is intended to be used, of the routine uses that may be made of the information, and of the effects on the person, if any, of not providing all or some part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, investigators, and their families, by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual at his or her request, if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Because this system of records is being exempted from subsections (d) and (f) of the Privacy Act concerning access to records and agency rules, respectively, these requirements are inapplicable to the extent that the system of records will be exempted from these requirements. However, OIG has published some information concerning its notification, access, and contest procedures. Under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his or her records in the system.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will continue to publish such a notice in broad generic terms as is its current practice.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this proposed exemption as that set out previously in item (4) (duty to maintain in agency records only ''relevant and necessary'' information about an individual). Although the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all of the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. When OIG decides to refer the matter to a prosecutive agency, for example, that information would be in the system of records and it may not be possible until further investigation is conducted, or indeed in many cases until after a trial (if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is ensured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

(10) 5 U.S.C. 552a(g) provides for civil remedies if any agency fails to comply with the requirements concerning

access to records under subsections (d)(1) and (3) of the Privacy Act, maintenance of records under subsection (e)(5) of the Privacy Act, and any other provision of the Privacy Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the OIG system of records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file. A Privacy Act lawsuit could become a strategic weapon used to impede OIG investigations. Because the system would be exempt from many of the Privacy Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those specific provisions.

Under subsection (k)(5) of the Privacy Act, the head of an agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. However, these records would be exempt only to the extent that the disclosure of this material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

NRC–18 contains information of the type described above. Therefore, in accordance with subsection (k)(5), NRC proposes to exempt information maintained in this system of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosure of the records for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to grant access to the accounting of disclosures including the date, nature, and purpose of each disclosure, and the identity of the recipient. The release of this information to the record subject could alert them to the existence of the investigation or prosecutive interest by NRC or other agencies. This could seriously compromise case preparation by prematurely revealing the existence and nature of the investigation; compromise or interfere with witnesses, or make witnesses reluctant to cooperate; and could lead to suppression, alteration, or destruction of evidence.

(2) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in the records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claims growing out of the investigation or proceeding.

(3) 5 U.S.C. 552a(e)(1) requires agencies to maintain only ''relevant and necessary'' information about an individual in agency records. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(4) Because this system of records is being exempted from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information under subsections (d) and (f) of the Privacy Act, the **Federal Register** notice requirements of 5 U.S.C. 552a(e)(4) (G) and (H) are inapplicable.

(5) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. However, the OIG will continue to publish such a notice in broad generic terms as is its current practice.

In addition, 10 CFR 9.95 is being amended to update the list of exemptions that apply to specific systems of records. The list, as amended, will include NRC–23, Office of Investigations Indices, Files, and Associated Records—NRC, and NRC–35, Drug Testing Program Records—NRC, for which corresponding Part 9 amendments were not previously prepared when each new system was established. NRC–40 has been deleted from this list because a review of the system revealed that the subsections (k)(5) and (k)(6) exemptions of the Privacy Act were no longer needed. This amendment will eliminate any confusion regarding the specific exemption(s) applicable to each system of records.

Environmental Impact—Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0043.

Regulatory Analysis

This proposed rule would add exemption (j)(2) of the Privacy Act to the NRC regulations that describe the exempt systems of records. This is an administrative regulatory action that would make NRC's regulations consistent with the regulations applicable to the majority of the statutorily appointed Inspectors General. The proposed rule would also clearly link each system of records to the specific exemption(s) of the Privacy Act under which the system is exempt. As such, the proposed rule would not have an economic impact on any class

of licensee or the NRC. By more clearly indicating the exemptions under which a system is exempt and by conforming NRC's regulations to those of the majority of statutorily appointed Inspectors General, the proposed rule may provide some benefit to those who may be required to use these regulations.

The alternative to the proposed rule would be to refrain from adopting the identified exemptions. As discussed in this notice, however, failure to adopt the proposed rule could have detrimental effects on the OIG's investigative program and its ability to obtain and protect information.

This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR part 9 are procedural in nature and will aid an NRC office to perform its criminal law enforcement functions. In addition, the amendments will eliminate any confusion regarding specific exemptions available to each affected Privacy Act system of records notice.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this proposed rule and, therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552, 552a, and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570.

Subpart B also issued under 5 U.S.C. 552a.

Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.52, paragraph (b)(4) is revised to read as follows:

§ 9.52 Types of requests.

* * * * *

(b) *Requests for accounting of disclosures.* * * * (4) Disclosures expressly exempted by NRC regulations from the requirements of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a (j)(2) and (k).

3. In § 9.61, current paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 9.61 Procedures for processing requests for records exempt in whole or in part.

* * * * *

(b) *General exemptions.* Generally, 5 U.S.C. 552a(j)(2) allows the exemption of any system of records within the NRC from any part of section 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the act if the system of records is maintained by an NRC component that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crimes, or to apprehend criminals, and consists of—

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole, and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

* * * * *

4. In § 9.80, paragraphs (a) (6), (10), and (11) are revised and a new paragraph (a)(12) is added to read as follows:

§ 9.80 Disclosure of record to persons other than the individual to whom it pertains.

(a) * * *

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or designee for evaluation to determine whether the record has such value;

* * * * *

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

5. Section 9.95 is revised to read as follows:

§ 9.95 Specific exemptions.

The following records contained in the designated NRC Systems of Records (NRC–5, NRC–9, NRC–11, NRC–18, NRC–22, NRC–23, NRC–28, NRC–29, NRC–31, NRC–33, NRC–35, NRC–37, and NRC–39) are exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) in accordance with 5 U.S.C. 552a(k). In addition, the records contained in NRC–18 are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, under 5 U.S.C. 552a(j)(2), except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). Each of these systems of records is subject to the provisions of § 9.61:

(a) Contracts Records Files, NRC–5 (Exemptions (k)(1) and (k)(5));

(b) Equal Employment Opportunity Discrimination Complaint Files, NRC–9 (Exemption (k)(5));

(c) General Personnel Records (Official Personnel Folder and Related Records), NRC–11 (Exemptions (k)(5) and (k)(6));

(d) Office of the Inspector General (OIG) Investigative Records, NRC–18 (Exemptions (j)(2), (k)(1), (k)(2), (k)(5), and (k)(6));

(e) Personnel Performance Appraisals, NRC–22 (Exemptions (k)(1) and (k)(5));

(f) Office of Investigations Indices, Files, and Associated Records, NRC–23 (Exemptions (k)(1), (k)(2), and (k)(6));

(g) Recruiting, Examining, and Placement Records, NRC–28 (Exemption (k)(5));

(h) Nuclear Documents System (NUDOCS), NRC–29 (Exemption (k)(1));

(i) Correspondence and Records, Office of the Secretary, NRC–31 (Exemption (k)(1));

(j) Special Inquiry File, NRC–33 (Exemptions (k)(1), (k)(2), and (k)(5));

(k) Drug Testing Program Records, NRC–35 (Exemption (k)(5));

(l) Information Security Files and Associated Records, NRC–37 (Exemptions (k)(1) and (k)(5)); and

(m) Personnel Security Files and Associated Records, NRC–39 (Exemptions (k)(1), (k)(2), and (k)(5)).

Dated at Rockville, Md., this 18th day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18319 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

10 CFR Part 72

[Docket No. PRM–72–1]

Maryland Safe Energy Coalition; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–72–1) from Richard Ochs submitted on behalf of the Maryland Safe Energy Coalition. The petitioner requested several amendments to the regulations governing the independent storage of spent fuel in dry casks.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195.

SUPPLEMENTARY INFORMATION:

The Petition

On June 23, 1993, Mr. Richard Ochs, on behalf of the Maryland Safe Energy Coalition, filed a petition for rulemaking with the NRC.

The petition relates to generic requirements for the licensing of independent storage of spent fuel in dry casks found in the Commission's regulations contained in 10 CFR Part 72. In particular, Subpart B provides information required to be submitted in a license application, Subpart C provides requirements for the issuance and conditions of a license, Subpart D provides the requirements for the records that must be kept by a licensee, and Subpart E provides requirements for evaluation of the storage facility site.

The petitioner requested that the NRC amend 10 CFR Part 72 to read as follows:

1. In § 72.22(e)(2), ''Contents of application: General and financial information,'' add ''Specify the planned life of the ISFSI.''

2. In § 72.22(e)(3), ''Contents of application: General and financial information,'' change ''after the removal of spent fuel and/or high-level radioactive waste'' to ''if the spent fuel and/or the high-level radioactive waste is removed.''

3. In § 72.42, ''Duration of license; renewal,'' add a new paragraph (d) to read ''No license will be issued before 90 days after the final safety evaluation report (SER) is published.''

4. In § 72.44(c)(3), ''License conditions,'' add paragraph (v) to read ''dry storage casks must be monitored continuously for radioactivity at the exit cooling vents.''

5. In § 72.46(d), ''Public hearings,'' add ''The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published.''

6. In § 72.72(a), ''Material balance, inventory, and records requirements for stored materials,'' after the first sentence add ''The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing.''

7. In § 72.104(a) ''Criteria for radioactive materials in effluents and direct radiation from ISFSI or MSR,'' in place of ''real'' put ''maximally exposed''; after ''individual'' add ''or fetus''; change ''25 mrem'' to ''5 mrem''; change ''75 mrem'' to ''15 mrem''; and change ''25 mrem'' to ''5 mrem''. The sentence would then read, ''* * * dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ * * * ''

This petition for rulemaking stems from earlier actions regarding the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI). On December 21, 1992, the petitioner filed a petition requesting that the NRC institute a proceeding pursuant to § 2.206 with regard to the Calvert Cliffs ISFSI. In acknowledging the receipt of the December 21, 1992, petition, the Director, Office of Nuclear Material Safety and Safeguards, indicated that to the extent it addressed generic issues related to dry cask storage, the appropriate course of action would be to file a petition for rulemaking. The Director's decision dated August 16, 1993, denied the § 2.206 petition, Baltimore Gas and Electric Company (Calvert Cliffs Independent Spent Fuel Storage Installation), DD–9–14 (August 16, 1993); 58 FR 44863 (August 25, 1993). This rulemaking petition filed on June 23, 1993, addresses many of the generic issues that were raised in the December 21, 1992, § 2.206 petition.

Basis for Request

As a basis for the requested action, the petitioner stated that, as an environmental consumer organization, the Maryland Safe Energy Coalition is interested in the minimization and safe storage of nuclear waste including spent fuel at nuclear power plant sites in general.

The petitioner indicated that it is particularly concerned about spent fuel storage at the Calvert Cliffs Nuclear Power Plant, which is operated by Baltimore Gas and Electric Company (BG&E). The petitioner stated that even though the spent fuel at Calvert Cliffs is stored under a specific Part 72 license, many of the generic requirements proposed by the petitioner would be the same or similar to the specific requirements applicable to independent spent fuel storage at Calvert Cliffs.

Public Comments on the Petition

A notice of filing of petition for rulemaking was published in the **Federal Register** on September 8, 1993 (58 FR 47222). Interested persons were requested to submit written comments or suggestions concerning the petition by November 22, 1993. The NRC received five comment letters from the industry and industrial associations, four from individuals, one from an environmental group, and two from governmental agencies. The commenters were evenly split, six supporting all or parts of the petition and six rejecting the petition. The supporters' comments generally supported the additional 90 days to review the Safety Evaluation Report (SER), the need for records because of the uncertainty of knowing how long the spent fuel will be stored, the need for continuously monitoring radiation leaving storage cask vents, and lower radiation limits. The commenters objecting to the petition were more specific, often citing the Director's decision under § 2.206, *Baltimore Gas & Electric Co.* (Calvert Cliffs Independent Spent Fuel Storage Installation), DD–93–14, August 16, 1993. Concerning extending the opportunity for hearing or petition to 90 days after the final SER is issued, the objecting commenters cited the NRC hearing and petition processes as providing ample opportunity for public participation. In refuting the lower radiation limits, the objectors cited studies and reports by respected organizations and other regulations

including EPA's 40 CFR Part 190 and the recently revised 10 CFR Part 20. Additional information was also received from the petitioner. The petition and the comments received in response to the notice of filing are available for inspection in the NRC Public Document Room identified above.

Reasons for Denial

The NRC has considered the petitioner's requested amendments, the public comments received, and other related information. The following discussion addresses each of the seven parts of the petitioner's requested amendments quoted above and the NRC's response.

Part 1: The petitioner requests that § 72.22(e)(2) be revised by adding ''Specify the planned life of the ISFSI.''

In the existing § 72.22(e), there is already the requirement for the applicant to specify the period of time for which the license is requested. The petitioner's request is therefore unnecessary and redundant because the applicant is already required to specify the planned life of the ISFSI, that is, the period of time for which the license is requested.

Part 2: The petitioner requests that wording of § 72.22(e)(3) be changed from ''after the removal of spent fuel and/or high-level radioactive waste'' to ''if the spent fuel and/or the high-level radioactive waste is removed.''

DOE is required by the Nuclear Waste Policy Act of 1982 to accept spent fuel for ultimate disposal. Moreover, the Commission made a generic determination in its Waste Confidence Decisions (September 18, 1990; 55 FR 38474 and August 31, 1984; 49 FR 34694) that there is reasonable assurance that safe disposal is technically feasible and will be available within the first quarter of the 21st century. The NRC therefore does not believe it is either necessary or appropriate to revise the existing wording of the regulation as requested by the petitioner.

Part 3 and Part 5: The petitioner requests a new paragraph (d) be added to § 72.42 to read ''No license will be issued before 90 days after the final safety evaluation report (SER) is published.'' The petitioner believes that significant new issues will be contained in the final SER. The petitioner also requests that the following be added to § 72.46(d): ''The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published.'' The petitioner states that if a notice of opportunity for a hearing or intervention is limited to a short period after the license application, interested parties may be prevented from obtaining a hearing based on the second or final SER. Information in the latter safety reports may impact on the advisability of issuing a license. The public should have the right and opportunity to comment on the final Safety Analysis Report (SAR) and SER before a license is issued.

An applicant for a site-specific dry cask storage license is required by § 72.24 to submit a detailed safety analysis report (SAR) with the application for license to the NRC. The applicant's SAR contains the detailed basis for requesting a license and, more particularly, for demonstrating compliance with NRC licensing standards. Following receipt of an application, the NRC publishes a notice of docketing an application for an ISFSI in the **Federal Register** as required by § 72.16(e). This notice, which may be combined with a notice of opportunity for a hearing, will typically indicate where a copy of the detailed SAR may be examined. An individual is allowed 30 days from the notice of proposed action to request that NRC grant a hearing in accordance with § 2.105 and § 2.1107. The 30-day period is provided so that the individual can review the license application and SAR and determine whether to request a hearing or intervention. The SAR will provide ample information for the individual to make the determination. At the same time, the NRC technical staff will commence its review of the SAR and other relevant documents and preparation of an SER. These documents and the license are placed in the NRC Public Document Room and the Local Public Document Room near the licensee site where they are also available for review. Should the SER contain a new issue (as opposed to new evidence on an issue apparent from the SAR) pertinent to the requested license, an interested party could seek late intervention or submit a late-filed contention as allowed by § 2.714. Finally, a party can petition the NRC to modify a license if new information comes to light after the license is issued. Thus, an individual has ample opportunity to participate in the ISFSI licensing process and to review and raise issues concerning the SER. Adding another 90-day delay in issuing the license would not significantly improve the process for licensing the safe operation of an ISFSI.

Part 4: The petitioner requests a new paragraph (v) be added to § 72.44(c)(3) to read ''dry storage casks must be monitored continuously for radioactivity at the exit cooling vents.'' The petitioner states that the exit vents are the most likely location of radioactive venting, and it is therefore logical that monitors would be required at these locations.

NRC regulations already require that the license (or Certificate of Compliance in the case of an NRC approved cask) include surveillance and monitoring requirements to determine when corrective actions need be taken to maintain safe storage conditions. See, e.g., 10 CFR 72.122(h)(4). In addition, radiation monitoring and environmental monitoring programs are also already required (e.g., 10 CFR 72.126), and these programs can be expected to detect any radiation leak in excess of NRC limits from an NRC-approved cask. Furthermore, the NRC-approved cask designs which use cooling vents and air flow between the fuel canister and the concrete biological shield for cooling also are designed to require double seal closure welds on the canister. These welds are inspected and the canister leak tested after being loaded. There is no known long-term degradation mechanisms which would cause the weld to fail within the design life of the canister. Therefore, the regulation proposed by the petitioner is not needed.

Part 5: The response to this part has been combined with the response to Part 3 and is addressed above.

Part 6: The petitioner requests that the following be added after the first sentence in § 72.72(a): ''The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing.'' The petitioner states that defective fuel can cause problems for safe storage; therefore, the history and condition of all spent fuel should be documented.

NRC regulations already require that the license (or Certificate of Compliance in the case of an NRC-approved cask) must include specifications for the conditions of fuel assemblies to be loaded into storage casks. See, e.g., 10 CFR 72.44(c). These regulations also require that licensees must demonstrate in procedures and records that the fuel load meets the cask design criteria. In addition, licensees must conduct loading operations in accordance with written procedures which must be specific enough to demonstrate that only fuel assemblies that meet the cask design criteria can be loaded. Licensees are required to maintain records, including the condition of the fuel, of

all fuel assemblies in storage casks or in the pool. See, e.g., 10 CFR Part 50 Appendix B, XVII, ''Quality Assurance Records,'' and 10 CFR 72.174, ''Quality Assurance Records.'' Therefore, additional records as proposed by the petitioner are not necessary.

Part 7: The petitioner requests the following revisions to § 72.104(a): in place of ''real'' put ''maximally exposed''; after ''individual'' add ''or fetus''; change ''25 mrem'' to ''5 mrem''; change ''75 mrem'' to ''15 mrem''; and change ''25 mrem'' to ''5 mrem.'' The sentence will then read, ''* * * dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ * * *''

The change of the word ''real'' to ''maximally exposed'' in § 72.104(a) is not needed. In the regulation, the word ''real'' in the phrase ''The annual dose equivalent to any real individual who is located beyond the controlled area * * *'' refers to an individual who lives closest to the boundary of the controlled area. This individual is, in general, the maximally exposed individual because other individuals are further away from the controlled area. If the petitioner's suggested words ''maximally exposed'' were adopted, it could mean that an imaginary individual would be continually present at the boundary of the controlled area. The NRC regulates radiation doses on the basis of real people in proximity to the boundary of the controlled area.

Section 72.104(a) establishes the bases for the amount of radioactive materials permitted in ISFSI effluents and direct radiation from an ISFSI. It imposes limits on the annual dose equivalent that is received by an individual who is located beyond the controlled area. The petitioner referred to a 1990 study by Alice Stewart that allegedly supports the conclusion that the standards incorporated in § 72.104(a) are too high for a developing fetus, women, and children. The petitioner cited additional references during the comment period.

Section 72.104(a) does not incorporate exposure limits that are unique to ISFSI operation. Rather, the exposure limits used in Part 72 are based on the Environmental Protection Agency's (EPA) Environmental Radiation Standards for fuel cycle facilities specified in 40 CFR Part 190. 45 FR 74693 (November 11, 1980). Moreover, the EPA, commenting on the proposed 10 CFR Part 72, stated: ''Our only comment of substance concerns your requirement that such independent storage facilities provide radiation protection consistent with the Agency's public health protection standards for the Uranium Fuel Cycle (40 CFR 190). We generally support your use of these requirements.''

The § 72.104(a) exposure limits are also consistent with the recent revision of 10 CFR Part 20—Standards for Protection Against Radiation which became effective on January 1, 1994. This revision was comprehensive in scope and reflects state-of-the-art data on radiation protection. This revision was based on recommendations and studies of expert groups through 1990, including the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, the United Nations Scientific Committee on the Effects of Atomic Radiation, and the National Academy of Science's Committee on the Biological Effects of Ionizing Radiation (BEIR). Among other things, these studies analyzed the data on radiation exposure to a developing fetus. In sum, the NRC's radiation protection standards are based on a body of recent, authoritative, and substantial data. The petition fails to provide an adequate basis for its requested revisions to § 72.104(a).

It should also be noted that both 10 CFR Parts 20 and 72 have requirements to keep radiation exposures as low as reasonably achievable (ALARA). Experience to date with ISFSI operations has demonstrated that due to the conservative ISFSI designs and the application of ALARA requirements, the radiation levels associated with ISFSI operations are in fact well below regulatory limits.

For the foregoing reasons, the petition is denied.

Dated at Rockville, Maryland, this 11th day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18318 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Chapter III

Water Quality Regulations; Proposed Amendments to Comprehensive Plan, Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on proposed amendments to its Comprehensive Plan, Water Code and Water Quality Regulations concerning water quality criteria for toxic pollutants and policies and procedures to establish wasteload allocations and effluent limitations for point source discharges to Zones 2 through 5 (Trenton, New Jersey to the Delaware Bay) of the tidal Delaware River.

DATES: The public hearings are scheduled as follows: October 5, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

October 11, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m. and resuming at 6:30 p.m. and continuing until 9:00 p.m., as long as there are people present wishing to testify.

October 13, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearings.

ADDRESSES: The October 5, 1995 hearing will be held in the Second Floor Auditorium of the Carvel State Building, 820 North French Street, Wilmington, Delaware.

The October 11, 1995 hearing will be held in the Franklin Room of the Holiday Inn at 4th and Arch Streets, Philadelphia, Pennsylvania.

The October 13, 1995 hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Telephone (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background and Rationale

The 1987 amendments to the Federal Clean Water Act required states to adopt water quality criteria for all toxic pollutants for which the U.S. Environmental Protection Agency has issued criteria guidance. This requirement resulted in a total of five separate sets of criteria which apply to the tidal portions of the Delaware River from the head of the tide at Trenton, New Jersey to Delaware Bay. In response, the Commission established

the Delaware Estuary Toxics Management Program in 1989, an interstate, cooperative effort, to develop uniform policies and procedures to control the release of substances toxic to humans and aquatic life in point source discharges to the tidal Delaware River.

The principal outputs of the program are:

1. Uniform water quality criteria for toxic pollutants for the mainstem river and tributaries to these waters up to the head of the tide to protect aquatic life, and human health through ingestion of water and fish, and

2. Uniform policies and procedures to establish wasteload allocations and effluent limitations for toxic pollutants for NPDES permits for point sources discharging to these waters.

In 1992, the Commission held briefings on recommended water quality criteria for toxic pollutants to solicit input from the public and regulated community. In 1994, briefings were held on recommended policies and procedures for establishing wasteload allocations and effluent limitations for point source discharges.

The proposed changes to the Commission's regulations were developed with scientific, academic and policy input from the Commission's Water Quality Advisory Committee. Participants in Committee deliberations included representatives from the environmental departments of Delaware, New Jersey, New York, Pennsylvania; U.S. Environmental Protection Agency Regions II and III; and public members from the University of Rhode Island and the Academy of Natural Sciences. Members of the general public also attended various Committee meetings. Comments received from the public briefings and the inputs received through the Advisory Committee deliberations have led to the revisions now being proposed.

Specifically, water quality criteria for selected toxic pollutants are proposed for incorporation in the Comprehensive Plan and Article 3 of the Water Code and Water Quality Regulations as stream quality objectives. Revisions are also proposed for Article 4 of the Water Quality Regulations describing the policies and procedures to be used to establish wasteload allocations for those discharges containing pollutants which impact the designated uses of the river.

Adoption of these revisions will provide a mechanism for identifying toxic pollutants which may impair aquatic life and human health, and developing uniform and equitable wasteload allocations for these pollutants for all NPDES discharges to the tidal Delaware River. The permitting authorities of the states will utilize the allocations developed by the Commission to establish effluent limitations for NPDES permittees in their jurisdictions.

The Commission has prepared Basis and Background Documents entitled ''Water Quality Criteria For Toxic Pollutants For the Delaware River Estuary'' and ''Implementation Policies and Procedures: Phase I TMDLs For Toxic Pollutants in the Delaware River Estuary''. These Documents describe the proposed amendments and their rationale in considerable depth and may be obtained by contacting Christopher M. Roberts at the Commission at (609) 883–9500 ext. 205.

Copies of the full text of the proposed amendments may be obtained by contacting Ms. Weisman at the address provided in **FOR FURTHER INFORMATION CONTACT.** Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed amendments should also be submitted to the Secretary.

Delaware River Basin Compact, 75 Stat. 688.

Dated: July 17, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–18301 Filed 7–25–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Notice of Fixed Charge Rate Methodology

Issued July 14, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking and supplemental notice of proposed rulemaking; notice of fixed charge rate methodology.

SUMMARY: The Federal Energy Regulatory Commission's notice of proposed rulemaking in this proceeding in footnote 403 (60 FR 17662 at 17720, April 7, 1995) referred to the representative transmission fixed charge rate of 17.5 percent. This notice demonstrates the derivation of that rate.

DATES: Comments on the proposed rule are due on or before August 7, 1995; reply comments are due on or before October 4, 1995.

FOR FURTHER INFORMATION CONTACT:

David D. Withnell (Legal Information), Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol St., N.E., Washington, D.C. 20426, Telephone: (202) 208–2063

Patricia M. Alexander (Technical Information), Office of Electric Power Regulation, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–0750

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., NE, Washington, DC 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Docket No. RM95–8–000: Derivation of 17.5% Fixed Charge Rate

The following narrative describes the fixed charge rate referenced in footnote 403 in the Stage One implementation section of the NOPR and explains the basis for the Commission's proposed uniform fixed charge rate of 17.5%.

A fixed charge rate is the ratio of a utility's annual fixed costs [depreciation, return (overall and on equity) on investment, taxes, and operating and administrative expenses] to its investment (plant-in-service). To determine the annual fixed costs of providing transmission service, the fixed charge rate is multiplied by the

original cost of transmission investment. This number is then divided by the capability of the transmission system to compute an annual rate for transmission service stated in $/kW. Charges for shorter periods can be derived from this figure, *e.g.*, a monthly rate would be computed by dividing the annual rate by 12.

Annual fixed costs can be calculated using either a levelized or nonlevelized fixed charge rate. With a levelized fixed charge rate, the capital recovery component of the rate does not vary from year to year. Instead, the rate is designed using essentially the same method used to develop fixed-rate home mortgage payments, *i.e.*, the monthly payment does not vary. Most of the monthly payment reflects interest (return on investment in the context of utility rates) in the early years, and most of the monthly payment reflects principal repayment (depreciation in the context of utility rates) in the later years. In contrast, nonlevelized rates decline over time. In the early years of a facility's life, nonlevelized rates will be higher than levelized rates and, in the later years of the facility's service life, nonlevelized rates will be lower than levelized rates. However, under either approach, the utility recovers, on a net present value basis, the same total revenues. See *Maine Public Service Company*, 71 FERC ¶ 61,249 (1995).

As explained in the NOPR, the levelized fixed charge method used by many utilities and the Commission is available on the Commission's Bulletin Board in spreadsheet format. This method is the basis for both of the Stage One options proposed in the NOPR. One option uses the levelized fixed charge method to compute a company-specific transmission cost using company-specific Form No. 1 data.

The other option uses a uniform 17.5% fixed charge rate for all companies. The 17.5% rate is based upon an average of the results of suspension analyses [1] over the last two years using the levelized fixed charge method to evaluate public utility filings involving either transmission service or the transmission component of a power sale.[2] For those filings, the Commission's preliminary fixed charge rate analyses ranged from 13.3% to 29.8% and the arithmetic average was 17%. The arithmetic average of the common equity returns reflected in those fixed charge rates was about 10%.

For purposes of Stage One implementation, the Commission proposed setting the fixed charge rate at 17.5% to reflect the fact that current equity returns (and related income taxes) are somewhat higher than the preliminary equity returns used in the surveyed analyses.

Lois D. Cashell,

Secretary.

APPENDIX—TRANSMISSION FIXED CHARGE RATES

Company	Docket No.	Transmission fixed charge rate (%)
Arizona Public Service Co	ER94–1681–000	17.18
Atlantic City Electric Co	ER93–927–000	21.75
Boston Edison Co	ER95–108–000	17.64
Black Hills Power & Light Co	ER94–1542–000	15.65
Carolina Power & Light Co	ER95–10–000	14.04
Central Illinois Public Service Co	ER94–1611–000	14.64
Central Maine Power Co	ER94–1153–000	17.88
Commonwealth Edison Co	ER95–5–000	16.13
Consolidated Edison Co. of New York	ER94–1666–000	22.05
Dayton Power & Light Co	ER94–1469–000	17.78
Delmarva Power & Light Co	ER94–1501–000	16.52
Duke Power Co	ER94–1429–000	16.77
Edison Sault Electric Co	ER94–1502–000	20.63
Energy Operating Co.'s	ER94–1440–000	15.91
Fitchburg Gas & Electric Light Co	ER94–1203–000	13.34
Florida Power Corp	ER95–100–000	15.46
Green Mountain Power Corp	ER95–84–000	20.11
Idaho Power Co	ER94–1231–000	14.94
Interstate Power Co	ER94–1346–000	14.82
Kentucky Utilities Co	ER94–1678–000	15.45
Louisville Gas & Electric Co	ER94–1480–000	14.75
Madison Gas & Electric Co	ER94–1147–000	14.25
Maine Public Service Co	ER94–1481–000	21.81
Midwest Power Systems	ER94–1278–000	15.29
Minnesota Power & Light Co	ER94–1556–000	17.61
Mississippi Power & Light Co	ER94–1306–000	16.43
Missouri Public Service Co	ER94–1692–000	17.34
Montana Power Co	ER94–1189–000	17.96
New England Power Co	ER94–1338–000	18.37
Niagara Mohawk Power Corp	ER94–1641–000	20.96
Northern States Power Co.'s (Wisc./Minn.)	ER94–1622–000	19.95
New York State Electric & Gas Corp	ER95–108–000	17.65
Ohio Power Co	ER94–1555–000	19.02
Oklahoma Gas & Electric Co	ER94–1266–000	15.06
Orange & Rockland Utilities Inc	ER94–1262–000	29.83
Otter Tail Power Co	ER94–1147–000	17.90
PacifiCorp	ER94–1233–000	13.54

[1] If the Commission's preliminary review of a rate filing indicates that it may not be just and reasonable, the Commission can suspend the rate for up to five months and set it for hearing. The preliminary analysis used to determine the need for a hearing and the appropriate length of any suspension period is called a suspension analysis.

[2] The Appendix contains a list of those filings.

APPENDIX—TRANSMISSION FIXED CHARGE RATES—Continued

Company	Docket No.	Transmission fixed charge rate (%)
Pacific Gas & Electric Co	ER94–1430–000	17.75
Pennsylvania Electric Co	ER94–1436–000	18.53
Pennsylvania Power & Light Co	ER94–1398–000	16.62
Potomac Electric Power Co	ER94–900–000	18.20
Portland General Electric Co	ER93–462–000	16.10
Public Service Co. of Oklahoma	ER94–949–000	15.06
Public Service Co. of Colorado	ER95–88–000	15.08
Public Service Electric & Gas Co	ER93–667–000	18.21
Puget Sound Power & Light Co	ER94–528–000	16.39
Rochester Gas & Electric Corp	ER94–1279–000	20.13
Sierra Pacific Power Co	ER94–1195–000	12.20
Southern California Edison Co	ER94–1608–000	17.48
South Carolina Electric & Gas Co	ER95–104–000	16.04
Southwestern Public Service Co	ER94–1152–000	14.07
Texas-New Mexico Power Co	ER94–1326–000	14.11
Tucson Electric Power Co	ER94–1424–000	13.50
Washington Water Power Co	ER94–183–000	13.50
Western Resources, Inc	ER94–1010–000	15.24
West Texas Utilities Co	ER95–245–000	16.78
Wisconsin Electric Power Co	ER94–1626–000	16.15
Wisconsin Power & Light Co	ER94–1204–000	16.73

[FR Doc. 95–18330 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–18–95]

RIN 1545–AT33

Lease Term; Exchanges of Tax-Exempt Use Property; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the lease term of tax-exempt use property.

DATES: The public hearing originally scheduled for August 2, 1995, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 168 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** for Friday, April 21, 1995, (60 FR 19868), announced that a public hearing on the proposed regulations would be held on Wednesday, August 2, 1995, beginning at 10:00 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C.

The public hearing scheduled for Wednesday, August 2, 1995 is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 95–18312 Filed 7–25–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–95–017]

Special Local Regulation; Detroit Grand Prix, Detroit River, Fleming Channel and Scott Middle Ground, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for portions of the Fleming Channel and Scott Middle Ground in the Detroit River, MI during the Detroit Grand Prix. This event is held annually on the second weekend of June. This regulation will establish a ''NO-STOPPING ZONE'' in the Fleming Channel, and a ''CAUTION AREA'' in Scott Middle Ground. The Detroit Grand Prix is an automobile race which will take place on the western end of Belle Isle. This event draws an estimated 2000 spectator craft which could pose hazards to navigation in the area. This regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

DATES: Comments must be received on or before September 25, 1995.

ADDRESSES: Comments should be mailed to Commander (oan), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060. The comments will be available for inspection and copying at the Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address. Annual notice of the exact dates and times of the effective period of the regulation will be published in local notices to mariners. To be placed on the mailing list for such notices, write to Commander (oan), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060.

FOR FURTHER INFORMATION CONTACT:

Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD09 95–017] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information. The drafters of these regulations are Lieutenant Junior Grade Byron D. Willeford, Ninth Coast Guard District, project officer, Aids to Navigation and Waterways Management Branch and Lieutenant Charles D. Dahill, Ninth Coast Guard District, project attorney, Legal Office.

Discussion of Proposed Regulations

The Coast Guard proposes to establish a special local regulation on specified waters of the Detroit River, MI during the Detroit Grand Prix. The Detroit Grand Prix is an automobile race which will be conducted on the western end of Belle Isle, MI. This event draws an estimated 2000 spectator craft which will dramatically increase boating traffic in the general vicinity. This regulation will require that all vessels operating in the Fleming Channel around Belle Isle not loiter or anchor, unless expressly authorized by the Coast Guard Patrol Commander; and that all vessels operating in the Scott Middle Ground around Belle Isle will be operated at a ''SLOW/NO-WAKE'' speed, which means that all vessels transiting the area will be operated at bare steerage, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area. This regulation is necessary to ensure the protection of life, limb and property during this event. Exact times and dates will be published in the Coast Guard Ninth District Local Notice to Mariners.

Federalism Implications

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

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654; July 29, 1994).

Economic Assessment and Certification

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

Collection of Information

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

List of Subjects in 33 CFR Part 100

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

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

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

2. New § 100.903 is added to read as follows:

§ 100.903 Detroit Grand Prix, Detroit River, Fleming Channel and Scott Middle Ground, MI.

(a) *No-stopping zone.* (1) *Location.* That portion of the Fleming Channel, Detroit River, bounded by the south Belle Isle shoreline on the north and the International Boundary on the south; bounded on the east by the International Boundary and the eastern most end of Belle Isle, and bounded on the west by the International Boundary and the western most end of Belle Isle.

(2) *Regulation.* Vessels will not loiter or anchor in the regulated area in paragraph (a)(1) of this section, unless expressly authorized by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Belle Isle, MI).

(b) *Caution area.* (1) *Location.* That portion of the Scott Middle Ground, Detroit River, bounded on the north by the mainland shoreline, and on the south by the north Belle Isle shoreline; bounded on the east by a north-south line from the mainland shoreline and the Belle Isle shoreline intersecting the Waterworks Intake Crib Light, and bounded on the west by a north-south line from the mainland shoreline and the western most end of Belle Isle intersecting North Channel Buoy 2.

(2) *Regulation.* The regulated area in paragraph (b)(1) of this section is designated as a ''CAUTION AREA''. All commercial and recreational vessel traffic transiting the area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area.

(c) *Patrol Commander.* (1) The Coast Guard will patrol the regulated areas under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.''

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

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

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

(d) *Effective date:* This Section will become effective from 7:30 a.m. until 6:30 p.m. annually, on Friday, Saturday and Sunday of the second weekend of

June, unless otherwise specified in the Coast Guard Local Notice to Mariners.

Dated: July 12, 1995.

G. F. Woolever,

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

[FR Doc. 95–18251 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 43–1–6868; FRL–5264–6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from rubber sports ball manufacturing and metal casting operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before August 25, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012;

Maricopa County Department of Environmental Services, 2406 South 24th Street, Suite E–204, Phoenix, AZ 85034–6822.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the Arizona SIP include: Maricopa County Environmental Services Department's (MCESD's) Rule 334, ''Rubber Sports Ball Manufacturing,'' and Rule 341, ''Metal Casting.'' These rules were submitted by the Arizona Department of Environmental Quality to EPA on August 16, 1994 (Rule 341) and December 19, 1994 (Rule 334).

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Maricopa County Area. 43 FR 8964; 40 CFR 81.303. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa County to the Maricopa Association of Governments (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended ACT, that MCESD's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that MCESD's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2)(C) of the CAA, Congress statutorily required nonattainment areas to submit RACT rules for all major stationary sources of VOCs by November 15, 1992 (the RACT catch-up requirement).

The MAG Urban Planning Area is classified as moderate;[1] therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.[2]

The State of Arizona submitted many revised RACT rules for incorporation into its SIP on August 16, 1994, and December 19, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for MCESD's Rule 334, ''Rubber Sports Ball Manufacturing,'' and Rule 341, ''Metal Casting.'' The MCESD adopted Rule 334 on September 20, 1994, and Rule 341 on August 5, 1994. These submitted rules were found to be complete on August 16, 1994 (Rule 341) and January 19, 1995 (Rule 334) pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and are being proposed for approval into the SIP.

Rules 334 and 341 control VOC emissions from rubber sports ball manufacturing and metal casting operations by restricting the VOC content of materials used in these operations or by requiring emission control systems. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of the MCESD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(b)(2)(C) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy

[1] The MAG Urban Planning Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] Arizona did not make the required SIP submittal by November 15, 1992. On January 15, 1993, the EPA made a finding of nonsubmittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The rules being acted upon in this NPRM were submitted in response to the EPA finding of failure to submit.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

guidance documents.[4] Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''catch-up'' their RACT rules. See section 182(b)(2). For some categories, such as rubber sports ball manufacturing and metal casting, EPA did not publish a CTG. In such cases, the state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Therefore, the MCESD must determine the VOC control measures that are reasonable and available for the affected sources. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 4. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MCESD's Rule 334, ''Rubber Sports Ball Manufacturing,'' is a new rule that limits the VOCs from the manufacture of rubber sport balls. Compliance with the rule is obtained through one of two methods: (1) The use of adhesives with a VOC content of 288 grams per liter (2.4 lbs/gal), less water and exempt compounds, or (2) the use of an emission control system with an overall efficiency (capture and control) of at least 81%. Records are explicitly required for all operations, including any that are exempt from the emission standards of the rule due to low usage. All records must be maintained for at least 3 years. Good engineering practices are required for operations, including the proper storage and disposal of VOC materials. The test methods referenced are all EPA approved, and there are no provisions for alternative methods. The rule required final compliance by May 31, 1995. Rule 334 is expected to achieve VOC reductions of at least 856 tpy. A more detailed discussion of the source controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for Rule 334, dated March 27, 1995.

MCESD's Rule 341, ''Metal Casting,'' is a new rule that limits the emissions of VOCs from metal investment-casting operations. In metal investment-casting, a solvent such as ethanol is used to bind the grains of sand together until the silicate components are kiln-fired at 1800°F and fused into a permanent mold. Compliance with the rule is obtained through one of three methods: (1) The use of an emission control system with an overall efficiency (capture and control) of at least 81%, (2) the use of binder materials with a VOC content of 420 grams VOC per liter (3.5 lbs/gal), less water and exempt compounds, or (3) the use of binder materials such that their daily-weighted average does not exceed a VOC content of 420 grams VOC per liter (3.5 lbs/gal), less water and exempt compounds. Records are explicitly required for all operations, including any that are exempt from the emission standards of the rule due to low usage. All records must be maintained for at least 3 years. Good engineering practices are required for operations, including the proper storage and disposal of VOC materials. The test methods referenced are all EPA approved, and there are no provisions for alternative methods. The rule required final compliance by September 1, 1994. Rule 341 is expected to achieve VOC reductions of at least 271 tpy. A more detailed discussion of the source controlled, the controls required, and the justification for why these controls represent RACT can be found in the TSD for Rule 341, dated March 27, 1995.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MCESD's Rule 334, ''Rubber Sports Ball Manufacturing,'' and Rule 341, ''Metal Casting,'' are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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 the 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.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 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 sections 110 and 301 and subchapter I, part D of the CAA 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, 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. The CAA 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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182(b)(2)(C) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed or action

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTG's).

does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 10, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–18371 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 180

[PP 3F2792/P622; FRL–4966–2]

RIN 2070–AC18

Pesticide Tolerance for Pendimethalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for the combined residues of the herbicide pendimethalin (*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine) and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodities pea pods, shelled peas, pea vines, and peas plus pods each at 0.1 part per million (ppm). The American Cyanamid Co. requested this proposed regulation to establish a maximum permissible level for residues of the herbicide in a petition submitted under the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: Comments, identified by the document control number [PP 3F2792/P622], must be received on or before August 25, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 3F2792/P622]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 1, 1983 (48 FR 1350), which announced that American Cyanamid Co. had submitted pesticide petition (PP) 3F2792 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR 180.361 by establishing a tolerance for the combined residues of the herbicide pendimethalin, in or on the raw agricultural commodities pea pods, shelled peas, pea vines, and peas plus pods each at 0.1 part per million (ppm). There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition and proposed to establish a tolerance for the combined residues of pendimethalin and its metabolite in or on the raw agricultural commodities of the legume vegetables (succulent or dried) group at 0.1 ppm and in or on the foliage of legume vegetables group at 0.1 ppm. The petition was later revised to propose tolerances for the combined residues of pendimethalin and its metabolite in or on peas (except field peas) pursuant to 40 CFR 180.1(h).

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. Results of acute oral, dermal and inhalation studies, primary eye irritation studies, and primary dermal irritation and sensitization studies placing technical-grade pendimethalin in Toxicity Category III.

2. A subchronic feeding study with rats fed dosages of 0, 10, 50, or 500 milligrams/kilogram/day (mg/kg/day) with no-observable-effect level (NOEL) of 50 mg/kg/day based on decreased hematocrit and hemoglobin levels in males, decreased body weight gain and food consumption, and hypertrophy of the liver accompanied by increased liver weights at 500 mg/kg/day.

3. A chronic feeding study in dogs fed dosages of 0, 12.5, 50, or 200 mg/kg/day with a NOEL of 12.5 mg/kg/day based on an increase in serum alkaline phosphatase and increased liver weights and hepatic lesions at 50 mg/kg/day.

4. A chronic feeding/carcinogenicity study in rats fed dosages of 0, 5, 25, or 50 mg/kg/day with a statistically significant increased trend and pairwise comparison between the high-dosed group and the control for thyroid follicular cell adenomas in male and female rats. The systemic NOEL is 5 mg/kg/day based on pigmentation of thyroid follicular cells in males and females.

5. A carcinogenicity study in male mice fed dosages of 0, 12.3, 62.3, or 622.1 mg/kg/day or female mice fed dosages of 0, 15.6, 783, or 806.9 mg/kg/day with no carcinogenic effects observed under the conditions of the study up to 622.1 mg/kg/day (highest dose tested [HDT]) in male mice or up to 806.9 mg/kg/day (HDT) in female mice.

6. A developmental toxicity study with rats fed dosages of 0, 125, 250, or 500 mg/kg/day with a developmental NOEL greater than 500 mg/kg/day (HDT) and a maternal NOEL greater than 500 mg/kg/day (HDT).

7. A developmental toxicity study with rabbits fed dosages of 0, 15, 30, or 60 mg/kg/day with a maternal and developmental NOEL greater than 60 mg/kg/day (HDT).

8. A two-generation reproduction study with rats fed dosages of 0, 34, 172, or 346 mg/kg/day (males) and 0, 43, 216, or 436 mg/kg/day (females) with a reproductive NOEL of 43 mg/kg/day based on a decrease in pup weight at 216 mg/kg/day. The parental NOEL is 34 mg/kg/day based on decreased body weight and food consumption at 172 mg/kg/day.

9. Mutagenicity data included assays with Salmonella typhimurium (positive in strains TA 1538 and TA 98 with metabolic activation); an *in vitro* cytogenetics-CHO assay (negative up to 25 *u*g/plate without metabolic activation and 100 *u*g/mL with activation); and an unscheduled DNA synthesis (negative between 30 and 3,000 *u*g/well). A micronucleus assay in mice was negative at 625 and 1,250 mg/kg.

The Health Effects Division Carcinogenicity Peer Review Committee (PRC) evaluated the toxicology data for carcinogenic potential. The PRC classified pendimethalin as a Group C-possible human carcinogen and recommended that for quantification of human risk, the Reference Dose (RfD) approach should be used. This decision was based on statistically significant increased trend and pairwise comparison between the high-dose group and controls for thyroid follicular cell adenomas in male and female rats. This study was conducted using adequate doses for the determination of carcinogenic activity. Pendimethalin induces gene mutations, but not aberrations or DNA damage/repair, based on acceptable studies. Structurally related compounds showed evidence of tumorigenic activity.

Based on the NOEL of 12.5 mg/kg/day (2-year dog-feeding study) and an uncertainty factor of 300, the RfD (reference dose) for pendimethalin is calculated to be 0.04 mg/kg/body weigh/day (bwt). The theoretical maximum residue contribution (TMRC) is 3.11 X 10^{-4} mg/kg bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by 1.8 X 10^{-5} mg/kg bwt/day or 0.04 percent of the RfD. This tolerance and previously established tolerances utilize 0.8 percent of the RfD. The subgroup most highly exposed, children ages 1 through 6, has a TMRC from published and proposed uses of 7.2 X 10^{-4} mg/kg bwt/day or 1.8 percent of the RfD, assuming that residue levels are at the established tolerances and 100 percent of the crop is treated.

There are no desirable data lacking and no pending regulations against the continuing registration of this chemical. The chronic dietary risk from this chemical appears to be minimal, particularly since none of the U.S. population subgroups has an exposure greater than 2 percent of the RfD.

The nature of the residues in plants and animals is adequately understood, and adequate analytical methodology (GLC using a 63Ni electron capture detector) is available for enforcement and has been published in the Pesticide Analytical Method (PAM), Method I. There is no expectation that secondary residues will occur in meat, milk, poultry, or eggs from this use.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. The pesticide is considered useful for the purpose for which it is intended. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3F2792/P622]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 3F2792/P622] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: July 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.361, paragraph (a) is amended in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Peas (except field peas)	0.1
* * * * *	

* * * * *

[FR Doc. 95–18001 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5263–5]

Notice of Intent To Delete Stewco, Incorporated Superfund Site Waskom, Harrison County, Texas; National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Stewco, Incorporated Superfund Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Stewco, Incorporated Superfund site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Texas (Texas Natural Resource Conservation Commission) have determined that all appropriate actions under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that response activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this site may be submitted on or before August 25, 1995.

ADDRESSES: Comments may be mailed to: Mr. Donn Walters, Community Relations Coordinator, U.S. EPA, Region 6 (6H–MC), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508.

Comprehensive information on this site is available through the EPA Region 6 public docket, which is located at EPA's Region 6 library office and is available for viewing from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The office address is: U. S. EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6424 or 665–6427.

Background information from the Regional public docket is available for viewing at the Stewco, Incorporated Superfund site information repositories located at:

Environmental Protection Agency, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202

Texas Natural Resource Conservation Commission, 12118 North IH–35, Building D, Room 190, Austin, Texas 78753, (512) 239–2920

Waskom City Hall, 304 Texas Avenue, Waskom, Texas 75692, (903) 687–2694

FOR FURTHER INFORMATION CONTACT: Mr. Donald H. Williams, Chief, Oklahoma/Texas Remedial Section (6H–SR), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–2197.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Stewco, Incorporated Superfund site, Waskom, Harrison County, Texas, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

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

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

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

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

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

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e)(1) has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of this site:

(1) EPA Region 6 has recommended deletion and has prepared the relevant documents.

(2) The State of Texas has concurred with the deletion decision.

(3) Concurrent with this National Notice of Intent to Delete, a notice will be published in local newspapers and shall be distributed to appropriate federal, state, and local officials, and other interested parties. This local notice also announces a thirty (30) day public comment period on the deletion package.

(4) The Region has made all relevant documents available in the Regional Office and local site and State of Texas information repositories.

These procedures have been completed for the Stewco, Incorporated site. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repository and deletion docket.

Upon completion of the 30-day public comment period, the EPA Regional Office will evaluate these comments before the final decision to delete. If necessary, the Region will prepare a Responsiveness Summary, to address those concerns raised by the comments received during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories. Members of the public are welcome to contact the EPA Regional Office to obtain a copy of the Responsiveness Summary, when available. If EPA still determines that deletion from the NPL is appropriate after receiving public comments, a final notice of deletion will be published in the **Federal Register**. However, it is not until a notice of deletion is published in the **Federal Register** that the site would be actually deleted.

IV. History and Basis for Intended Site Deletion

The following summary provides the Agency's rationale for deleting the Stewco, Incorporated (Stewco) Superfund site from the NPL.

The Stewco Superfund site is located in Waskom, Harrison County, Texas, near the Texas/Louisiana State line. The site consists of ponds at two locations approximately one mile apart. Location #1 is a one-half acre plot located on Texas Highway 9, approximately one-half mile south of Interstate Highway 20. Location #2 is on the eastbound access road of Interstate 20, one mile west of Highway 9. Petroleum storage facilities are located directly north of the Stewco site. Land use south of the site is residential. Land east of the site is undeveloped at the present time.

The Stewco site was operated as a truck-tank washing facility from 1972 to 1983. Wastewater was generated from high pressure washing and steam cleaning tank trucks used to haul glue, gasoline, diesel and jet fuel, and creosote. Wastewater and tank residues were disposed of in two ponds at Location #1. Excess wastewater was trucked to a pond at Location #2 for disposal.

In August 1976, Corbett Transport, Inc., the predecessor to Stewco, obtained state permits for the disposal of wastewater from the truck washing operation. Field inspections conducted by the Texas Natural Resource Conservation Commission (TNRCC), formerly the Texas Department of Water Resources, indicated numerous violations of the Stewco permit requirements. These violations included unauthorized surface water discharges at Location #1, ground water contamination, and inadequate operation of the wastewater neutralization facility. After the site was abandoned in 1983, the ponds at Location #1 filled with rain water, eventually overtopping the dike around the ponds. This created a serious threat of the dikes collapsing, which would result in a substantial release of hazardous substances to surrounding businesses and one residence.

As a result of this threat, the EPA Region 6 Emergency Response Branch conducted a removal action in April 1984. A detailed account of this action is available in the EPA On-Scene Coordinator's ''After Action Report'' (May 1985).

Soil and ground water analytical data collected prior to and during the 1984 removal action was used to propose the site for inclusion on the NPL in June 1984. Although Location #1 had undergone an immediate removal action, the ranking was performed as if the removal never occurred. Inclusion of the site on the NPL was based on the potential for site contaminants to migrate to the Wilcox aquifer, the drinking water supply for the city of Waskom. Several private wells were also located within a one-half mile radius of the site. At the time of the ranking, constituents of concern were polynuclear aromatic hydrocarbons, phthalates, DDT, and aromatic solvents.

Field investigations conducted by EPA from 1983 through 1988 showed organic contamination in soil, ground water, surface water, and pond sediments onsite. In 1988, EPA conducted a remedial investigation (RI) to determine the extent and magnitude of any risks posed by contaminants at the site and concluded that several contaminants detected during the RI are not attributable to the Stewco site. Benzene and xylene, found in soils in 1988, were not found in soil samples taken in 1983 and 1984 on the Stewco property at Location #1. However, these compounds were documented in reports of soil samples taken from petrochemical facilities directly north of Stewco. Background concentrations of polynuclear aromatic hydrocarbons (PAH's) detected were higher than concentrations in soil samples taken onsite.

The highest concentrations of benzene and 1,2-dichloroethane in the ground water were found in wells placed perpendicular to the gradient across the site. Benzene was also documented in monitoring wells located east and southeast of Stewco, areas unaffected by the Stewco operation. Any release of contaminants of concern from the Stewco site would be detected in monitoring wells located immediately downgradient of Location #1. Because contamination was not detected in these wells, EPA does not believe that the Stewco site is the source of contamination of the shallow ground water at Location #1. No contaminants of concern were detected in any of the residential wells sampled during the RI, indicating that area water supplies have not been impacted by the Stewco site.

At Location #2, benzene and xylene were detected in a shallow monitoring well upgradient of the pond. Xylene was also detected in a shallow monitoring well installed perpendicular to the ground water gradient. However, these chemicals were not found in either the shallow or the deep monitoring wells installed downgradient of Location #2. EPA would expect to detect contamination in downgradient wells if the pond was a source of contamination.

The 1988 remedial investigation and risk assessment were designed to assess the completeness of the 1984 removal action. Sampling undertaken during the RI indicated that the average excess cancer risk for a resident onsite at Location #1 was reduced to 2 in

1,000,000 by the removal action. The non-cancer risk (Hazard Index) was reduced to less than 1.0. Non-carcinogenic health effects are not expected at sites with a Hazard Index less than 1.0. These risk levels are consistent with EPA's remedial goal of 1 in 10,000 to 1 in 1,000,000 excess lifetime cancer incidents and a Hazard Index of 1.0 or less. Based on this reduction in risk at Location #1, EPA determined that no further remedial activities were necessary to address soil contamination at Location #1.

The excess lifetime cancer risk associated with the maximum concentration of benzene found in the ground water at Location #2 was calculated to be 2 in 100,000 in the 1988 RI. This calculation was made assuming that the ground water was developed as a drinking water supply. Because this risk is well within the target risk range for Superfund remedial actions of 1 in 10,000 to 1 in 1,000,000, EPA determined that no remedial action is necessary to address ground water contamination at Location #2.

EPA activities to address the contamination at the Stewco site during the 1984 removal action consisted of removing the source of the contamination from the site. Approximately 400,000 gallons of liquid wastes were pumped from Location #1, treated by activated carbon adsorption, and discharged to a storm water runoff drain adjacent to the site. In addition, approximately 5,500 cubic yards of sludges were excavated from these lagoons, stabilized, and shipped offsite for disposal in a hazardous waste landfill permitted under the Resource Conservation and Recovery Act (RCRA). Finally, the lagoon area was backfilled with clean soil, covered with a 10-mil thick synthetic liner and one foot of compacted clay, graded, and re-seeded with grass.

No removal activities were considered necessary at Location #2 since contaminant concentrations did not pose a risk and no evidence of dike failure or pond liquids spilling over the dike was found.

The Agency for Toxic Substances and Disease Registry was consulted and supports these conclusions.

Data generated during the 1988 RI indicated that the removal action conducted in 1984 adequately addressed any actual or potential threats posed by the Stewco site. A comment period for public input on the proposed No Further Action decision for Stewco began on July 25, 1988, and closed on August 23, 1988. EPA met with the Mayor of Waskom, Texas, and editors of the local newspaper to discuss the plan on August 4, 1988. On September 16, 1988, a Record of Decision, selecting the final remedy for the Stewco site, was signed by the Region 6 Regional Administrator. Specifically, the selected remedy included:

1. Closure of existing monitoring wells, if not needed for future offsite investigations;

2. Further investigation of the nearby petroleum storage facilities (Mobil and Texaco) to assess any contribution to existing ground water contamination;

3. Deletion of the site from the NPL if EPA determines that offsite sources, and not the Stewco site, are contributing to ground water contamination.

While investigations conducted in 1986 at petroleum storage facilities adjacent to Stewco detected benzene contamination offsite, EPA requested, as part of the 1988 Record of Decision, that TNRCC conduct an investigation of these facilities under RCRA. The purpose of this investigation, conducted by the Mobil Oil Corporation in compliance with guidelines set by TNRCC, was to confirm that ground water contamination in the area was, in fact, not attributable to Stewco. Data submitted in a report written by Applied Earth Sciences for Mobil (December 10, 1990), indicate that a hydrocarbon plume is migrating from a storage facility north of Mobil, across a portion of the Mobil property and the Stewco property. Benzene concentrations were reported in monitoring wells north of the Mobil property ranging from 9,700 ug/l to 27,000 ug/l and from 180 ug/l to 300 ug/l south of the property. EPA believes that this report demonstrates sufficiently that ground water contamination found during the Stewco RI is not attributable to the Stewco site.

No operation and maintenance activities are required at the Stewco site. The five-year review requirements of Section 121 (c) of the Superfund Amendments and Reauthorization Act of 1986 are not applicable, since contaminants attributable to Stewco are at concentrations that allow for unlimited use and unrestricted access.

EPA's removal action addressed volatile (benzene, toluene, and xylene) and semi-volatile (polynuclear aromatic hydrocarbons) contamination found at the Stewco site. Soil and ground water sampling conducted during the 1984 removal action and the 1988 remedial investigation confirm that contaminants attributable to Stewco do not remain onsite in concentrations that would pose an excess risk beyond EPA's target risk range, as set in the NCP. Therefore, EPA's removal action and No Further Action Record of Decision are protective of human health and the environment. The State of Texas has concurred with the Record of Decision.

The documentation supporting the Record of Decision and this deletion notice is included in the Administrative Record and files for the Stewco site. A bibliography of documents supporting this deletion notice is attached.

EPA, with concurrence of the State of Texas, has determined that all appropriate Fund-financed responses under CERCLA at the Stewco Superfund site have been completed, and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Texas have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

Dated: June 29, 1995.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 95–18256 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7145]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Grande Terrace (City), San Bernardino County.	Santa Ana River	At Atchison, Topeka, and Santa Fe Railroad Bridge.	None	*913
			Approximately 200 feet upstream of Atchison, Topeka, and Santa Fe Railroad Bridge.	None	*920
			Approximately 50 feet upstream of Southern Pacific Railroad Bridge.	None	*922
Maps are available at City Hall, City of Grande Terrace, 22795 Barton Road, Grande Terrace, California.					
Send comments to The Honorable Byron Matteson, Mayor, City of Grande Terrace, 22795 Barton Road, Grande Terrace, California 92313.					
California	Loma Linda (City), San Bernardino County.	San Timoteo Creek	Approximately 400 feet upstream of California Street.	None	*1,210
			Approximately 1,222 feet upstream of California Street.	None	*1,222
Maps are available at City Hall, City of Loma Linda, 25541 Barton Road, Loma Linda, California.					
Send comments to The Honorable Robert Christman, Mayor, City of Loma Linda, City Hall, 25541 Barton Road, Loma Linda, California 92354					
California	Ban Bernardino (City), San Bernardino County.	San Timoteo Wash A	At Hunts Lane	None	*994
			At Waterman Avenue	None	*1,018
			At divergence from San Timoteo Creek (approximately at Artesia Street).	None	*1,038
		Warn Creek	Approximately 700 feet upstream of Sterling Avenue.	None	*1,110
			Approximately 1,000 feet upstream of Sterling Avenue.	None	*1,112

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available at City Hall, City of City of San Bernardino, 300 North D Street, San Bernardino, California.					
Send comments to The Honorable Tom Minor, Mayor, City of San Bernardino, City Hall, 300 North D Street, San Bernardino, California 92418.					
California	San Bernardino County, (Unincorporated Areas).	Little Sand Creek	Just upstream of North Sterling Avenue	None	*1,272
			20 feet upstream of East Lynwood Avenue.	None	*1,292
		Reche Canyon Channel	Approximately 2,100 feet upstream of Barton Road.	*1,084	*1,078
			At Pepper Tree Lane	*1,155	*1,156
			50 feet downstream of Fern Street	*1,223	*1,210
			140 feet upstream of Mobile Home Road	*1,253	*1,246
			300 feet upstream of Mobile Home Road	*1,258	#3
			Approximately 325 feet upstream of Tidewell Driveway.	*1,297	#3
			Approximately 500 feet upstream of Tidewell Driveway.	*1,310	*1,304
			At San Bernardino County Boundary	*1,330	*1,330
		Santa Ana River	Approximately 600 feet downstream of La Cadena Drive.	None	*908
			At Atchison, Topeka, and Santa Fe Railroad Bridge.	None	*913
		Twentynine Palms Channel.	Approximately 400 feet downstream of Bullion Mountain Road.	None	*1,725
			Approximately 200 feet upstream of Bullion Mountain Road.	None	*1,728
		Alluvial Fan Flooding:			
		Basin 1	300 feet southeast of intersection of Base Line Road and Encelia Avenue.	None	#1
		Basin 2 (Smoke Tree Wash).	100 feet south of Base Line Road along Smoke Tree Wash.	None	#1
		Basin 3	1,400 feet south of intersection of Foothill Drive and Springs Road.	None	#1
		Basin 5 (Joshua Mountain Wash).	100 feet southwest of intersection of Base Line Road and Adobe Road.	None	#1
		Basins 6 and 7	1,500 feet south of intersection of Rocky Road and Desert Knoll Avenue.	None	#1
		Basins 8 through 11	2,000 feet south and 200 feet west of the intersection of Rocky Road and Utah Trail.	None	#1
Maps are available for inspection at San Bernardino County Department of Public Works, 385 North Arrowhead Avenue, San Bernardino, California.					
Send comments to The Honorable James Hlawek, San Bernardino County Administrative Officer, County Government Center, 385 North Arrowhead Avenue, Fifth Floor, San Bernardino, California 92415–0110.					
California	Victorville (City), San Bernardino County.	Mojave River	200 feet downstream of Unnamed Wash	*2,639	*2,640
Maps are available for inspection at City Hall, City of Victorville, 14343 Civic Drive, Victorville, California					
Send comments to The Honorable Terry Caldwell, Mayor, City of Victorville, P.O. Box 5001, Victorville, California 92393–5001.					
Oregon	Gresham (City), Multnomah County.	Kelly Creek	At upstream end of culvert at Kane Road	None	*303
			Approximately 1,296 feet above downstream end of culvert at Kane Road.	None	*319
			At downstream end of culvert at Division Street.	None	*335
Maps are available for inspection at the City of Gresham, 1333 Northwest Eastman Parkway, Gresham, Oregon.					
Send comments to The Honorable Gussie McRobert, Mayor, City of Gresham, 1333 Northwest Eastman Parkway, Gresham, Oregon 97030.					
Texas	Baytown (City), Chambers and Harris Counties.	Cedar Bayou	At the power plant across Cedar Bayou from Cedar Bayou Junior High School.	*14	*12
			At Milam Bend	*17	*15

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At Southern Pacific Railroad Bridge south of Eldon.	*23	*20
			Just south of Interstate Highway 10	*25	*22
		Horsepen Bayou	At confluence with Cedar Bayou	*19	*17
			Approximately 500 feet east of State Highway 146.	*19	*17

Maps are available for inspection at City Hall, City of Baytown, 2401 Market Street, Baytown, Texas.

Send comments to The Honorable Pete Alfaro, Mayor, City of Baytown, City Hall, 2401 Market Street, Baytown, Texas 77522.

Texas	Bexar County (Unicorporated Areas).	Cibolo Creek	Approximately 400 feet upstream of confluence of Martinez Creek.	None	*525
			Approximately 900 feet downstream of Weir Road.	*648	*646
			Approximately 200 feet upstream of Missouri and Pacific Railroad.	*788	*786
			Approximately 21,000 feet upstream of Missouri and Pacific Railroad.	*839	*840
			Approximately 6,000 feet downstream of confluence of Clear Springs Fork.	*877	*880
			Approximately 14,800 feet downstream of FM 1863 (downstream crossing).	*929	*930
			Just downstream of FM 1863 (upstream crossing).	*961	*965
			Just upstream of Smithson Valley Road ..	*1,013	*1,017
			Just downstream of U.S. Route 281 (northbound lanes).	*1,061	*1,061
			Just downstream of Blanco Road	None	*1,130
			Approximately 300 feet downstream of Ralph Fair Road.	*1,247	*1,254
		Balcones Creek	Approximately 200 feet upstream of confluence with Cibolo Creek.	*1,270	*1,274
			Approximately 3,200 feet upstream of confluence with Cibolo Creek.	*1,278	*1,278
		West Salitrillo Creek	Just upstream of FM 1516	*646	*647
			Just upstream of Martinez Creek Dam No. 4.	None	*740
			Approximately 150 feet downstream of Miller Road.	None	*801
		East Salitrillo Creek	At confluence of East Branch of Salitrillo Creek.	*673	*670
			Just upstream of Southern Pacific Railroad.	*691	*695
			Approximately 2,525 feet upstream of confluence of East Fork of Salitrillo Creek.	*733	*736
		East Branch of Salitrillo Creek.	Approximately 650 feet upstream of confluence with East Salitrillo Creek.	None	*672

Maps are available for inspection at the Bexar County Public Works Department, Vista Verde Building, Suite 420, 233 North Pecos Street, San Antonio, Texas.

Send comments to The Honorable Cyndi Krier, Bexas County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205.

Texas	Converse (City), Bexar County.	Drain No. 10	At confluence with West Salitrillo Creek ...	None	*795
			Just downstream of Miller Road	None	*797
		West Salitrillo Creek	Approximately 150 feet upstream of FM 1516.	*647	*649
			Approximately 500 feet downstream of Southern Pacific Railroad.	*692	*700
			Just upstream of Kitty Hawk Road	None	*771
			Approximately 450 feet downstream of Miller Road.	None	*797
		East Salitrillo Creek	Approximately 1,500 feet upstream of confluence with Salitrillo Creek.	*628	*629
			Approximately 250 feet upstream of Schaefer Road.	*650	*651
			Approximately 100 feet upstream of FM 78.	*682	*683

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 350 feet downstream of Martinez Creek Dam No. 5.	*758	*761
		East Branch of Salitrillo Creek.	Approximately 800 feet upstream of confluence with East Salitrillo Creek.	None	*673
			Approximately 100 feet downstream of FM 78.	None	*714

Maps are available for inspection at City Hall, City of Converse, 403 South Setuins Avenue, Converse, Texas.

Send comments to The Honorable Rick Maas, Mayor, City of Converse, City Hall, 403 South Setuins Avenue, Converse, Texas 78109.

Texas	Fair Oaks Ranch (City), Bexar County.	Cibolo Creek	Approximately 700 feet upstream of Ralph Fair Road.	*1,252	*1,256
			Approximately 200 feet upstream of confluence of Balcones Creek.	*1,270	*1,274
			Approximately 9,800 feet upstream of confluence of Balcones Creek.	*1,294	*1,302
		Balcones Creek	Approximately 200 feet upstream of confluence with Cibolo Creek.	*1,270	*1,274
			Approximately 3,200 feet upstream of confluence with Cibolo Creek.	*1,278	*1,278

Maps are available for inspection at City Hall, City of Fair Oaks Ranch, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas.

Send comments to The Honorable E. L. Gaubatz, Mayor, City of Fair Oaks Ranch, City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas 78006.

Texas	Live Oak (City), Bexar County.	Drain No. 1	At confluence with East Salitrillo Creek	*835	*835
			Approximately 50 feet upstream of Cherrywood Lane.	*842	*841
		Drain No. 2	At confluence with East Salitrillo Creek	*825	*829
			Approximately 280 feet upstream of Greycliff Drive.	None	*848
		Drain No. 3	Just upstream of confluence with East Salitrillo Creek.	*814	*813
			Approximately 100 feet upstream of Wilderness Trail.	*855	*851
			Approximately 750 feet upstream of Toepperweim Road.	None	*878
		Drain No. 4	Approximately 120 feet upstream of confluence with East Salitrillo Creek.	*810	*808
			Approximately 350 feet upstream of Village Oak Drive.	None	*848
		Drain No. 5	Approximately 40 feet upstream of confluence with Drain No. 4.	*815	*815
			Approximately 1,080 feet upstream of Enchanted Oaks Drive.	None	*834
		Drain No. 6	At confluence with East Salitrillo Creek	*800	*797
			Approximately 1,250 feet upstream of Lone Shadow Trail.	*872	*868
		Drain No. 7	Approximately 1,200 feet upstream of Martinez Creek Dam No. 5.	*792	*702
			Approximately 1,000 feet upstream of Lone Shadow Trail.	*847	*839
		Drain No. 8	At confluence with Drain No. 7	*792	*792
			Approximately 1,030 feet upstream of confluence with Drain No. 7.	*817	*809
		Drain No. 9	Just downstream of Miller Road	None	*797
			Approximatley 2,270 feet upstream of Mill Road.	None	*865
		Drain No. 10	Approximately 100 feet upstream of Miller Road.	None	*801
			Approximately 50 feet upstream of Forest Bluff.	None	*948
			Approximately 850 feet upstream of Forest Bluff.	None	*875
		Drain No. 12	At confluence with West Salitrillo Creek	None	*838
			Approximately 200 feet upstream of Avery Road.	None	*896

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Unnamed Tributary of Cibolo Creek.	Approximately 330 feet downstream of Breached Dam.	None	*825
			Approximately 1,560 feet upstream of Breached Dam.	None	*845
		West Salitrillo Creek	Just upstream of Miller Road	None	*806
			Approximately 200 feet upstream of Avery Road.	None	*889
		East Salitrillo Creek	Just upstream of Martinez Creek Dam No. 5.	*792	*792
			Approximatley 100 feet downstream of Village Oak Drive.	*820	*819
			Approximately 200 feet upstream of State Highway 218.	*855	*857
			Approximately 4,100 feet upstream of State Highway 218.	None	*919
Maps are available for inspection at City Hall, City of Live Oak, 8001 Shin Oak Drive, Live Oak, Texas.					
Send comments to The Honorable Ray Hildebrand, Mayor, City of Live Oak, City Hall, 8001 Shin Oak Drive, Live Oak, Texas 78233.					
Texas	San Antonio (City), Bexar County.	Leon Creek Overflow	At confluence with Leon Creek	*888	*888
			Approximately 3,600 feet downstream of Babcock Road.	*906	*905
			Just upstream of Babcock Road	*920	*921
			Approximately 3,750 feet downstream of West Hausman Road.	*935	*935
			Just downstream of West Hausman Road	*955	*953
		Cibolo Creek	Approximately 300 feet upstream of Missouri, Kansas, and Texas Railroad.	*769	*771
			Approximately 200 feet downstream of Missouri and Pacific Railroad.	*786	*781
		Salitrillo Creek	Just upstream of Martinez Creek Dam No. 6–A.	None	*629
		East Salitrillo Creek	At confluence with Salitrillo Creek	None	*629
		West Salitrillo Creek	Approximately 3,500 feet upstream of confluence with Salitrillo Creek.	None	*634
			Approximately 1,300 feet upstream of FM 78.	*664	*665
			Just downstream of Southern Pacific Railroad.	*695	*701
Maps are available for inspection at City Hall, City of San Antonio, 100 Military Plaza, San Antonio, Texas.					
Send comments to The Honorable Nelson Wolff, Mayor, City of San Antonio, City Hall, 100 Military Plaza, San Antonio, Texas 78205.					
Texas	Selma (City), Bexar County.	Cibolo Creek	Just downstream of confluence of Selma Creek.	*738	*738
			Approximately 100 feet downstream of Lookout Road.	*758	*760
Maps are available for inspection at City Hall, City of Selma, 9375 Corporate Drive, Selma, Texas.					
Send comments to The Honorable Kenneth Sleenor, Mayor, City of Selma, City Hall, 9375 Corporate Drive, Selma, Texas 78154					
Texas	Terrell (City), Kaufman County.	Kings Creek	Approximately 150 feet downstream of State Highway 34 (south crossing).	None	*439
			Approximately 500 feet upstream of State Highway 34 (south crossing).	*442	*443
			At Interstate Highway 20 eastbound lanes	*449	*445
			At Airport Road	*453	*451
			At College Mound Road	*459	*458
			At East College Street	*471	*468
			Just upstream of abandoned railroad	*477	*478
Maps are available for inspection at 201 East Nash, Terrell, Texas.					
Send comments to The Honorable Don Lindsey, Mayor, City of Terrell, P.O. Box 310, Terrell, Texas 75160.					
Texas	Universal City (City), Bexar County.	Cibolo Creek	Just upstream of Aviation Boulevard	*714	*7715
			Approximately 150 feet downstream of Selma Road.	*736	*735

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		East Salitrillo Creek	Approximately 2,675 feet upstream of confluence of East Fork Salitrillo Creek.	*734	*737
			Approximately 350 feet downstream of Martinez Creek Dam No. 5.	*758	*761
			Just upstream of Martinez Creek Dam No. 5.	*792	*792
		East Branch of Salitrillo Creek.	Just upstream of Southern Pacific Railroad.	*715	*725
			Approximately 950 feet upstream of Southern Pacific Railroad.	*725	*725
		East Fork of East Branch of Salitrillo Creek.	Just upstream of confluence of East Branch of Salitrillo Creek.	*715	*725
			At FM 1604	*725	*725
Maps are available for inspection at City Hall, City of Universal City, 2150 Universal City Boulevard, Universal City, Texas.					
Send comments to The Honorable Carmeilme Squires, Mayor, City of Universal City, City Hall, 2150 Universal City Boulevard, Universal City, Texas 78148.					
Utah	Farmington (City), Davis County.	Farmington Creek	Just upstream of the Denver and Rio Grande Western Railroad.	None	*4,231
			Just upstream of the northbound Interstate Highway 15 Bridge.	None	*4,255
			Just upstream of the 300 North Bridge	None	*4,277
			Just upstream of the 600 North Bridge	None	*4,316
			Approximately 750 feet upstream of the 600 North Bridge.	None	*4,365
		Steed Creek	Approximately 450 feet downstream of the 620 South Bridge, at the Interstate Highway 15 Frontage Road.	*4,252	*4,252
			Approximately 150 feet upstream of the 620 South Bridge.	None	*4,254
			Just upstream of the 75 West Bridge	None	*4,280
			Just upstream of the 200 East Bridge	None	*4,360
			Approximately 975 feet upstream of the 200 East Bridge.	None	*4,425
Maps are available for inspection at Farmington City Hall, 130 North Main, Farmington, Utah.					
Send comments to The Honorable Gregory S. Bell, Mayor, City of Farmington, P.O. Box 160, Farmington, Utah 84025–0160.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 11, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–18389 Filed 7–25–95; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC19

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Alaska Breeding Population of the Steller's Eider; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: The Fish and Wildlife Service on June 30, 1995 (60 FR 34225) published a document that reopened the comment period on the Alaska breeding population of the Steller's eider (*Polysticta stelleri*). The new comment period was in error. This document corrects the comment period to end October 1, 1995.

DATES: The comment period is reopened and closes on October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jon Nickles (907) 786–3605.

Dated: July 19, 1995.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 95–18283 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 143
Wednesday, July 26, 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

Forest Service

Environmental Impact Statement, King George Timber Harvest on the Wrangell Ranger District, Stikine Area of the Tongass National Forest, Petersburg

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Stikine Area of the USDA Forest Service proposes to harvest timber on approximately 1300 acres in the King George project area on North Etolin Island using a variety of harvest methods that would leave various densities of trees within harvested areas. A variety of yarding systems would be used including helicopter, cable, skyline, and shovel systems. approximately ten miles of road would be constructed in the Honeymoon and King George drainages. A log transfer site with a ramp for both large and small scale operators would be constructed north of Honeymoon Creek.

The purpose and need for this project is to make available for harvest approximately 15 to 25 million board feet (MMBF) of timber to (1) implement direction in the Tongass Land Management Plan, (2) contribute to providing a sustained volume of wood to meet local and national demand, and (3) provide local and regional employment opportunities. A comparison of the existing and desired condition suggests that approximately 900 to 1300 acres would be treated with a variety of silvicultural methods. Silvicultural methods will be designed to maintain stand structure and ecological functions over time while still producing timber. These methods will leave low, medium, and high densities of trees within the stands following harvest. Harvesting between 900 to 1300 acres of forest using these methods could make available approximately 15 to 25 MMBF of timer. A variety of resources and values will be maintained through the application of ecosystem management principles in the design of the project.

A range of alternatives will respond to environmental issues such as scenery and recreation values, economics, subsistence hunting and gathering, freshwater and estuary systems, and habitat conservation. The no-action alternative will not harvest timber in the area. The action alternatives will harvest approximately 15 to 25 million board feet of timber and construct alternate road systems.

The decision to be made is (1) if, where, how, and how much timber harvest will occur in the King George area, (2) how much and where road construction will occur to facilitate harvest, and (3) what mitigation measures and monitoring will be implemented.

EFFECTIVE DATE: Public coping began in June 1993. The Draft Environmental Impact Statement should be available for public review by August, 1995. The Final Environmental Impact Statement is scheduled to be completed by November, 1995.

FOR FURTHER INFORMATION CONTACT: Questions, written comments and suggestions concerning the analysis should be sent to Margaret Y. Mitchell, Team Leader, P.O. Box 51, Wrangell, AK, 99929, phone (907) 874–2323, fax (907) 874–2095.

SUPPLEMENTARY INFORMATION: The following permits or approvals will be necessary to implement the proposed action;

1. U.S. Army Corp of Engineers approval to dredge of fill materials into coastal waters under Section 404 of the Clean Water Act.
2. Environmental Protection Agency National Pollution Discharge Elimination System Review under Section 402 of the Clean Water Act.
3. State of Alaska, Department of Natural Resources tideland permit and lease or easement.
4. State of Alaska, Department of Environmental Conservation Solid Waste Disposal Permit and Certificate of Compliance with Alaska Water Quality Standards under Section 401 of the Clean Water Act.
5. State of Alaska Coastal Zone Consistency.
6. State of Alaska, State Historic Preservation Officer compliance with Section 106 of the National Historic Preservation Act.

Public Comment

Federal, State, and local agencies; potential contractors; and other individuals or organizations who may be interested in, or affected by, the decision are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibility.
4. Examination of various alternatives.

The Forest Supervisor will hold public meetings during the planning process. Meetings have not been scheduled at this time.

Interested publics are invited to comment. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency Notice of Availability appears in the **Federal Register**.

The Forest Service believes, at this stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power* v. *NRDC, 435 U.S. 519, 533 [1978]).* Also, environmental objections that could have been raised at the Draft EIS stage may be waived if not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final envirnonment impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the satement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environment Policy Act in 40 CFR 1503.3 while addressing these points.

The responsible official for the decision is Abigail R. Kimbell, Forest Supervisor of the Stikine Area, Tongass National Forest, Alaska Region, Petersburg, Alaska.

Dated: July 12, 1995.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 95–18300 Filed 7–25–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070695C]

Shrimp Fishery of the South Atlantic Region; Intent to Prepare a Supplemental Environmental Impact Statement

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for comments.

SUMMARY: NMFS announces the intent of the South Atlantic Fishery Management Council (Council) to prepare an SEIS for proposed Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) to address the issue of bycatch in the shrimp trawl fishery. The SEIS will examine the environmental effects of shrimp trawling on the human environment, as well as other fisheries and protected species (endangered or threatened). The FMP was prepared by the Council and approved and implemented by NMFS under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Written comments on the scope of the SEIS must be submitted by August 25, 1995.

ADDRESSES: Comments and requests for copies of the SEIS should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699 (FAX: 803–769–4520).

FOR FURTHER INFORMATION CONTACT: Sharon Coste, Public Information Officer, 803–571–4366.

SUPPLEMENTARY INFORMATION: The Council held scoping meetings on bycatch in the shrimp fishery to determine the scope of significant issues to be addressed in the SEIS and associated Amendment 2. The scoping meetings were held in conjunction with the following Council meetings: February 7, 1995, in

St. Augustine, FL, April 11, 1995, in Savannah, GA, and June 20, 1995, in Palm Beach Gardens, FL. Additional scoping meetings were held on May 22, 1995, in Wilmington, NC, and May 23, 1995, in Charleston, SC. Minutes of the scoping meetings are available from the Council office.

The Council prepared the FMP in 1992 and NMFS approved and implemented it in 1993. At the time the Shrimp FMP was implemented, the Council was concerned about bycatch in the shrimp trawl fishery, and intended to begin developing management measures that would reduce bycatch through an FMP amendment.

The Council's goal of bycatch reduction was delayed by the 1990 amendments to the Magnuson Act, which prohibited the Gulf and South Atlantic Councils from implementing regulations for bycatch reduction in the southeast shrimp fisheries. These amendments also mandated that NMFS conduct a 3-year research program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of the South Atlantic and Gulf of Mexico Fishery Management Councils. The results of this research program have been summarized recently in a NMFS report to Congress entitled ''A Report to Congress—Cooperative Research Program Addressing Finfish Bycatch in the Gulf of Mexico and South Atlantic Shrimp Fisheries—April 1995.''

The Council is considering these research results as an important basis for any specific management action. Recent advances in gear development through cooperative efforts between Federal and state governments and the shrimp industry have produced Bycatch Reduction Devices (BRDs) that successfully exclude fish from shrimp trawls with a minimum of shrimp loss. Both the Council and the South Atlantic States have requested that NMFS proceed as rapidly as possible to obtain the research information needed to identify and assess options for requiring the use of BRDs under the FMP and under coastal fishery management plans (CFMPs) developed by the Atlantic States Marine Fisheries Commission (Commission), pursuant to provisions of the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Atlantic Coastal Act).

The Council still is concerned about the impacts of shrimp bycatch on the Spanish and king mackerel resources. In addition, under the current amendment to the CFMP for Weakfish, prepared by the Commission under the Atlantic Coastal Act, all South Atlantic states must implement measures to reduce the bycatch of weakfish in the shrimp trawl fisheries by 50 percent for the 1996 fishing season. Bycatch reduction plans must be submitted to the Commission's Weakfish Technical Committee by October 1, 1995.

As a result of the scoping process, the Council has determined that the following principal issues need to be addressed in the SEIS for Amendment 2: Reducing the bycatch of non-target finfish and invertebrates in the shrimp trawl fishery, and coordinating the development of State and Federal measures for reducing bycatch to enhance enforceability.

The Council is considering the following management measures for this amendment: Developing specific bycatch reduction measures for all penaeid shrimp fisheries in the South Atlantic exclusive economic zone (EEZ), including possibly requiring the use of NMFS-approved BRDs in all penaeid shrimp trawls in the South Atlantic EEZ, and reducing the bycatch component of weakfish and Spanish mackerel fishing mortality by 50 percent. The Council may consider seasonal and areal restrictions to reduce bycatch. Also, regarding the bycatch issue, the SEIS would evaluate the effects of taking no management action. The Council is also considering adding brown and pink shrimp to the management unit.

The Council intends to approve draft Amendment 2 to the FMP and the draft SEIS for public hearings at its August 1995 meeting. These documents are expected to be released for public comment in early September. The draft SEIS would be filed with the Environmental Protection Agency for a

45-day public comment period in September 1995.

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

Dated: July 20, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18310 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050195E]

Small Takes of Marine Mammals Incidental to Specified Activities; Lockheed Launch Vehicles at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization to take small numbers of harbor seals by harassment incidental to launches of Lockheed's launch vehicles (LLVs) at Space Launch Complex 6 (SLC–6), Vandenberg Air Force Base, CA (VAFB) has been issued.

EFFECTIVE DATE: This authorization is effective from July 18, 1995 until July 18, 1996.

ADDRESSES: The application and authorization are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301–713–2055, or Craig Wingert, Southwest Regional Office at 301–980–4021.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, the Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can receive an authorization, without regulations, to incidentally take small numbers of marine mammals by harassment. New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days after the comment period, NMFS must either issue, or deny issuance, of the authorization.

On March 13, 1995, NMFS received an application from Lockheed requesting an authorization for the harassment of small numbers of harbor seals (*Phoca vitulina*) incidental to LLV launches at SLC–6, VAFB. These launches would place commercial payloads into low earth orbit using its family of vehicles (LLV–1, LLV–2 and LLV–3). Because of the requirements for circumpolar trajectories of the LLV and its payloads, the use of SLC–6 is the only feasible alternative within the United States. Lockheed intends to launch approximately two LLVs during the period of this proposed 1-year authorization (Air Force, 1995)[1]. The noise associated with the launch itself and the resultant sonic boom have the potential to cause a startle response to harbor seals that haul out on the coastline south and southwest of VAFB and possibly on the northern Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of SLC–6 while low-level sonic booms potentially could be heard on the Channel Islands, specifically San Miguel Island (SMI) and Santa Rosa Island.

A notice of receipt of the application and the proposed authorization was published on May 10, 1995 (60 FR 24840) and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, one comment was received. The Marine Mammal Commission recommended that NMFS (1) determine whether additional marine mammals should be included in the authorization; (2) justify the conclusion that no harbor seals, including pups, would be killed or seriously injured during launches; and (3) demonstrate that only small numbers of harbor seals or other marine mammals would be taken. These recommendations are discussed in detail below. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the above-mentioned notice and needs not be repeated here.

1. Determine whether additional marine mammals should be included in the authorization. While there are approximately 29 species of cetaceans and 6 species of pinnipeds that have the potential to be under the flight path of the LLV and thereby subject to hearing either launch or sonic boom noise, only harbor seals are expected to haul out along the coast at VAFB and be subject to taking by harassment. Launch noises, which are predicted to be about 93 dBA (118 dB) at the principal haulout at Rocky Point, are expected to be almost unnoticeable offshore. In order to be detectable by a marine mammal, noise needs to be greater than ambient within the same frequency band as the animal's hearing range. With launch noises attenuating to approximately 85 dBA within 2.5 km offshore, and ambient noise level expected to range between 56 and 96 dBA (Lockheed, 1995), there is no scientific evidence that any marine mammals, other than harbor seals onshore at the time of launch, would be subject to harassment by launch noises, although the potential does exist that other marine mammal species may hear the launch noise.

Sonic booms resulting from launches of the LLV vary with the type of vehicle, vehicle trajectory and the specific ground location. Sonic booms are not expected to intersect with the ocean surface until the vehicle changes its launch trajectory. This location will vary depending upon the LLV type, but will be well offshore. For example, the sonic boom from LLV–3 (the largest of the LLV rockets) is not expected to intersect any portion of the northern Channel Islands, but instead will focus approximately 37 miles from the launch site, in open water southwest of the Channel Islands.

The maximum magnitude of sonic booms from launches of the LLV–1 (6.3 lb/ft^2 (psf)/130.7.6 dB), LLV–2 (3.5 psf/125.6 dB) and the LLV–3 (3.5 psf/125.6 dB), as predicted by Lockheed, will be less than those measured for other launch vehicles, such as the Titan IV and the Space Shuttle (10 psf), for

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

which small take authorizations for harassment have been issued previously (see 56 FR 41628, August 22, 1991 and 51 FR 11737, April 7, 1986). Also, while it is predicted that launches of the LLV–1 and LLV–2 will produce sonic booms over portions of the Channel Islands, the maximum overall sound pressure levels over the islands are not expected to exceed 80 dBA and in most cases will not exceed 70 dBA (Air Force, 1995). These sonic boom levels are likely to be indistinguishable from background noises caused by wind and surf (Air Force, 1995). Furthermore, as the expected noise level is well below the threshold response criteria of 101.8 dBA identified during previous research on harbor seal behavior resulting from sonic booms (Stewart et al., 1993), and as harbor seals have shown themselves to be more sensitive to noise than other species of seals and sea lions (Bowles and Stewart, 1980) and, therefore, more likely to flee to the water than other pinniped species, there is no evidence that either harbor seals or other pinniped species on the Channel Islands would be impacted by sonic booms from LLVs. However, to ensure that this assumption is valid, NMFS will require acoustic monitoring of the first launch of each type of LLV that takes place at the same time that pinnipeds are hauled out on SMI to determine sound pressure levels. If noise levels exceed the predicted levels, and/or there are indications that pinnipeds responded to the sonic booms, Lockheed will be requested to seek a modification to its authorization to include pinnipeds on the Channel Islands.

Cetaceans and pinnipeds in the water should also be unaffected by the sonic booms, although, depending upon location and ambient noise levels, they may be able to hear the sonic boom. First, sound entering a water surface at an angle greater than 13 degrees from the vertical has been shown to be largely deflected at the surface with very little sound entering the water (Chappell, 1980; Richardson et al., 1991), although rough seas may provide some surfaces at the proper angle for penetration (Richardson et al., 1991). As this area is relatively small, the chance that a marine mammal would be within it and thereby capable of hearing the sonic boom is low. Also, Chappell (1980) believes that a sonic boom would need to have a peak overpressure in the range of 138 to 169 dB to cause a temporary hearing threshold shift (TTS) in marine mammals, lasting at most a few minutes. Therefore, with the likelihood that a marine mammal will be directly under the line of flight of the LLV being remote, and with the LLVs having overpressures below the threshold for potentially causing TTS in marine mammals, NMFS believes that sonic booms are not likely to result in the harassment of cetacean or pinniped populations in offshore southern California.

2. Justify the conclusion that no harbor seals, including pups, would be killed or seriously injured during launches. NMFS is not aware of any Titan IV launchings by the U.S. Air Force during the harbor seal pupping season (February through end of May (post-weaning)); direct observations to conclude whether harbor seal pups would be incidentally killed or seriously injured during launches or not is therefore not available. However, several studies on other pinniped species support this assumption. First, Stewart (1981, 1982) exposed breeding California sea lions and northern elephant seals on San Nicolas Island to loud implosive noises created by a carbide pest control cannon. Sound pressure levels varied from 125.7 to 146.9 dB. While behavioral responses of each species varied by sex, age, and season, Stewart found that habitat use, population growth, and pup survival of both species appeared unaffected by periodic exposure to the noise. In addition, while monitoring the August 2, 1993, Titan IV launch, Stewart et al. (1993) reported that the rocket explosion created a sonic boom-like pressure wave that caused approximately 45 percent of the California sea lions (approximately 23,400, including 14 to 15 thousand 1-month old pups, were hauled-out on SMI during the launch) and 2 percent of the northern fur seals to enter the surf zone. Although approximately 15 percent of the sea lion pups were temporarily abandoned when their mothers fled into the surf, no injuries or mortalities were observed. After forming rafts offshore, most animals returned to shore within 2 hours of the disturbance (Stewart et al., 1993). However, to ensure that no harbor seals (or other pinnipeds) are killed or seriously injured by launchings of LLVs, monitoring of the impact of LLV launches on the harbor seal haulouts at Rocky Point or in the absence of harbor seals at that location, at another South VAFB location, and on the northern part of SMI during the 1-year period of authorization will be required.

3. Demonstrate that only small numbers of harbor seals or other marine mammals would be taken. Based upon the information discussed above, NMFS believes that only those harbor seals hauled out along the coast of VAFB at the time of either of the two planned launches could potentially be taken by harassment. As the population at this haulout numbers fewer than 500 animals at the peak haulout time of the year (Lockheed, 1995), and as only a portion of the population is expected to react to launch noises, NMFS considers that this authorization will result in the taking by harassment of only a small number of harbor seals and have a negligible impact on the species.

Therefore, since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, would have only a negligible impact on the species, and would result in the least practicable impact on the stock, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

Dated: July 19, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–18311 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071995A]

New England Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a public meeting to review and approve a public hearing document and a Draft Supplemental Impact Statement (DSEIS) for Amendment #7 to the Council's multispecies fishery management plan.

DATES: The meeting will be held on August 2, 1995, at 9:00 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, Route 1, (1 Newbury Street), Peabody, MA 01960; telephone: (508) 535–4600.

Council address: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council; telephone: (617) 231–0422.

SUPPLEMENTARY INFORMATION: The public hearing document will describe the alternatives currently under active consideration by the Council for eliminating overfishing and rebuilding

stocks of cod, haddock and yellowtail flounder. It will also indicate the likely impacts of the various alternatives if they were approved and implemented by Amendment #7. The DSEIS will evaluate the environmental impacts of the proposed alternatives in greater detail.

Following approval by the Council, the public hearing document and the DSEIS will be put into final form and distributed for comment by the public at a series of hearings, after which the Council will select an alternative and prepare the plan amendment and the Final Supplemental Environmental Impact Statement.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**), at least 5 days prior to the meeting date.

Dated: July 20, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18386 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council meeting will be held on Wednesday, August 9, 1995 from 9:00 a.m. until 4:30 p.m.

ADDRESSES: The NII Advisory Council meeting will take place in the University of Washington, School of Public Policy, Perrington Hall, The Commons, Room 308, Seattle, Washington 98195.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle (or Ms. Tiffani Burke, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

AGENDA:

1. *Welcome Opening (Delano Lewis, Ed McCracken)*
2. *Universal Access and Service Implementation—discussion*
3. *Security Paper Responses—discussion*
4. *Review Document Outlines*
5. *Public Comment*
6. *Health Care Principles—discussion*
7. *KickStart Review*
8. *Responses to Intellectual Property White Paper*

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Tiffani Burke at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–18327 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command Rules and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Motor or Railroad Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Extension of request for carrier industry comments.

SUMMARY: This notice extends the deadline to August 29, 1995 for carriers to submit suggestions to Headquarters, MTMC, Attn: MTOP–T–SR, for needed changes to MTMC Freight Traffic Rules Publication (MFTRP) No. 1A for transport of military freight by motor carriers and to MFTRP No. 10 railroads. Formerly the deadline for carriers to submit comments was July 27, 1995, as published on June 21, 1995 (**Federal Register**, Vol. 60, No. 119, page number 32305).

FOR FURTHER INFORMATION CONTACT: Mr. Julian Jolkovsky, Military Traffic Management Command, ATTN: MTOP–T–SR, 5611 Columbia Pike, Falls Church, VA 22041–5050; or telephone (703) 681–3440.

SUPPLEMENTARY INFORMATION: After the deadline to receive carrier comments, MTMC will prepare an initial draft of the updated MFTRP No. 1A and MFTRP No. 10 and furnish copies to carriers approved under the MTMC Carrier Qualification Program.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–18313 Filed 7–25–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet 11 August 1995 from 1330-1500. The meeting will be held at the Pentagon,

room 4E630. This session will be closed to the public.

The purpose of this meeting is to brief the Chief of Naval Operations on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302-0268, Phone: (703) 681-6205.

Dated: July 11, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–18351 Filed 7–25–95; 8:45 am]

BILLING CODE 3810–FF–F

Secretary of the Navy's Advisory Subcommittee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Secretary of the Navy's Advisory Subcommittee on Naval History, a Subcommittee of the Department of Defense Historical Advisory Committee, will meet from 0800-1600 on September 21 and 0800-1600 on September 22, 1995 in Building 1 of the Naval Historical Center, Washington Navy Yard, Washington, DC. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History on 10 and 11 March 1994, and to make comments and recommendations on these activities to the Secretary of the Navy.

For further information concerning this meeting, write to the Director of Naval History, 901 M Street SE, Bldg. 57 WNY, Washington, DC, 20374-5060, or call Dr. William S. Dudley at (202) 433-2210.

Dated: July 11, 1995

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–18352 Filed 7–25–95; 8:45 am]

BILLING CODE 3810–FF–F

Notice of Availability of Inventions for Licensing

The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

For further information contact: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCC), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: July 10, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

Patent 5,293,261: DEVICE FOR LOW ELECTRIC-FIELD INDUCED SWITCHING OF LANGMUIR-BLODGETT FERROELECTRIC LIQUID CRYSTAL POLYMER FILMS; filed 31 December 1992; patented 8 March 1994.

Patent 5,299,171: TORPEDO DECOY SIGNAL GENERATOR; filed 20 July 1970; patented 29 March 1994.

Patent 5,342,737; HIGH ASPECT RATIO METAL MICROSTRUCTURES AND METHOD FOR PREPARING THE SAME; filed 27 April 1992; patented 30 August 1994.

Patent 5,353,260: NOISE SIGNAL PROCESSOR; filed 13 May 1982; patented 4 October 1994.

Patent 5,374,567: OPERATIONAL AMPLIFIER USING BIPOLAR JUNCTION TRANSISTORS IN SILICON-ON-SAPPHIRE; filed 20 May 1993; patented 20 December 1994.

Patent 5,377,613: SUBMERSIBLE BOAT; filed 29 June 1993; patented 3 January 1995.

Patent 5,378,413: PROCESS FOR PREPARING MICROCAPSULES HAVING GELATIN WALLS CROSSLINKED WITH QUINONE; filed 21 January 1993; patented 3 January 1995.

Patent 5,378,962: METHOD AND APPARATUS FOR A HIGH RESOLUTION, FLAT PANEL CATHODOLUMINESCENT DISPLAY DEVICE; filed 29 May 1992; patented 3 January 1995.

Patent 5,379,034: APPARATUS AND METHOD OF RADIO COMMUNICATION FROM A SUBMERGED UNDERWATER VEHICLE; filed 15 June 1993; patented 3 January 1995.

Patent 5,379,043: REPLY-FREQUENCY INTERFERENCE/JAMMING DETECTOR; filed 26 September 1975; patented 3 January 1995.

Patent 5,379,109: METHOD AND APPARATUS FOR NON-DESTRUCTIVELY MEASURING LOCAL RESISTIVITY OF SEMICONDUCTORS; filed 17 June 1992; patented 3 January 1995.

Patent 5,379,270: ACOUSTIC-OPTIC SOUND VELOCITY PROFILER; filed 25 March 1994; patented 3 January 1995.

Patent 5,379,346: CASCADED SYNCHRONIZED CHAOTIC SYSTEMS; filed 30 September 1993; patented 3 January 1995.

Patent 5,379,711: RETROFITTABLE MONOLITHIC BOX BEAM COMPOSITE HULL SYSTEM; filed 30 September 1992; patented 10 January 1995.

Patent 5,379,955: INFEED HOPPER WITH PIVOTABLE THROAT FOR SHREDDER OR GRANULATOR; filed 24 September 1993; patented 10 January 1995.

Patent 5,380,298: MEDICAL DEVICE WITH INFECTION PREVENTING FEATURE; filed 7 April 1993; patented 10 January 1995.

Patent 5,380,382: METHOD OF INSTALLING A METALLIC THREADED INSERT IN A COMPOSITE/RUBBER PANEL; filed 22 February 1994; patented 10 January 1995.

Patent 5,381,381: FAR FIELD ACOUSTIC RADIATION REDUCTION; filed 30 September 1993; patented 10 January 1995.

Patent 5,381,384: VERTICAL VELOCITY AMBIGUITY RESOLUTION METHOD; filed 9 May 1988; patented 10 January 1995.

Patent 5,381,428: TUNABLE YTTERBIUM-DOPED SOLID STATE LASER; filed 30 July 1993; patented 10 January 1995.

Patent 5,381,433: 1.94 μM LASER APPARATUS, SYSTEM AND METHOD USING A THULIUM-DOPED YTTRIUM-LITHIUM-FLUORIDE LASER CRYSTAL PUMPED WITH A DIODE LASER; filed 28 January 1993; patented 10 January 1995.

Patent 5,381,755: METHOD OF SYNTHESIZING HIGH QUALITY, DOPED DIAMOND AND DIAMONDS AND DEVICES OBTAINED

THEREFROM; filed 20 August 1992; patented 17 January 1995.
Patent 5,382,185: THIN-FILM EDGE EMITTER DEVICE AND METHOD OF MANUFACTURING THEREFOR; filed 31 March 1993; patented 17 January 1995.
Patent 5,382,957: SYSTEM AND METHOD; filed 19 December 1989; patented 17 January 1995.
Patent 5,383,366: ULTRASONIC TWO PROBE SYSTEM FOR LOCATING AND SIZING; filed 26 October 1992; patented 24 January 1995.
Patent 5,383,567: PROTECTIVE DEVICE FOR CONTAINER; filed 24 September 1993; patented 24 January 1995.
Patent 5,384,751: ATTACHMENT DEVICE FOR TETHERED TRANSDUCER; filed 30 June 1994; patented 24 January 1995.
Patent 5,385,109: DISPENSER FOR DEPLOYING ELONGATED FLEXIBLE ARTICLES; filed 5 April 1993; patented 31 January 1995.
Patent 5,385,618: NON-MAGNETIC ALLOW; filed 19 November 1993; patented 31 January 1995.
Patent 5,385,633: METHOD FOR LASER-ASSISTED SILICON ETCHING USING HALOCARBON AMBIENTS; filed 29 March 1990; patented 31 January 1995.
Patent 5,387,095: APPARATUS FOR INJECTION MOLDING HIGH-VISCOSITY MATERIALS; filed 7 April 1993; patented 7 February 1995.
Patent 5,387,864: CHANNEL EQUALIZED DC SQUID FLUX-LOCKED LOOP; filed 26 July 1993; patented 7 February 1995.
Patent 5,388,021: VOLTAGE SURGE SUPPRESSION POWER CIRCUITS; filed 18 September 1992; patented 7 February 1995.
Patent 5,388,112: DIODE PUMPED CONTINUOUSLY TUNABLE, 2.3 MICRON CW LASER; filed 29 April 1994; patented 7 February 1995.
Patent 5,389,411: COMPOSITE STRUCTURE FORMING A WEAR SURFACE; filed 24 September 1993; patented 14 February 1995.
Patent 5,389,441: PHTHALONITRILE PREPOLYMER AS HIGH TEMPERATURE SIZING MATERIAL FOR COMPOSITE FIBERS; filed 28 June 1993; patented 14 February 1995.
Patent 5,389,746: SUBMARINE HULL STRUCTURES PROVIDING ACOUSTICALLY ISOLATED HULL OPENINGS; filed 30 June 1994; patented 14 February 1995.
Patent 5,390,154: COHERENT INTEGRATOR; filed 14 July 1983; patented 14 February 1995.
Patent 5,390,203: METHOD OF LOCKING LASER WAVELENGTH TO AN ATOMIC TRANSITION; filed 13 June 1994; patented 14 February 1995.
Patent 5,390,548: ELECTRODE ARRAY ELECTROMAGNETIC VELOCIMETER; filed 18 March 1993; patented 21 February 1995.
Patent 5,390,581: MARKER BEACON CASE; filed 23 March 1994; patented 21 February 1995.
Patent 5,390,619: WATER EXPANDED COMPRESSED SPONGE CABLE FAIRING; filed 25 August 1993; patented 21 February 1995.
Patent 5,391,914: DIAMOND MULTILAYER MULTICHIP MODULE SUBSTRATE; filed 16 March 1994; patented 21 February 1995.
Patent 5,392,256: MAGNETO-ACOUSTIC SIGNAL CONDITIONER; filed 4 October 1993; patented 21 February 1995.
Patent 5,392,258: UNDERWATER ACOUSTIC INTENSITY PROBE; filed 12 October 1993; patented 21 February 1995.
Patent 5,392,370: MULTI-CHANNEL FIBER OPTIC ROTATABLE INTERCONNECTION SYSTEM; filed 21 April 1994; patented 21 February 1995.
Patent 5,392,881: DEVICE FOR DAMPENING VIBRATORY MOTION; filed 6 October 1993; patented 28 February 1995.
Patent 5,393,016: ENERGY ABSORPTION DEVICE FOR SHOCK LOADING; filed 30 June 1993; patented 28 February 1995.
Patent 5,394,151: APPARATUS AND METHOD FOR PRODUCING THREE-DIMENSIONAL IMAGES; filed 30 September 1993; patented 28 February 1995.
Patent 5,394,378: HYDROPHONE TRANSDUCTION MECHANISM; filed 21 June 1993; patented 28 February 1995.
Patent 5,394,493: FIBER-OPTIC BUNDLE AND COLLIMATOR ASSEMBLY; filed 8 August 1994; patented 28 February 1995.
Patent 5,395,568: FEEDBACK-CONTROLLED OXYGEN REGULATION SYSTEM FOR BENTHIC FLUX CHAMBERS AND METHOD FOR MAINTAINING A CONSTANT VOLUME OF OXYGEN THEREFOR; filed 3 December 1993; patented 7 March 1995.
Patent 5,396,166: FIBER-OPTIC INTERFEROMETRIC ELECTRIC FIELD AND VOLTAGE SENSOR UTILIZING AN ELECTROSTRICTIVE TRANSDUCER; filed 28 August 1992; patented 7 March 1995.
Patent 5,396,811: FLUID DYNAMOMETER HAVING FLUID CHARACTERISTIC POWER ABSORPTION ADJUSTMENT CAPABILITY; filed 29 March 1993; patented 14 March 1995.
Patent 5,396,830: ORTHOGONAL LINE DEPLOYMENT DEVICE; filed 17 June 1994; patented 14 March 1995.
Patent 5,396,855: UNDERWATER VEHICLE TAILCONE ASSEMBLY; filed 30 June 1994; patented 14 March 1995.
Patent 5,396,859: SYSTEM FOR EFFECTING UNDERWATER COUPLING OF OPTICAL FIBER CABLES CHARACTERIZED BY A NOVEL V-PROBE CABLE CAPTURE MECHANISM; filed 13 September 1993; patented 14 March 1995.
Patent 5,397,447: ELECTRIFIED MICROHETEROGENEOUS CATALYSIS; filed 24 November 1993; patented 14 March 1995.
Patent 5,397,953: STATOR FOR DISC TYPE ELECTRIC MOTOR; filed 17 November 1993; patented 14 March 1995.
Patent 5,398,214: PRESSURE RESPONSIVE CLASP; filed 2 March 1981; patented 14 March 1995.
Patent 5,398,239: CROSSPOINT ANALOG DATA SELECTOR; filed 8 December 1993; patented 14 March 1995.
Patent 5,398,587: GAS-PROPELLED LINE DEPLOYMENT SYSTEM; filed 23 March 1994; patented 21 March 1995.
Patent 5,398,636: SYSTEM FOR EFFECTING UNDERWATER COUPLING OF OPTICAL FIBER CABLES CHARACTERIZED BY A NOVEL LATERAL ARM CABLE CAPTURE MECHANISM; filed 13 September 1993; patented 21 March 1995.
Patent 5,399,388: METHOD OF FORMING THIN FILMS ON SUBSTRATES AT LOW TEMPERATURES; filed 28 February 1994; patented 21 March 1995.
Patent 5,399,444: ENCAPSULATED DRY ELECTROLYTE COMPOSITION FOR TIME RELEASE INTO A SOLUTE; filed 30 September 1993; patented 21 March 1995.
Patent 5,400,296: ACOUSTIC ATTENUATION AND VIBRATION DAMPING MATERIALS; filed 25 January 1994; patented 21 March 1995.
Patent 5,4,00,422; TECHNIQUE TO PREPARE HIGH-REFLECTANCE OPTICAL FIBER BRAGG GRATINGS WITH SINGLE EXPOSURE IN-LINE ON FIBER DRAW TOWER; filed 21 January 1993; patented 21 March 1995.
Patent 5,400,429: METHOD FOR MAKING FIBER-OPTIC BUNDLE COLLIMATOR ASSEMBLY; filed 8 August 1994; patented 21 March 1995.

Patent 5,402,131: DETECTION OF RADAR TARGETS USING HIGHER-ORDER STATISTICS; filed 28 September 1993; patented 28 March 1995.

Patent 5,402,317: METHOD AND MEANS FOR ISOLATING EQUIPMENT FROM SHOCK LOADS; filed 29 December 1993; patented 28 March 1995.

Patent 5,402,335: TWO-STEP METHOD CONSTRUCTING LARGE-AREA FACILITIES AND SMALL-AREA INTRAFACILITIES EQUIPMENTS OPTIMIZED BY USER POPULATION DENSITY; filed 24 September 1992; patented 28 March 1995.

Patent 5,402,393: NON-INVASIVE ACOUSTIC VELOCIMETRIC APPARATUS AND METHOD; filed 14 March 1994; patented 28 March 1995.

[FR Doc. 95–18350 Filed 7–25–95; 8:45 am]

BILLING CODE 3810–FF–M

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 the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 25, 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, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence 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. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public 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 of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited.

Title: Higher Education Collaboration Between the United States and the Program Community (A Special Focus Competition of the Fund for the Improvement of Postsecondary Education)

Frequency: Annually.

Affected Public: Not for profit institutions.

Reporting Burden:

Responses: 300.

Burden Hours: 6000.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: The Higher Education Collaboration Between the United States and the European Community is an experimental program that will support new types of cooperation and exchange between institutions of higher education in the U.S. and counterparts in the member states of the European Community through awarding of grants.

Additional Information: Clearance for this information collection is requested by August 14, 1995. An expedited review is requested to allow enough time to make grant awards for this year.

[FR Doc. 95–18305 Filed 7–25–95; 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 August 18, 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, 600 Independence 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 has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited.
Title: Application for the Training Program for Federal TRIO Programs.
Frequency: Biennially.
Affected Public: Not for profit institutions.
Reporting Burden:
Responses: 60.
Burden Hours: 2,040.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Training Program will provide training to staff and leadership personnel employed or preparing for employment in projects designed to identify individuals from disadvantaged backgrounds, prepare them for a program of postsecondary education and provide special services for such students pursuing programs in postsecondary education. The Department will use the information to make grant awards.

Additional Information: Clearance for this information collection is requested by August 18, 1995. An expedited review is requested to meet the schedule for Fiscal Year 1996 funding. To obtain a copy of this application for your review and comment, please call (202) 708–4804.

[FR Doc. 95–18306 Filed 7–25–95; 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 July 31, 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, 600 Independence 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. to 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 has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited.
Title: Notice Inviting Applications for Participation in the Quality Assurance Program.
Frequency: One Time.
Affected Public: Business or other for-profit; and Not for profit institutions.
Reporting Burden:
Responses: 400.
Burden Hours: 400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: A Notice Inviting Applications for Participation in the Quality Assurance (QA) Program will be published in the **Federal Register** for institutions to freely apply. In a letter of application to the Department, Financial Aid Administrators will be requested to describe their commitment to quality assurance and error reduction in processing and awarding student aid dollars. The information being collected will determine that an institution has basic procedures in place to control for and correct weaknesses in its financial aid operations, and the institution's intent and capacity to support and conduct program activities.

Additional Information: Clearance for this information collection is requested by July 31, 1995. An expedited review is requested to allow enough time to recruit institutions to participate in the Quality Assurance Program by late summer/early fall of 1995. Institution will need this time to determine whether to apply.

[FR Doc. 95–18307 Filed 7–25–95; 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 the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 25, 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, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence 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 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public 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 information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 21, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Vocation Rehabilitation Program/Cost Report.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 94.
Burden Hours: 395.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State vocational rehabilitation agencies provide data from the Department on the Annual Vocational Rehabilitation Program/Cost Report. The Department uses this information to management and administer the Basic Support Program and Title VI.

[FR Doc. 95–18394 Filed 7–25–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) has submitted five information collection packages to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1980.

The packages cover management and procurement collections of information from management and operating contractors of DOE's Government-owned/ contractor-operated facilities and offsite contractors. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations.

DATES AND ADDRESSES: Comments regarding the information collection packages should be submitted to the OMB Desk Officer at the following address no later than August 25, 1995. DOE Desk Officer, Office of Management and Budget (OIRA), Room 3001, New Executive Office Building, Washington, DC 20503, (202) 395–3084. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed in this notice.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Mary Ann Wallace, Records Management Team (HR–424), Department of Energy, Washington, DC 20585, (301) 903–4353.

SUPPLEMENTARY INFORMATION: Each package listing contains the following information: (1) Title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

Package Title: Information Management
Current OMB No.: 1910–0100
Type of Respondents: DOE management and operating contractors and offsite contractors.
Estimated Number of Responses: 25,389
Estimated Total Burden Hours: 176,027
Purpose: This information is required by the Department to ensure that information management requirements and resources are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 29 information and/or recordkeeping requirements.

Package Title: Industrial Relations
Current OMB No.: 1910–0600
Type of Respondents: DOE management and operating contractors and offsite contractors.
Estimated Number of Responses: 1,452
Estimated Total Burden Hours: 30,149
Purpose: This information is required by the Department to ensure that industrial relations resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 27 information and/or recordkeeping requirements.

Package Title: Legal
Current OMB No.: 1910–0800
Type of Respondents: DOE management and operating contractors, and offsite contractors.
Estimated Number of Responses: 3,109
Estimated Total Burden Hours: 23,469
Purpose: This information is required by the Department to ensure that legal resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 8 information and/or recordkeeping requirements.

Package Title: Public Affairs
Current OMB No.: 1910–1500
Type of Respondents: DOE management and operating contractors and offsite contractors.
Estimated Number of Responses: 241
Estimated Total Burden Hours: 3,694
Purpose: This information is required by the Department to ensure that public affairs resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 8 information and/or recordkeeping requirements.

Package Title: Procurement
Current OMB No.: 1910–4100
Type of Respondents: DOE management and operating contractors, and offsite contractors.
Estimated Number of Responses: 6,131
Estimated Total Burden Hours: 1,248,436
Purpose: This information is required by the Department to ensure that procurement resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 30 information and/or recordkeeping requirements.

Issued in Washington, DC, on July 13, 1995.

Gerald F. Chappell,

Director, Program Management Group, Office of Information Management.

[FR Doc. 95–18392 Filed 7–25–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–50–NG]

Texas-Ohio Gas, Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texas-Ohio Gas, Inc. authorization to import and export up to a combined total of 100 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first import or export.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 11, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–18238 Filed 7–25–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–319–001]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 17, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 92
Third Revised Sheet No. 93
First Revised Sheet No. 93A

The proposed effective date of the above tariff sheets is June 1, 1995. Iroquois states that this filing is made in compliance with the Commission's June 30, 1995 Order in the above-referenced docket requiring Iroquois to revise Section 28.5(a) of the General Terms and Conditions of its Tariff to clarify the exceptions to the notice, bidding, and allocation requirements of its capacity release provisions. In addition, Iroquois states that it has modified Section 28.2 of the General Terms and Conditions to add a new defined term required by the modifications to Section 28.5(a). Iroquois states that copies of this filing were served upon all jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 27, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18293 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–390–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 17, 1995, Koch Gateway Pipeline Company (KGPC) tendered for to become part of its FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 3603

KGPC states that the above referenced tariff sheets reflect KGPC's compliance with the Commission's Final Rule (Order No. 577–A) issued May 31, 1995 at Docket No. RM95–5–001. KGPC states that these tariff sheets reflect modifications to KGPC's capacity release provisions to reflect the Commission's revision of Section 284.243(h) of its Regulations.

KGPC, pursuant to Section 154.51 of the Commission's Regulations, respectfully requests waiver of the notice requirement of Section 154.22 of said Regulations to permit the tendered tariff sheets to become effective July 17, 1995 as submitted.

KGPC also states that the revised tariff sheets are being served upon all its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18294 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–389–000]

Mobile Bay Pipeline Company' Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 17, 1995, Mobile Bay Pipeline Company (MBPC) tendered for to become part of its FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of July 17, 1995:

First Revised Sheet No. 83
First Revised Sheet No. 238
First Revised Sheet No. 239

MBPC states that the above referenced tariff sheets reflect MBPC's compliance with the Commission's Final Rule (Orders No. 577 and 577–A) issued March 29, 1995 at Docket No. RM95–5–000 and May 31, 1995 at Docket No. RM95–5–001, respectively. MBPC states that these tariff sheets reflect modifications to MBPC's capacity release provisions to reflect the Commission's revision of Section 284.243(h) of its Regulations.

MBPC, pursuant to Section 154.51 of the Commission's Regulations, respectfully requests waiver of the notice requirement of Section 154.22 of said Regulations to permit the tendered tariff sheets to become effective July 17, 1995 as submitted.

MBPC also states that the revised tariff sheets are being served upon all its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on

or before July 27, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18295 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–53–003]

NorAm Gas Transmission Company; Notice of Filing

July 20, 1995.

Take notice that on July 18, 1995, NorAm Gas Transmission Company (NGT) moved to place into effect the rates and tariff sheets in NGT's November 23, 1994 filing in this proceeding.

NGT states that its motion rate filing complies with the Commission's December 23, 1994 suspension order, and June 28, 1995 order terminating the referenced docket. NGT's motion rate filing would be come effective on August 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 27, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18296 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–145–003]

Pacific Gas Transmission Company; Notice of Filing of Operational Report Regarding Hub Service

July 20, 1995.

Take notice that on May 15, 1995, Pacific Gas Transmission Company (PGT) filed an operational report of hub service activities in Docket No. RP94–145–003. The filing was made to comply with the Federal Energy Regulatory Commission's (Commission) Order of August 3, 1994.

PGT states that the Operational report provides a detailed operational accounting of all changes to PGT's line pack for the 12 month period ending March 31, 1995. Including all additions and deletions, a breakdown for each month of the approximate ownership of the line pack between PGT and others, and sets forth the percentage of ownership for each. In addition, the report provides a valuation of the line pack in PGT's system for each month, broken down between gas owned by PGT and gas owned by others.

PGT states that copies of PGT's filing have been served upon all parties to this proceeding as well as PGT's jurisdictional customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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. 95–18297 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–55–002]

Paiute Pipeline Company; Notice of Compliance Filing

July 20, 1995.

Take notice that on July 18, 1995, Paiute Pipeline Company (Paiute) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets:

Substitute First Revised Sheet No. 63
Substitute Original Sheet No. 65A

Paiute indicates that the purpose of its filing is to comply with the Commission's order issued June 1, 1995 in Docket Nos. RP95–55–001 and RP95–269–000, by which the Commission approved an offer of settlement filed by Paiute. Paiute requests that the proposed tariff sheets be permitted to become effective June 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before July 27, 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. 95–18298 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–383–001]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 18, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 7, 1995:

Second Revised Sheet No. 222
Second Revised Sheet No. 235
Second Revised Sheet No. 241

Panhandle states that the purpose of this filing is to fully conform the General Terms and Conditions to the changes proposed by Panhandle in its July 7, 1995 filing. These sheets were inadvertently omitted from the July 7, 1995 filing. In that filing, Section 6.1 is being revised to delete the references to Section 6.12, which was deleted from the General Terms and Conditions. Section 6.7, Section 7.2(b)(iii) and Section 8.7 of the General Terms and Conditions should also be revised to make similar conforming changes regarding requests for transportation and storage service.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 27, 1995. Protests will be considered by the Commission in determining the appropriation 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18299 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1593–002, et al.]

National Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 18, 1995.

Take notice that the following filings have been made with the Commission:

1. National Power Exchange Corporation

[Docket No. ER94–1593–002]

Take notice that on June 5, 1995, National Power Exchange Corporation tendered for filing certain information as required by the Commission's letter order dated October 7, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. Midamerican Energy Company

[Docket No. ER95–188–001]

Take notice that on June 30, 1995 and July 11, 1995, Midamerican Energy Company tendered for filing revised tariff sheets in the above-referenced docket.

Comment date: July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Industrial Gas & Electric Services Company

[Docket No. ER95–257–002]

Take notice that on June 26, 1995, Industrial Gas & Electric Services Company tendered for filing certain information as required by the Commission's letter order dated February 1, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

4. Kaztex Energy Services, Inc.

[Docket No. ER95–295–003]

Take notice that on July 11, 1995, Kaztex Energy Services, Inc. tendered for filing certain information as required by the Commission's letter order dated February 24, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. Toledo Edison Company

[Docket No. ER95–498–000]

Take notice that on July 3, 1995, the Toledo Edison Company (Toledo), amended its filing in the above-referenced docket to modify the method by which Toledo will determine the cost of emission allowances in the coordinated sales of agreements between Toledo and Ohio Power Company, American Municipal Power-Ohio, the parties to the Operating Agreement with the Michigan Companies (namely, Consumers Power Company and Detroit Edison Company), Ohio Valley Electric Corporation, and the parties to the CAPCO Basic Operating Agreement (namely, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Cleveland Electric Illuminating Company).

A copy of the filing was served upon the parties affected by the amendment and the Ohio Public Utilities Commission.

Comment date: August 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1283–000]

Take notice that on June 28, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 127, a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: August 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER95–1286–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission service to Jersey Central Power and Light (Purchaser). The Rate Schedule provides for a monthly transmission, energy losses and administrative charge for delivery by PSE&G of the Sussex Rural Electric Cooperative Association's and the Boroughs of Butler, Lavallette, Madison, Pemberton and Seaside Heights' (recipient Entities) share of the state hydroelectricity from the New York/New Jersey boarder to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

Comment date: August 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER95–1287–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission and subtransmission service to the Borough of Milltown (Purchaser). The Rate Schedule provides for a monthly transmission, subtransmission, energy losses and administrative charge for delivery by PSE&G of the Purchase's share of the State of New Jersey's allocation of New york Power Authority neighboring state hydroelectricity from the New York/New Jersey boarder to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

Comment date: July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Hinson Power Company

[Docket No. ER95–1314–000]

Take notice that on June 30, 1995, Hinson Power Company (Hinson) tendered for filing FERC Electric Service Rate Schedule No. 1, together with a petition for waivers and blanket approvals of various Commission Regulations necessary for such Rate Schedule to become effective 60 days after June 30, 1995.

Hinson states that it intends to engage in electric power and energy transactions as a marketer, and that it proposes to make sales under rates, terms and conditions to be mutually agreed to with the purchasing party. Hinson further states that it is not in the business of generating, transmitting, or distributing electric power.

Comment date: July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18328 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–135–001, et al.]

Allegheny Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 19, 1995.

Take notice that the following filings have been made with the Commission:

1. Allegheny Power Service Corporation on behalf of Monongahela Power Company The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER95–135–001]

Take notice that on June 30, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (''the APS Companies'') filed amendments to comply with a Commission Order on filing rates for emission allowances. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed January 1, 1995 effective date specified in Docket No. ER95–135–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Kentucky Utilities Company

[Docket No. ER95–529–000]

Take notice that on July 11, 1995, Kentucky Utilities Company (KU), tendered for filing an amendment to its filing in the above-referenced docket regarding the inclusion of the cost of emission allowances associated with coordination sets.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection Association

[Docket Nos. ER95–564–000 ER95–565–000 ER95–566–000 ER95–567–000 and ER95–568–000]

Take notice that on June 27, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to PJM Interconnection Agreement, amended versions of Exhibit A in each of the subject dockets to explain the treatment of the costs of emission allowances in energy sales.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER95–576–001]

Take notice that Wisconsin Public Service Corporation (WPSC), of Green Bay, Wisconsin on June 30, 1995, tendered for filing revisions to its SO_2 emission allowance procedures in compliance with the Commission's June 2, 1995 order accepting WPSC's February 8, 1995 emissions allowance filing. WPSC asks that its emission allowance rate become effective on July 1, 1995 rather than January 1, 1995 as specified in the Commission's June 2, 1995 order.

WPSC states that the filing has been served on the affected parties and posted as required by the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER95–836–001]

Take notice that on June 30, 1995, Maine Public Service Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER95–902–000]

Take notice that on July 14, 1995, Northern Indiana Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1026–000]

Take notice that on July 6, 1995, Orange and Rockland Utilities, Inc. (O&R) tendered for filing an Amendment to its agreement with Enron Power Marketing, Inc, (EPMI) to provide for the purchase or sale by either party of energy and capacity and whereby the sale by O&R is subject to cost based ceiling rates. The ceiling rate for O&R energy is 100 percent of O&R's Incremental Cost (SIC) plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by O&R is $14.79 per megawatt hour.

O&R states that a copy of this filing has been served by mail upon EPMI.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1027–000]

Take notice that on July 3, 1995, Orange and Rockland Utilities, Inc. (O&R) tendered for filing an Amendment to its agreement with Long Island Lighting Company (LILCO) to provide for the sale by O&R of energy and capacity subject to cost based ceiling rates. The ceiling rate for energy is 100 percent of the Seller's Incremental Cost (SIC) plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power recourse). The ceiling rate for capacity sold by O&R is $14.79 per megawatt hour.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER95–1053–000]

Take notice that on July 3, 1995, Duquesne Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER95–1093–000]

Take notice that on July 17, 1995, Central Hudson Gas & Electric Corporation tendered for filing a letter requesting to withdraw its Notice of Cancellation regarding Rate Schedule 71.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket Nos. ER95–1098–000]

Take notice that Portland General Electric Company, on July 5, 1995, tendered for filing an amendment to its May 25, 1995 filing in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Colorado

[Docket No. ER95–1207–000]

Take notice that on July 7, 1995, Public Service Company of Colorado tendered for filing an amendment in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER95–1276–000]

Take notice that on June 27, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing the First Amendment to the Transmission Service Agreement (Amendment) between Entergy Services and NorAm Energy Services (NorAm). Entergy Services states that the Amendment modifies the transmission arrangements under which the Entergy Operating Companies' will provide NorAm non-firm transmission service under Entergy Services Transmission Service Tariff.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1285–000]

Take notice that on June 29, 1995, GPU Service Corporation (GPU) tendered for filing on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company tendered for an amendment to the GPU Power Pooling Agreement dated July 21, 1969, as amended, which is on file with the Commission as Jersey Central Power & Light Rate Schedule No. 31, Metropolitan Edison Company Rate Schedule No. 40 and Pennsylvania Electric Company Rate Schedule No. 62.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Power, Inc.

[Docket No. ER95–1330–000]

Take notice that on July 3, 1995, Entergy Power, Inc. (EPI), tendered for filing a Purchase and Sale Agreement with Catex Vitol Electric. L.L.C.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission notice requirements in § 35.11 of the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER95–1332–000]

Take notice that on July 3, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Enron Power Marketing, Inc. (EPMI). The Transmission Service Agreement allows EPMI to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on EPMI, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER95–1333–000]

Take notice that on July 3, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and LG&E Power Marketing Inc. (LPM). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on LPM, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Stalwart Power Company

[Docket No. ER95–1334–000]

Take notice that on July 3, 1995, Stalwart Power Company (Stalwart) tendered for filing pursuant to Rule 205, 18 CFR 385.205 an application for a blanket certificate, disclaimer of jurisdiction, and various other authorizations and waivers from the Commission, including approval of its FERC Electric Rate Schedule No. 1 to be effective August 31, 1995.

Stalwart proposes to engage in the wholesale electric power market as both a broker and a marketer buying and selling electric power. Specifically, Stalwart proposes to purchase electric energy and transmission capacity from public utilities and other power producers, and resell such energy and capacity to others. Stalwart anticipates that such transactions will vary in duration and quality of service relative to interruptibility. In addition, the price it proposes to charge for its services shall be negotiated, market-based rates. Stalwart does not own or operate electric power generation, transmission, or distribution facilities.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Power, Inc.

[Docket No. ER95–1335–000]

Take notice that on July 3, 1995, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with Sam Rayburn G&T Electric Cooperative, Inc.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in § 35.11 of the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Power, Inc.

[Docket No. ER95–1336–000]

Take notice that on July 5, 1995, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with East Texas Electric Cooperative, Inc.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in § 35.11 of the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Power & Light Company

[Docket No. ER95–1337–000]

Take notice that on July 5, 1995, Wisconsin Power & Light Company (WP&L), tendered for filing an amended Wholesale Power Agreement dated June 26, 1995, between Adams-Columbia

Electric Cooperative and WP&L. WP&L states that this amended Wholesale Power Agreement revises the previous agreement between the two parties dated August 24, 1988, and designated Rate Schedule Number 144 by the Commission.

The parties have amended the Wholesale Power Agreement to add an additional delivery point. Service under this amended Wholesale Power Agreement will be in accordance with standard WP&L Rate Schedule W–2.

WP&L requests an effective date of July 14, 1995 which is concurrent with the expected service date. WP&L states that copies of the amended Wholesale Power Agreement and the filing have been provided to Adams-Columbia Electric Cooperative and the Public Service Commission of Wisconsin.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Pacific Gas and Electric Company

[Docket No. ER95–1338–000]

Take notice that on July 5, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing the First Amendment to the September 22, 1993 Power and Transmission Services Agreement between PG&E and Lassen Municipal Utility District (Lassen), a Revised Appendix A to that Agreement, and a February 3, 1995 Letter Agreement between PG&E and Lassen. The three submittals proposed changes in energy, power and transmission rates for services PG&E provides Lassen to be effective July 1, 1994.

Copies of this filing have been served upon Lassen and the California Public Utilities Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Company

[Docket No. ER95–1340–000]

Take notice that on July 6, 1995, Portland General Electric Company (PGE), tendered for filing a Revision No. 2 to Exhibit D of the General Transfer Agreement between Bonneville Power Administration (BPA) and PGE (FERC Electric Service Tariff Volume No. 72).

The BPA and PGE mutually agree to revise Exhibit D to the General Transfer Agreement to reflect PGE as the full service supplier to Canby Utility Board (Docket No. ER95–1128–000).

Copies of the filing have been served on the parties included in the filing letter.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993, (Docket No. PL93–2–002), PGE respectfully requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow Revision No. 2 to Exhibit D of the GTA to become effective as of August 1, 1995.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Pacific Gas and Electric Company

[Docket No. ER95–1341–000]

Take notice that on July 6, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing a rate schedule change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

The rate schedule change establishes recorded-cost based rates for true-up of capacity sales and energy sales from Energy Account No. 2 made during 1993, at rates based on estimated costs. Pursuant to Contract No. 14–06–200–2948A, and to the PG&E—Western Letter Agreement dated February 7, 1992, sales are made initially at rates based on estimated costs and then are rebilled at rates based on recorded costs after the necessary data becomes available. With interest, the rebilling will result in a refund to Western of over $2.1 million.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Virginia Electric and Power Company

[Docket No. ER95–1342–000]

Take notice that on July 7, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Public Service Electric and Gas Company and Virginia Power, dated July 1, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 17, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Engelhard Power Marketing, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Black Hills Corporation

[Docket No. ER95–1343–000]

Take notice that on July 7, 1995, Black Hills Corporation (Black Hills), which operates its electric utility business under the name of Black Hills Power and Light Company, tendered for filing the Second Restated Electric Power and Energy Supply and Transmission Agreement, dated as of February 28, 1995 (Amended Agreement), between Black Hills and the City of Gillette, Wyoming (Gillette), in replacement of and to supersede the Restated Electric Power and Energy Supply and Transmission Agreement, dated December 21, 1987, between Black Hills and Gillette filed with the Commission and designated Black Hills Power and Light Company, Rate Schedule FERC No. 34 and Supplement No. 1 thereto. As a further supplement to the above Rate Schedule, Black Hills also tenders for filing the Restated and Amended Coal Supply Agreement for Neil Simpson Unit No. 2, dated February 12, 1993 as an amended to Black Hills' Rate Schedule FERC No. 33 (as now designated).

The New Agreement reduces the quantity of capacity and energy to be sold Gillette and provides for an increase in the capacity charge and other minor changes.

Black Hills requests and provides waiver of the Commission's Notice requirements to permit this rate schedule to become effective September 1, 1995.

Copies of this filing were served upon the parties to the Amended Agreement, the South Dakota Public Utilities Commission, the Wyoming Public Service Commission and the Montana Public Service Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. CINergy Services, Inc.

[Docket No. ER95–1344–000]

Take notice that on July 7, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated June 1, 1995, between CIN, CG&E, PSI and Torco Energy Marketing, Inc. (TORCO).

The Interchange Agreement provides for the following service between CIN and TORCO.

1. Exhibit A—Power Sales by TORCO
2. Exhibit B—Power Sales by CIN

CIN and TORCO have requested an effective date of August 1, 1995.

Copies of the filing were served on Torco Energy Marketing, Inc., the Illinois Commerce Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. CINergy Services, Inc.

[Docket No. ER95–1345–000]

Take notice that on July 7, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated June 1, 1995, between CIN, CG&E, PSI and Tennessee Power Company (TPCO).

The Interchanges Agreement provides for the following service between CIN and TPCO.

1. Exhibit A—Power Sales by TPCO
2. Exhibit B—Power Sales by CIN

CIN and TPCO have requested an effective date of August 1, 1995.

Copies of the filing were served on Tennessee Power Company, the Tennessee Public Service Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18329 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Application Filed With the Commission

July 20, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2586–018.

c. *Date filed:* July 3, 1995.

d. *Applicant:* Alabama Electric Cooperative, Inc.

e. *Name of Project:* Gantt Project.

f. *Location:* The project is located on the Conecuh River in Crenshaw and Covington Counties, Alabama.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Tisdale, Alabama Electric Cooperative, Inc., P.O. Box 550, Andalusia, AL 36420, Phone: (334) 222–2571.

i. *FERC Contact:* Jon E. Cofrancesco, (202) 219–0079.

j. *Comment Date:* August 18, 1995.

k. *Description of Amendment:* Alabama Electric Cooperative, Inc. (licensee), proposes to drawdown the project's Point A reservoir 6–10 feet for 90 days to allow the installation of a concrete basin for a cooling tower associated with the McWilliams Steam Plant 150 yards downstream from the Gantt Dam and the installation of a boat ramp adjacent to the Gantt Dam.

. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18291 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11419–001 Oregon]

Abert Rim Hydroelectric Associates; Notice of Surrender of Preliminary Permit

July 20, 1995.

Take notice that Abert Rim Hydroelectric Associates, Permittee for the Abert Rim Project No. 11419, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11419 was issued October 5, 1993, and would have expired September 30, 1996. The project would have been located on Lake Abert and Rabbit Creek, in Lake County, Oregon.

The Permittee filed the request on July 12, 1995, and the preliminary permit for Project No. 11419 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18292 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for disbursement of $29,376,255.50 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Western Asphalt Service, Inc. (Case No. LEF–0047), Gray Trucking Company (Case No. LEF–0120), William Valentine & Sons, Inc. (Case No. LEF–0123), Dorchester Master Limited Partnership (Case No. VEF–0005), Howell Corporation (Case No. VEF–0006), Placid Oil Company (Case No. VEF–0008), Eton Trading Corporation (Case No. VEF–0009) and Rodgers Hydrocarbon Corporation (Case No. VEF–0010). The OHA has determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $29,376,255.50, plus accrued interest, remitted to the DOE by Western Asphalt Service, Inc., Gray Trucking Company, William Valentine & Sons, Inc., Dorchester Master Limited Partnership, Howell Corporation, Placid Oil Company, Eton Trading Corporation and Rodgers Hydrocarbon Corporation. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995, deadline for the crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted for the 20 percent of these funds allocated to individual claimants. Instead, that share of the funds will be added to the general crude oil overcharge pool used for direct restitution.

Date: July 17, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 17, 1995.

Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

Names of Firms: Western Asphalt Service, Inc. *et al.*

Dates of Filing: July 17, 1992 *et al.*

Case Numbers: LEF–0047 *et al.*

The Office of General Counsel, Regulatory Litigation (''OGC'') (formerly the Economic Regulatory Administration (ERA), Office of Enforcement Litigation), filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute funds which the eight firms listed in the Appendix to this Decision and Order remitted to the DOE pursuant to court-approved settlements between the parties and the DOE, DOE consent orders or remedial orders.

In accordance with procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the OGC requested in its Petitions that the OHA establish special refund procedures to remedy the effects of the regulatory violations which were resolved by these proceedings. This Decision and Order sets forth the OHA's final plan to distribute these funds.

I. Background

As indicated by the following summaries of the relevant enforcement proceedings, all of the funds that are subject to this Decision were obtained by the DOE as a result of alleged or adjudicated crude oil overcharges.

A. Western Asphalt Service, Inc. (Western)

During the period of Federal petroleum price controls, Western was engaged in crude oil refining and reselling.[1] The firm was therefore subject to regulations governing the pricing of crude oil set forth at 10 CFR parts 205, 210, 211, and 212 of the Mandatory Petroleum Price and Allocation Regulations. As a result of an ERA audit of its operations, a Proposed Remedial Order (PRO) was issued to Western on April 4, 1984 pursuant to 10 CFR part 205, Subpart O (ERA Docket No. 940X00182). The PRO alleged violations of the pricing and certification rules that applied to crude oil resellers. Essentially, the firm was charged with selling price-controlled crude oil at unlawfully high prices in violation of the provisions of 10 CFR part 212, Subpart L and 10 CFR § 212.131. In another enforcement proceeding, on May 7, 1981, a Notice of Probable Violation (NOPV) was issued to Western which alleged that the firm unlawfully received Small Refiner Bias Entitlements (ERA Docket No. N00S90197) in April and May 1977. These alleged violations of DOE crude oil regulations by Western were settled by a Consent Order between the firm and DOE on May 30, 1984. The PRO was therefore withdrawn and the NOPV was rescinded. Western agreed to remit $300,000, plus interest, to the DOE for deposit in an interest-bearing escrow account. Western has complied with this obligation, remitting a total of $390,059.12 to the DOE. In return, the DOE has released Western from any liability regarding its failure to comply with the Federal petroleum price and allocation regulations during the period August 19, 1973 through January 27, 1981, with the sole exception of any potential violations of the Entitlements Program after September 30, 1980.

B. Gray Trucking Company (Gray)

Gray was also a crude oil reseller during the period of price controls. On March 29, 1982, Gray and the DOE entered into a Consent Order whereby Gray would remit $31,500, plus interest, to the DOE for deposit in an interest-bearing escrow account. The DOE agreed not to pursue its claim that, during the period March 1977 through January 1980, Gray overcharged its customers by charging unlawfully high prices for crude oil in violation of 10 CFR part 212, subparts F and L. Despite its agreement with the terms of the Consent Order, Gray failed to comply fully with its financial obligations to the DOE, and remitted only $4,738.86 to the DOE. On October 15, 1985, the U.S. District Court for the Northern District of Texas, Amarillo Division, granted the DOE an Amended Judgment against Gray for an additional $34,625. However, the Amended Judgment has not resulted in any additional payments to DOE by Gray. ERA has petitioned that the $4,738.86, plus accrued interest, obtained from Gray be distributed by OHA in accordance with the Subpart V regulations.

C. William Valentine & Sons, Inc. (Valentine)

Valentine was engaged in crude oil reclamation during the period May 1979 through December 1980.[2] Through an unincorporated subsidiary, Big Muddy Oil Processors Inc. (Big Muddy), Valentine obtained waste crude oil from oil spills, pipeline ruptures, waste oil pits and oil tank bottoms. After numerous separation and filtering processes, the waste oil was mixed with various blending agents (naphthas, natural gasoline, natural gas by-products, etc.) and the resulting product was sold as pipeline-quality crude oil. Big Muddy, and by extension Valentine, was therefore a reseller of crude oil, subject to the provisions

[1] Western Asphalt Service, Inc., W.F. Moore and Son, Inc., and Gibson Oil and Refining Company were all controlled by Wilfred Paige van Loben Sels during the price control period. Textual references to ''Western'' in this Decision include all parties to the Western Consent Order.

[2] William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine, and James L. Marchant are collectively referred to as ''Valentine'' in the text. All are parties to the Settlement Agreement which resolved DOE claims against them.

of 10 CFR part 212, subpart L, which governed the resales of crude oil.

An ERA audit uncovered evidence that Valentine sold crude oil at unlawfully high prices during the period May 1979 through December 1980. On December 2, l987, OHA issued a Remedial Order (RO) to Valentine directing the firm to refund $1,454,876 in overcharges, plus interest. See William Valentine and Sons, Inc., 16 DOE ¶ 83,025 (1987). Valentine appealed OHA's determination to the Federal Energy Regulatory Commission (FERC). On March 23, 1989, FERC rejected Valentine's Appeal of the RO and upheld OHA's findings. See William Valentine and Sons, Inc., 46 FERC ¶ 61,252 (1989). Valentine appealed that decision and, on January 24, 1990, the U.S. District Court for the District of Wyoming ruled that Valentine's challenge to the RO and to FERC's ruling was without merit. At the same time, the Court also approved a Settlement Agreement in which Valentine agreed to remit to DOE no less than $108,739 plus interest. In return, DOE agreed to deem Valentine in full compliance with the price control program and to release all administrative and civil claims against the firm. Valentine has paid $126,402.66 into an interest-bearing DOE escrow account in compliance with the Settlement Agreement.

D. Dorchester Master Limited Partnership (DMLP)

During the period of petroleum price controls, the firms which now comprise DMLP [3] were engaged in crude oil refining and reselling. The firms were therefore subject to regulations governing the pricing and allocation of crude oil set forth at 10 C.F.R. Parts 211 and 212. In an audit which covered the period from November 1, 1974 through August 1979 the ERA identified instances in which it believed that Dorchester's refinery subsidiary and reseller division engaged in the improper switching of crude oil certifications in violation of 10 C.F.R. 211.67 (the Crude Oil Entitlements Program) and 212.131(b). As a result of the ERA audit, a PRO was issued to Dorchester on March 19, 1982 (Case No. 6A0X00278). The OHA affirmed the findings of the PRO and issued an RO to Dorchester on March 11, 1985. *Dorchester Gas Corp.*, 12 DOE ¶ 83,034 (1985), appeal docketed, No. R085–12–000 (FERC April 22, 1985). As a result of another ERA audit, on March 9, 1983, a PRO was issued to Doram and Damson, the other firms now comprising DMLP, alleging that during the period March 1980 through December 1980, they received illegal revenue by reselling crude oil at prices in excess of those permitted by applicable crude oil reseller price regulations. An RO was issued to those two firms on March 12, 1987. *Doram Energy, Inc.*, 15 DOE ¶ 83,024 (1987), *modified*, 16 DOE ¶ 83,006 (1987), appeal docketed, No. R087–16–000 (FERC April 6, 1987).

On April 4, 1988, a Consent Order was executed between DMLP and the DOE which resolved a number of outstanding issues involving DMLP. Under the terms of the settlement, DMLP would pay the DOE a maximum of $65 million but no less than $11 million, plus installment interest, by July 1, 1997. The Consent Order states that the DOE has made no formal findings of violation by DMLP and that DMLP does not admit it has committed any regulatory violations. As of March 31, 1995, DMLP had paid the DOE the sum of $11,193,729.72,[4] and it is current in its payments to DOE. Although we anticipate that additional revenues will be collected from DMLP, no good reason exists to forestall implementing procedures for distributing the current balance of the fund.

E. Howell Corporation (Howell)

During the price control period, Howell was a crude oil producer, refiner, and reseller. Howell was therefore subject to the Federal petroleum price and allocation regulations. In 1981, the ERA audited Howell's compliance with the crude oil Entitlements Program during the period January 1, 1978 through January 27, 1981. As a result of that audit, on June 24, 1988, a PRO was issued to the firm, alleging violations of the crude oil price and allocation regulations.[5] On February 23, 1989, the DOE and Howell executed a Consent Order resolving the issues addressed in the PRO. Pursuant to the Consent Order, Howell agreed to pay the DOE $19,375,000 plus interest, with installment payments over seven years. As of June 30, 1995, Howell had paid the DOE $15,288,097.66, and it is current in its payments to the DOE. Although we anticipate that additional revenues will be collected from Howell, no good reason exists to forestall implementing procedures for distributing the current balance of the fund.

F. Placid Oil Company (Placid)

Placid was a producer of crude oil during the period of price controls. On March 30, 1981, the ERA issued a PRO in which it alleged that during the period from September 1973 through May 1977, Placid overcharged its customers in sales of crude oil from several properties it operated. In addition, the PRO also alleged that Placid improperly calculated the average daily production for a number of properties and as a result erroneously certified crude oil production from these properties as exempt from price controls pursuant to the stripper well exemption. On February 11, 1985, the OHA issued an RO to Placid, affirming the ERA allegations concerning Placid's overcharges. *Placid Oil Co.*, 12 DOE ¶ 83,030, *modified*, 13 DOE ¶ 83,007 (1985). Placid appealed the RO to the FERC. On February 26, 1987, the FERC reversed and vacated the RO (*Placid Oil Co.*, 38 FERC ¶ 61,199); however, on July 23, 1987, the FERC reversed itself in part, vacating portions of its previous Order (*Placid Oil Co.*, 40 FERC ¶ 61,112). On March 18, 1988, the FERC issued an Order affirming the RO but modifying the violation amount. *Placid Oil Co.*, 42 FERC ¶ 61,326 (1988). Subsequently, in a bankruptcy proceeding involving Placid, the U.S. Bankruptcy Court for the Northern District of Texas approved the DOE's claim of $1,196,728.09 against Placid. Placid has fulfilled its financial obligation to the DOE, with payments, including installment interest, totalling $1,272,963.81.

G. Eton Trading Corporation (Eton)

Eton and its affiliate, Eton Enterprises, Inc., were resellers of crude oil during the period June 1980 through December 1980, and were subject to the crude oil reseller regulations set forth at 10 CFR. Part 212, Subpart L. As the result of an ERA audit of Eton's operations, on January 14, 1986, the ERA issued a PRO to the firm alleging that it had engaged in layered crude oil transactions in violation of 10 CFR § 212.186. The PRO stated that those layered transactions resulted in overcharges amounting to $9,182,412.70. On March 17, 1986, Eton filed a Notice of Objection with this Office but waived its right to contest the determinations made in the PRO by failing to file a Statement of Objections in a timely manner. Accordingly, on December 5, 1986, the OHA issued the PRO as a final Remedial Order. *Eton Trading Corp.*, 15 DOE ¶ 83,011 (1986). In July 1986, Eton Trading Corporation and Eton Enterprises filed for bankruptcy. The DOE filed identical claims in the bankruptcy proceedings of the two firms. A distribution has been made in the Eton Trading bankruptcy proceeding, in which the DOE received $1,049,073.67. Although the possibility exists that additional revenues will be distributed to the DOE in the Eton Enterprise bankruptcy proceeding which has not yet been closed, no reason exists to delay in implementing distribution of the current balance of the fund.

H. Rodgers Hydrocarbon Corporation

Rodgers Hydrocarbon Corporation and Ray V. Rodgers, Jr. (referred to collectively as Rodgers) were crude oil resellers during the period of September 1977 through January 1980. On March 29, 1985, the ERA issued a PRO to Rodgers alleging that during that period, Rodgers failed to properly certify crude oil as required by 10 CFR. 212.131(b). In addition, the ERA alleged that Rodgers failed to submit reports and maintain books and records in accordance with 10 CFR

[3] DMLP, a limited partnership formed in 1984, is the successor to Dorchester Gas Corporation (Dorchester) and includes Damson Oil Corporation (Damson), the general partner of DMLP, and Doram Energy, Inc. (Doram), a subsidiary of Damson. Therefore, DMLP will be used to refer collectively to Dorchester, Damson, and Doram, and their subsidiaries and affiliates. We will refer to the individual firms in some instances, since the audits originated with those firms during the period of price controls.

[4] Of that amount $5,198.52 came from Damson pursuant to its own bankruptcy proceeding.

[5] The PRO alleged violations of 10 C.F.R. 211.66(b) and (h), 205.202, and 210.62(c), resulting from significant understatement of receipts of price-controlled crude oil. Specifically, ERA alleged that during the period April 1978 through December 1979, the Joint Venture consisting of Howell and Quintana Refinery Co, failed to correctly report the tier certifications associated with substantial volumes of its crude oil receipts at its Corpus Christi, Texas, refinery; and Howell Hydrocarbons engaged in similar conduct during the period April 1978 through November 1980 at its San Antonio, Texas, refinery. In addition, the ERA alleged that during the period April 1978 through December 1979, Howell Industries, an affiliate, improperly charged prices for crude oil in excess of its actual purchase prices, in violation of 10 C.F.R. 212.186, 210.62(c) and 205.202.

212.187 (a) and (b).[6] Rodgers filed a Statement of Objections to the PRO on August 26, 1985. After considering Rodgers' objections, certain provisions of the PRO were modified, and the PRO was issued as a final RO on July 20, 1989. *Rodgers Hydrocarbon Corp.*, 19 DOE ¶ 83,004 (1989). On December 4, 1989, Rodgers and the DOE executed a Consent Order resolving the issues addressed by the RO. Pursuant to the Consent Order, Rodgers agreed to pay the DOE $50,000, plus interest, in two equal payments. Rodgers paid to the DOE the sum of $51,190 and has fulfilled its financial obligation to the DOE.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 et seq.; *see also Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. The Proposed Decisions and Orders

On July 1, 1994, and June 12, 1995, OHA issued Proposed Decisions and Orders (PDOs) setting forth the OHA's tentative plan to distribute these funds. See 59 FR 35329 (July 11, 1994) (the Western PDO) and 60 FR 32004 (June 19, 1995) (the DMLP PDO), respectively. OHA tentatively concluded that the funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, (MSRP), *see* 51 FR 27899 (August 4, 1986). Pursuant to the MSRP, OHA proposed to reserve 20 percent of those funds for direct refunds to applicants who claim that they were injured by the crude oil violations. We stated that the remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution.

We provided a period of 30 days from the date of the PDOs' publication in the **Federal Register** in which the public could submit comments regarding the tentative refund procedures. More than 30 days have elapsed, and the OHA has received no comments concerning the proposed procedures.

IV. The Refund Procedures

A. Crude Oil Refund Policy

We adopt the tentative determination of the PDOs to distribute the funds obtained from the eight firms in accordance with the MSRP, which was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) Document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

B. Refund Claims

The amount of money subject to this Decision is $29,376,255.50, plus accrued interest, which, as of May 31, 1995, totalled $6,312,426.32. In accordance with the MSRP, we shall initially reserve 20 percent of those funds ($5,875,251.10 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We shall base refunds on a volumetric amount which has been calculated in accordance with the methodology described in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. See 57 FR 15562 (March 24, 1995).

In the Western PDO, we indicated that the filing deadline for refund applications in the crude oil refund proceeding was June 30, 1994. This was subsequently changed to June 30, 1995. See Filing Deadline Notice, 60 FR 19914 (April 20, 1995); see also DMLP PDO, 60 FR 32004, 32007 (June 19, 1995). Because the June 30, 1995, deadline for crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted for these funds. Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.[7]

C. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the crude oil violation amounts subject to this Decision, or $23,501,004.40 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $11,750,502.20 plus interest, into an interest bearing subaccount for the states, and one-half or $11,750,502.20, plus interest, into an interest bearing subaccount for the federal government.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the consent order funds shown in the Appendix to this Decision and Order, plus all accrued interest from the escrow accounts of the firms listed in the Appendix pursuant to Paragraphs (2), (3), and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer $11,750,502.20 plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-States,'' Number 999DOE0003W.

(3) The Director of Special Acccounts and Payroll shall transfer $11,750,502.20, plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-Federal,'' Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $5,875,251.10 plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-Claimants 4,'' Number 999DOE0010Z.

(5) This is a final Order of the Department of Energy.

Dated: July 17, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[6] Crude oil resellers were required to file certain information on ERA–69 ''Crude Oil Reseller's Self-Reporting Forms.''

[7] A crude oil refund applicant is only required to submit one application for its share of all available crude oil overcharge funds. See, *e.g., Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,176 (1988).

APPENDIX

Case No.	Firm	ERA order numbers	Principal amount
LEF–0047	Western Asphalt Service, Inc.	940X00182Z	$390,059.12
LEF–0120	Gray Trucking Company	6A0X00305Z	4,738.86
LEF–0123	William Valentine & Sons, Inc.	N00X00683Z	126,402.66
VEF–0005	Dorchester Master Limited Partnership	6A0X00278W	11,193,729.72
VEF–0006	Howell Corporation	650X00367W	15,288,097.66
VEF–0008	Placid Oil Company	6D0C00048W	1,272,963.81
VEF–0009	Eton Trading Corporation	6C0X00301W	1,049,073.67
VEF–0010	Rodgers Hydrocarbon Corporation	6A0X00328W	51,190.00
Total			29,376,255.50

[FR Doc. 95–18390 Filed 7–25–95; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5261–5]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. The new designated method is identified as follows:

RFNA–0795–104, ''Environment S. A. Model AC 31 M Chemiluminescent Nitrogen Oxide Analyzer,'' operated with a full scale range of 0–500 ppb, at any temperature in the range of 15°C to 35°C, with 5-micron PTFE sample particulate filter, with the following software settings: Automatic response time ON, Minimum response time set to 60 seconds (RT÷2), and with or without any of the following options:

Internal Permeation Oven
Connection for Silica Gel Dryer
RS232–422 interface
EV34 valve
Internal Printer

Note: In addition to the standard U.S. electrical power voltage and frequency (115 Vac, 60 Hz), this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency and any of the following voltage ranges: 98–126 Vac (115 nominal) and 195–246 Vac (230 volts nominal).

This method is available from Environmental S.A., 111, Bd Robespierre, 78300 Poissy, France or from Environment U.S.A., 570 Higuera Street, Suite 25, San Luis Obispo, California 93401. A notice of receipt of application for this method appeared in the **Federal Register,** Volume 60, January 31, 1995, page 5919.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzers has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received

notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Air Measurements Research Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Dated: July 12, 1995.

Joseph Alexander,

Assistant Administrator for Research and Development.

[FR Doc. 95–18369 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5264–3]

Notice of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to improving the Federal facilities environmental restoration process.

DATES: The meeting will be held on August 1, 1995, from 8 a.m. until 5 p.m. and on August 2, 1995, from 8 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Grand Hyatt Hotel, 1000 H Street, SW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the meeting or on the Federal Facilities Environmental Restoration Dialogue Committee should contact Sven-Erik Kaiser, Federal Facilities Restoration and Reuse Office (5101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260–5138.

Dated: July 17, 1995.

Sven-Erik Kaiser,

Designated Federal Official.

[FR Doc. 95–18370 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5264–4]

Vermont: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination to Fully Approve the Adequacy of the State of Vermont's Municipal Solid Waste Permitting Program, Public Hearing and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste, will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that, regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The State of Vermont has applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region I has reviewed Vermont's MSWLF permit program adequacy application and has made a tentative determination that all portions of Vermont's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. (In statutes and rules of the State of Vermont ''certification'' is substituted for the term, ''permitting program.'' References herein to the State Permitting Program pertain to the Vermont Certification Program.) Vermont's application for program adequacy determination is available for public review and comment at the places listed in the **ADDRESSES** section below during regular office hours.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF permit program, EPA Region I has tentatively scheduled a public hearing on this determination. If a sufficient number of persons express interest in participating in a hearing by writing to the EPA Region I Solid Waste Program or calling the contact given below within 30 days of the date of publication of this notice, EPA Region I will hold a hearing, in Montpelier, Vermont, on the date given below in the ''DATES'' section. EPA Region I will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **CONTACTS** section below.

DATES: All comments on Vermont's application for a determination of adequacy must be received by the close of business on August 25, 1995. If there is sufficient interest, a public hearing

will be held on October 12, 1995 at 10:00 a.m., at the Pavilion Office Building, Fourth Floor Conference Room, 109 State Street, Montpelier, Vermont. The State will participate in the public hearing, if held by EPA Region I on this subject.

ADDRESSES: Copies of Vermont's application for adequacy determination are available at the following addresses for inspection and copying: during the hours of 8:00 a.m. to 4:00 p.m., Vermont Agency of Natural Resources, Solid Waste Management Division, 103 South Main Street, The Laundry Building, Waterbury, VT 06571–0407, Attn: Ms. Stacey Gosselin, telephone (802) 241–3444; during the hours of 8:00 a.m. to 5:00 p.m., U.S. EPA Region I, 90 Canal Street, Boston, MA 02203, Attn: Fred Friedman, telephone (617) 573–9687. Written comments should be sent to Mr. John F. Hackler, Chief, Solid Waste and Geographic Information Section, mail code HER-CAN6, EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203–2211, Attn: Mr. Charles Franks, mail code HER-CAN6, telephone (617) 573–9678.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop ''adequate'' programs for permits or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement, as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Vermont

On August 23, 1993, EPA Region I received Vermont's draft final MSWLF Permit Program application for adequacy determination. Region I reviewed the final application, submitted comments to Vermont, and requested additional information about state program implementation. Vermont addressed EPA's comments, provided the requested additional information, and submitted a revised final application for adequacy determination on April 27, 1995. Region I has reviewed Vermont's revised application and has tentatively determined that all portions of Vermont's MSWLF program meet all the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until August 25, 1995. Copies of Vermont's application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this notice.

The State of Vermont's *Solid Waste Rules* are performance based and allow for adaptability in specifications while maintaining protection of human health and the environment. The Vermont Municipal Solid Waste Landfill Permitting Program generally reflects, but in some instances is different from, the Federal Criteria. In those instances where the program is different it is equivalent to the Federal Criteria and no less stringent. The differences are found primarily in the parts pertaining to groundwater and corrective action.

The Vermont permitting process relies heavily on site characterization and groundwater protection strategy. Vermont has a groundwater classification scheme which has not been fully implemented; each proposed application, however, must identify the groundwater classification of the proposed site and meet the siting restriction and criteria for those conditions. In addition to the siting restrictions, the approach taken by Vermont as their permitting program relates to groundwater monitoring and corrective action has a pro-active involvement by the Department of Environmental Conservation. The Vermont approach goes directly from detection of a release into corrective action, with the appropriate solution(s) determined by the Department of Environmental Conservation based upon the information reported by the owner/operator. The Vermont approach typically does not implement assessment monitoring as a distinct step in evaluating a release from a municipal solid waste landfill. Assessment monitoring is generally included as a function of corrective action.

To ensure full compliance with the Federal Criteria, Vermont has modified its current MSWLF permitting requirements by the adoption of Procedures. The Procedures have incorporated those requirements from the Federal Criteria not found in the State's existing MSWLF permitting program and are applicable to all existing MSWLFs and to all MSWLF permit applications. Vermont will implement its MSWLF permit program through enforceable permit conditions. These new requirements occur in the following areas:

1. The adoption of the following definitions as required by the revised Federal Criteria, 40 CFR 258.2: active life, active portion, composite liner, earthen daily cover, existing MSWLF unit, final cover system for lined landfills, final cover system for unlined landfills, lateral expansion, municipal solid waste landfill unit, new MSWLF unit, 100-year flood, and washout.

2. Compliance with the new location restrictions of 40 CFR 258.10, 258.14, and 258.15, which pertain to airport safety, seismic impact zones, and unstable areas.

3. Compliance with the new operating criteria of 40 CFR 258.20, 258.23, 258.26, 258.28, and 258.29 which pertain to procedures for excluding the receipt of hazardous waste, explosive gases control, run-on/run-off control

systems, liquids restrictions, and recordkeeping requirements.

4. Compliance with the design criteria of 40 CFR 258.40.

5. Compliance with the requirements of 40 CFR 258.50, 258.51, 258.53, 258.54, and 258.55 which pertain to groundwater monitoring and the requirements of 40 CFR 258.56, 258.57, and 258.58 which pertain to corrective action.

6. Compliance with the closure and post-closure criteria of 40 CFR 258.60 and 258.61.

7. Compliance with the financial assurance criteria of 40 CFR 258.73, which pertain to financial assurance for corrective action.

Vermont's Department of Environmental Conservation requires all existing MSWLFs to have either an existing permit or a temporary permit, both of which require compliance with the Federal Criteria in 40 CFR part 258 pursuant to state laws and regulations, found at Title 10 of the Vermont Statutes Annotated (V.S.A.) Chapters 159, 201 and 211, and 4 V.S.A. Chapter 27. The State of Vermont is not asserting jurisdiction over Indian land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR part 258.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Vermont's program. EPA will make a final decision on approval of the State of Vermont's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a), provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972, to enforce the Federal Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See, 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6945.

Dated: July 17, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–18375 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30000/10I; FRL–4944–4]

Lindane: Decision Not To Initiate a Special Review on Kidney Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA (the Agency) announces its decision not to initiate a Special Review for pesticide products containing lindane based on worker health concerns arising from studies showing irreversible renal effects in the rat. EPA has determined that these effects occur only in the kidneys of the male rat and are not relevant for human risk assessment. The Agency is currently developing a strategy to examine the role organochlorine chemicals, such as lindane, may play as endocrine disrupters. Should the Agency determine that this or other effects cause unacceptable risk, it will take appropriate regulatory action.

FOR FURTHER INFORMATION CONTACT: By mail, David H. Chen, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Rm. WF32C6, Crystal Station #1, 2800 Crystal Drive, Arlington, VA., telephone Number: 703–308–8017, internet e-mail address: chen.david@epamail.epa.gov

SUPPLEMENTARY INFORMATION: On March 18, 1994, EPA announced its proposed decision (and solicitation for public comment) not to initiate a Special Review of lindane for male rat kidney effects described in the September 18, 1985 preliminary notification to lindane registrants and applicants. The Agency has reviewed the available data in light of the Agency's 1991 alpha$_{2u}$-globulin (α_{2u}-g) regulatory policy and the public comments received in response to the March, 1994 announcement. This notice provides the Agency's final decision, its response to comments, and the rationale for its final decision.

I. Introduction

Background information on pesticide registration and the Special Review process can be found in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.), and appropriate sections under 40 CFR part 154, published on November 27, 1985 (50 FR 49015). For a more comprehensive summary of the legal and regulatory background pertaining to lindane, refer to the Agency's proposed decision not to initiate a Special Review on rat kidney effects, published on March 18, 1994 (59 FR 12916). Below is a summary of the text of that document.

A. Background

Lindane (*gamma-hexachlorocyclohexane*) is a broad spectrum organochlorine insecticide/acaricide registered for control of insects and other invertebrates on a wide variety of sites. This pesticide is currently registered for use on field and vegetable crops (including seed treatments) and non-food crops (ornamental and tobacco), greenhouse food crops (vegetables), forestry (including Christmas trees), domestic outdoor and indoor (pets and household uses), commercial indoor (food/feed storage areas and containers), animal premises, wood or wooden structures, and human skin/clothing (military use only).

B. Regulatory History

Between 1977 and 1983, EPA conducted a Special Review that was based on the carcinogenicity, fetotoxicity/teratogenicity, and reproductive effects of lindane, and its potential to cause blood dyscrasia, as well as acute toxicity to aquatic wildlife. In the Agency's final determination (PD-4) published in 1983, the Agency canceled the indoor uses of smoke fumigation devices (by May, 1986) and the use of dips on dogs to control pests other than mites. Subsequently, the dog dip use was permitted for commercial use (kennel, farm, and sport dog uses only), provided that additional label

precautions were added to reduce applicator exposure. All other uses were allowed to continue with various restrictions. Those restrictions varied according to the degree of hazard associated with the use, but typical requirements included protective clothing, label statements describing necessary precautions, and restrictions of some products to certified pesticide applicators.

Following the conclusion of the Special Review in 1983, the Agency received a new 90–day subchronic rat feeding study which showed histopathological kidney and liver changes. Based on the effects observed in this study, on September 18, 1985, EPA notified registrants and applicants for registrations for lindane that the Agency was considering initiating a new Special Review base on concerns for workers exposed to lindane as a result of its forestry and uninhabited building uses.

The subchronic feeding study showed that lindane causes histopathological lesions, primarily in the kidney of male rats, and also in the liver of male and female rats. The kidney lesions were not completely reversed after a 6–week recovery period on a lindane-free diet. These renal changes included tubular degeneration, hyaline droplets, tubular casts, tubular distention, interstitial nephritis, and basophilic tubules. No adverse effects on kidney structure in female rats were noted. The liver effects (hepatocellular hypertrophy) were not regarded as a specific response to lindane because they are related to increased detoxification processes, and are considered a typical response and defensive mechanism to the presence of foreign substances.

Subsequent to the initial demonstration of lindane induced rat kidney lesions, the Agency required and received a number of additional toxicological studies aimed at elucidating the observed kidney effects. In summary, only male rats demonstrated the lindane induced kidney effects; while mice, rabbits and female rats did not. In the rat chronic feeding/carcinogenicity study, male Wistar rats demonstrated the characteristic α_{2u}-g kidney histopathological sequence of kidney lesions associated with increased ''accumulation of hyaline droplets containing α_{2u}-g'', ''necrosis of tubule epithelium'' leading to tubular degeneration, and subsequent formation of granular casts, without any evidence of lindane induced kidney tumors. (Refer to ''Alpha$_{2u}$-Globulin: Association with Chemically Induced Renal Toxicity and Neoplasia in the Male Rat'', Risk Assessment Forum Monograph (EPA/625/391/019F, September 1991, page 2). The Monograph is available through the U.S. Government Printing Office: 1992-648-003/41809. A chemical analysis of the kidney for evidence of increased levels of α_{2u}-g revealed clear and pronounced compound dose-related increases in this protein. Furthermore, the exacerbation of hyaline droplets was due to the apparent binding of the α_{2u}-g to lindane as an adduct, which accumulates in the kidney proximal tubules and cannot be excreted (refer to Monograph, page 92). Lindane is one of a group of α_{2u}-g chemical inducers tested that has been shown to produce ''the sequence of lesions characteristic of the α_{2u}-g syndrome'' in the absence of renal tubule tumors in the male Wistar rat (refer to Monograph, page 89).

In the above Monograph, the Agency outlined its regulatory policy for human risk assessment for chemical agents that affect the male rat kidney through the α_{2u}-g mechanism (refer to Monograph, page 89). This policy states ''if a compound induces alpha 2u-globulin accumulation in hyaline droplets, the associated nephropathy in male rats is not an appropriate endpoint to determine noncancer (systemic) effects potentially occurring in humans. Likewise, quantitative estimates of noncancer risk (e.g., reference doses and margin of exposure determinations) are based on other endpoints.'' In the case of lindane, the Agency has reviewed the weight-of-evidence in light of the 1991 α_{2u}-g policy, and has concluded that the observed renal effects were the result of the α_{2u}-g mechanism. The potential for lindane to induce kidney lesions in male rats is not currently regarded as being relevant to human health risk assessment. Therefore, the renal effects observed do not provide a basis for a Special Review of lindane.

II. Comments Received on the Proposed Notice Not to Initiate a Special Review on Kidney Effects

In its March, 1994 proposal not to initiate a Special Review, the Agency provided a 60–day comment period, which ended on May 17, 1994. EPA received five sets of comments, most of which were responses from public interest groups.

Comment. All of the commenters urged the Agency not to abandon the Special Review of lindane because there are additional health concerns beyond kidney effects that are currently not under consideration in the review by EPA.

Agency Response. In 1983, EPA concluded a major Special Review effort of lindane based on carcinogenicity, fetotoxicity/teratogenicity, reproductive effects, and acute effects on aquatic organisms. This effort resulted in the cancellation of indoor uses of smoke fumigation devices and greatly limited the use of pet dips on dogs. In addition, there were uses that were allowed to continue only if certain imposed restrictions were implemented. The restrictions were based on the degree of associated hazards, and included changes in warning labels, the wearing of protective clothing, and restrictions to limit uses to certified pest control operators. Today's action only deals with the concerns originally raised in the 1985 preliminary notification to registrants and applicants of lindane, that is, kidney effects to workers exposed to lindane in forestry and uninhabited building uses. The Agency has concluded that the unique kidney effects induced via the α_{2u}-g mechanism in the rat have no direct biological relevance for human risk assessment. Consequently, there is no basis for initiating a Special Review of lindane due to the kidney effects at this time. However, the Agency recognizes that organochlorine pesticides, such as lindane, can cause endocrine disruption that may be associated with risk concerns. The Agency is currently developing a strategy to look at organochlorine pesticides as a group to examine their role as endocrine disrupters. Although the Agency is not initiating a Special Review on lindane for kidney effects, the findings from a comprehensive examination of the group of chemicals could lead to further regulatory action on lindane.

Comment. Several commenters pointed to concerns for breast cancer, neurotoxic, endocrine-disruption and other health effects from the continued use of lindane products. The commenters urged that EPA take more aggressive actions to further reduce risk.

Agency Response. The issues raised by the commenters were not Special Review triggers in the 1985 preliminary notification letter to registrants of lindane. Also, the identification of a possible toxic response or health concern to a given chemical does not always indicate that Special Review criteria have been exceeded. The recently completed rat carcinogenicity study did not demonstrate an association between lindane exposure and carcinogenicity. Presently, the Agency does not have a mouse carcinogenicity study that meets current acceptance criteria and a new study has been requested. However, the literature reports suggesting an apparent relationship between lindane and breast cancer in humans require further

evaluation. Investigation is underway at the National Cancer Institute to determine whether the association found in these studies can be confirmed. The possible endocrine effects reported in the literature to date have not been evident in those studies conducted in rats reviewed by the Agency, nor has immunotoxicity been indicated to be a critical endpoint for lindane toxicity. The Agency is considering additional data requirements for reregistration, including a neurotoxicity study, and the need for requiring special studies to assess both immunotoxicity and endocrine effects. The Agency is currently developing a strategy for examining the role of organochlorine chemicals as endocrine disrupters. Such an effort could result in the Agency pursuing further regulatory action against lindane. Today's action only deals with the kidney effects and does not preclude the Agency from taking future regulatory action against this chemical based on the risk concerns raised above.

Comment. Several commenters suggested EPA ban further use of lindane because the severity of the pesticide's environmental and health concerns have already caused regulators in more than a dozen countries to ban or severely restrict the use of this chemical.

Agency Response. EPA updates and reviews its scientific database on a routine basis for new evidence on chemicals which may identify risk concerns. Any regulatory action must meet the scrutiny of sound science and be consistent with the statutes and regulations governing pesticide registration and use. The Agency will exercise its authority to ban or restrict the use of pesticides when such action is necessary to protect against unreasonable adverse effects.

III. Reregistration Activities

EPA is considering what additional toxicological data are necessary to support continued registration, which include carcinogenicity and developmental neurotoxicity studies. Upon receipt and review of any of these studies, the Agency could initiate a Special Review or take other appropriate regulatory action if risk concerns are raised.

IV. Conclusion

Today's notice announces the Agency's final decision that the lindane induced kidney effects observed in male rats are not relevant for human risk assessment, nor do these effects meet the risk criteria for initiation of a Special Review. Because EPA no longer believes there is a renal-related hazard posed to humans, the Agency will not initiate a Special Review for this effect. The Agency is developing a strategy to look at the role of organochlorine pesticides, such as lindane, may play as endocrine disrupters to better understand the risks from this group of chemicals. This action does not preclude the Agency from taking action on this chemical in the future as new information on this or any other risk concern becomes known.

Dated: July 19, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–18368 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

[OPP–30390; FRL–4966–1]

Monterey Laboratories; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 25, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30390] and the file symbol (63608–R) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30390]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8097; e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Monterey Laboratories, 777 Maher Court, P.O. Box 189, Watsonville, CA 95077–0189, to register the pesticide product Vertigo Mushroom Fungicide (EPA File Symbol 63608–R), containing the active ingredient cinnamaldehyde at 50 percent, which involves a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for general use to include in its presently registered use, the control of larvae of soil dwelling beetles on or in turfgrass, landscape ornamentals, soil, transporation facilities, and interior plantscapes. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–

30390] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 12, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–18000 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30371A; FRL–4964–1]

Ciba-Geigy Corp; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Ciba-Geigy Corporation, to conditionally register the pesticide products Peak, Exceed, and Prosulfuron Technical containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 18, 1994 (59 FR 42593), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC, 27419, had submitted applications to conditionally register the pesticide products Exceed WG (now known as Peak) and Prosulfuron Technical (EPA File Symbols 100–TAG and 100–TAE), containing the active ingredient prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea at 57 and 96 percent respectively, an active ingredient not included in any previously registered products.

EPA subsequently received an application from Ciba-Geigy to register the product Exceed (EPA File Symbol 100–TTU), containing the active ingredient prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea at 32.3 percent, an active ingredient not included in any previously registered products and primisulfuron-methyl 3-[4,6-bis(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonylphenylsulfonyl) urea also at 32.3 percent, an active ingredient that was registered in 1990, for use in other products. However, since the notice of receipt of application was not published in **Federal Register**, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically by sending electronic mail; e-mail to: opp-docket@epamail.epa.gov. More detailed information is found in all documents requesting comments as of May 1995.

The applications were approved on May 3, 1995, for one technical and two end-use products listed below:

1. Prosulfuron Technical for formulation into herbicides for the use on corn (EPA Registration Number 100–762).

2. Peak Herbicide (formerly Exceed WG) for weed control in field corn (grown for grain, silage, or seed), popcorn, and sweet corn (EPA Registration Number 100–763).

3. Exceed for weed control in field corn (grown for grain, silage, or seed), and popcorn (EPA Registration Number 100–774).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of prosulfuron and primisulfuron-methyl, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of prosulfuron and primisulfuron-methyl during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e). Ciba-Geigy must make sure that all required studies are submitted under the terms of these conditional registrations.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in

an EPA Pesticide Fact Sheet on prosulfuron and primisulfuron-methyl.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18253 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34076A; FRL–4969–2]

Reregistration Eligibility Decision Documents for Ethephon, et al.; Availability for Comment Correction; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice correction.

SUMMARY: In this notice EPA is correcting a Notice of Availability of Reregistration Eligibility Decision (RED) for active ingredients of Ethephon, Linuron and Metolachlor which published in the **Federal Register** on May 24, 1995 and is reopening the comment period.

DATE: The comment period for this RED is reopened and comments are due by August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Technical questions on the decisions in this RED and on this correction should be directed to the appropriate chemical review managers listed below:

List	Chemical Name	Case No.	Chemical Review Manager	Telephone No.
List A	Ethephon	Case 0382	Judy Loranger	(703) 308–8056
List A	Linuron	Case 0047	Karen Jones	(703) 308–8047
List A	Metolachlor	Case 0001	Jane Mitchell	(703) 308–8061

Correction

In FR Doc. 95–12566 published in the **Federal Register** of Wednesday, May 24, 1995, beginning on page 27505, in the 2nd column, fourth line from the top, the sentence ''EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.'', is corrected to read as follows: ''EPA has determined that all currently registered products subject to reregistration containing Metolachlor are eligible for reregistration except those with uses for potatoes, soybeans, and peanuts. An eligibility decision for these uses cannot be made at this time because under current policies, section 409 tolerances under the Federal Food, Drug & Cosmetic Act (FFDCA) are needed because Metolachlor concentrates in some of the processed fractions of these crops and such tolerances may be barred by the Delaney Clause. EPA has determined that all currently registered products subject to reregistration containing Linuron are eligible for reregistration except for the use of Linuron on cotton, potato, non-cropland (rights-of-way), and sweet corn until additional generic data are submitted. The Agency is unable to make a reregistration eligibility decision on the use of Linuron on potatoes because under current policies tolerances under section 409 of the (FFDCA) are needed for this use, but such a tolerance may be barred by the Delaney clause in section 409.''

There are no changes regarding Ethephon.

Dated: July 20, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–18366 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–628; FRL–4958–2]

Pesticide Tolerance Petitions; Filings, Amendments, and a Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings, amendments, and a withdrawal of pesticide petitions (PP) and food/feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be

accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-628]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number/e-mail	Address
George LaRocca (PM-13)	Rm. 204, CM #2, 703-305-6100; e-mail: larocca.george@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA.
Dennis Edwards, Jr. (PM-19)	Rm. 207, CM #2, 703-305-6386; e-mail: edwards.dennis@epamail.epa.gov.	Do.
Joanne Miller (PM-23)	Rm. 237, CM #2, 703-305-6224; e-mail: miller.joanne@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities. EPA is also withdrawing a petition.

Initial Filings

1. *PP 5F4508.* Merck & Co., Inc., Agricultural Research and Development, Hillsborough Rd., Three Bridges, NJ 08487, has submitted to EPA pesticide petition (PP) 5F4508 that proposes amending 40 CFR 180.449 to establish tolerances for the insecticide avermectin B_1 and its delta-8,9-isomer in or on potatoes at .002 part per million (ppm). (PM-13)

2. *PP 5F4522.* Bayer Corp. (formerly Miles, Inc.) 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, has submitted to EPA pesticide petition (PP) 5F4522 that proposes amending 40 CFR 180.472 by establshing a regulation permitting residues of the the insecticide imidacloprid, 1-[chloro-3-pyridinyl)methyl-N-nitro-2-imidazolidinimine, in or on leafy green vegetables (including amaranth; arrugula; chervil; chrysanthemum, edible-leaved; chrysanthemum, garland; corn salad; cress, garden; cress, upland; dandelion; dock; endive; orach; parsley; purslane, garden; purslane, winter; radicchio (red chicory); spinach; spinach, New Zealand; and spinach, vine). (PM-19)

Amended Filings

3. *FAP 4H5700.* EPA gave notice in the **Federal Register** of November 2, 1994 (59 FR 54907), that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted the petition to amend 40 CFR part 186 to establish a feed additive regulation for the insecticide imidacloprid, 1-[(chloro-3-pyridinyl)methyl-N-nitro-2-imidazolidinimine, and its metabolites (calculated as imidacloprid), in or on the processed commodity beets, sugar, molasses at 0.2 part per million (ppm). Gustafson, Inc., has submitted to EPA an amendment to the petition that now calls for establishing a feed additive regulation for the processed commodity beets, sugar, molasses at 0.5 ppm. (PM-19)

4. *PP 8F3607.* In the **Federal Register** of May 25, 1988 (53 FR 18897), EPA issues a notice that Hoechst Celanese Corp., Route 202-206 North, Sommerville, NJ 08876, proposed amending 40 CFR part 180 by establishing a regulation to permit the residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)-butanoate (expressed as 2-amino-4-(hydroxymethylphosphinyl butanoic acid) and 3-methylphosphinicopropionic acid (expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid) in or on soybean seed at 0.05 ppm; apples at 0.05 ppm; grapes at 0.05 ppm; field corn grain, forage, fodder, and silage at 0.05 ppm; nuts at 0.05 ppm; and almond hulls at 0.50 ppm. An amendment to the PP 8F3607 has been submitted to EPA by AgrEvo USA Co., Little Falls One, 2711 Centerville Rd., Wilmington, DE 19808, proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide butanoic acid, 2-amino-4-(hydroxymethylphosphinyl), monoammonium salt and its metabolite 3-methylphosphinico-propionic acid, in or on the tree nut group at 0.10 ppm, almond hulls at 0.50 ppm, cattle fat at 0.05 ppm, cattle meat at 0.05 ppm, cattle meat byproducts (mbyp) at 0.10 ppm, eggs at 0.05 ppm, goat fat at 0.05 ppm, goat meat at 0.05 ppm, goat mbyp at 0.10 ppm, horse fat at 0.05 ppm, horse meat at 0.05 ppm, horse mbyp at 0.10 ppm, milk at 0.02 ppm, poultry fat at 0.05 ppm, poultry meat at 0.05 ppm, poultry mbyp at 0.10 ppm, sheep fat at 0.05, sheep meat at 0.05, and sheep mbyp at 0.10 ppm.

Withrawn Petition

5. *PP 2F4110.* Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500 Somerville, NJ 08876-1258, has requested that the petition be withdrawn without prejudice to future filing. Notice of filing of the petition appeared in the **Federal Register** of June 10, 1992 (57 FR 24646), and proposed establishment of a regulation to permit residues of the insecticide amitraz in or on the liver, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep. The notice of filing is hereby withdrawn without prejudice to a future filing of the notice. (PM 19)

A record has been established for this notice document under docket number [PF-628] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all

comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping.

Authority: 7 U.S.C. 136a.

Dated: July 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18367; Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180975; FRL–4963–9]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States listed below. Two crisis exemptions were initiated by the Washington Department of Agriculture. These exemptions, issued during the month of April 1995, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Delaware Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 10, 1995, to August 20, 1995. (David Deegan)

2. Delaware Department of Agriculture for the use of clomazone on watermelons to control weeds; April 19, 1995, to June 30, 1995. (David Deegan)

3. Idaho Department of Agriculture for the use of avermectin on hops to control two-spotted spider mites; April 19, 1995, to September 20, 1995. (Margarita Collantes)

4. Maryland Department of Agriculture for the use of clomazone on watermelons to control weeds; April 19, 1995, to June 30, 1995. (David Deegan)

5. Maryland Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 10, 1995, to August 20, 1995. (David Deegan)

6. Michigan Department of Agriculture for the use of oxytetracycline on apples to control fire blight; April 18, 1995, to July 1, 1995. (Margarita Collantes)

7. New Jersey Department of Environmental Protection and Energy for the use of chlorothalonil on blueberries to control anthracnose; April 12, 1995, to December 31, 1995. (David Deegan)

8. New York Department of Environmental Conservation for the use of chlorothalonil on blueberries to control anthracnose; April 12, 1995, to July 31, 1995. (David Deegan)

9. Oregon Department of Agriculture for the use of propiconazole on mint to control peppermint rust; April 3, 1995, to June 1, 1995. (Margarita Collantes)

10. Oregon Department of Agriculture for the use of oxytetracycline on apples to control fire blight; April 18, 1995, to May 7, 1995. (Margarita Collantes)

11. Oregon Department of Agriculture for the use of bifenthrin on raspberries to control weevils; April 20, 1995, to August 15, 1995. (David Deegan)

12. Oregon Department of Agriculture for the use of bifenthrin on strawberries to control weevils; April 19, 1995, to August 31, 1995. (David Deegan)

13. Oregon Department of Agriculture for the use of avermectin on hops to control two-spotted spider mites; April 19, 1995, to September 20, 1995. (Margarita Collantes)

14. Pennsylvania Department of Agriculture for the use of chlorothalonil on mushrooms to control *verticillium* fungicola; April 27, 1995, to April 26, 1996. (David Deegan)

15. Texas Department of Agriculture for the use of esfenvalerate on greens (kale, kohlrabi, and mustard greens) to control cabbage loopers; April 21, 1995, to November 30, 1995. (Libby Pemberton)

16. Virginia Department of Agriculture and Consumer Services for the use of clomazone on watermelons to control weeds; April 19, 1995, to June 30, 1995. (David Deegan)

17. Virginia Department of Agriculture and Consumer Services for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 1, 1995, to August 20, 1995. (David Deegan)

18. Washington Department of Agriculture for the use of bifenthrin on strawberries to control weevils; April 19, 1995, to September 30, 1995. (David Deegan)

19. Washington Department of Agriculture for the use of avermectin on hops to control two-spotted spider mites; April 19, 1995, to September 20, 1995. (Margarita Collantes)

20. Washington Department of Agriculture for the use of oxytetracycline on apples to control fire blight; April 18, 1995, to August 1, 1995. Washington had initiated a crisis exemption for this use. (Margarita Collantes)

21. Washington Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 10, 1995, to June 30, 1995. (David Deegan)

22. Wisconsin Department of Agriculture, Trade, and Consumer Services for the use of clomazone on cabbage to control velvetleaf; April 15, 1995, to August 31, 1995. (David Deegan)

Crisis exemptions were initiated by the:

1. Washington Department of Agriculture on April 27, 1995, for the use of sethoxydim on mint to control grasses. This program is expected to last until November 1, 1995. (Libby Pemberton)

2. Washington Department of Agriculture on April 7, 1995, for the use of oxytetracycline on apples to control fire blight. This program will end on August 1, 1995. (Margarita Collantes)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: July 5, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–17999 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180976; FRL 4967–2]

Lactofen; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture Consumer Services (hereafter referred to as the ''Applicant'') for use of the pesticide, lactofen (Cobra Herbicide), to control nightshade *Solanum spp.* and parthenium *Parthenium spp.* on up to 10,000 acres of row middle tomatoes and 5,000 acres of row middle green peppers in Florida. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 10, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180976,'' should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180976]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain (CBI) must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; Internet address: collantes.Margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the herbicide, lactofen, available as Cobra from Valent USA Corporation, to control nightshade and parthenium on up to 10,000 acres of row middle tomatoes and 5,000 acres of row middle green peppers in Florida. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the use of registered alternatives, Paraquat and Diquat herbicides, has led to the development of different biotypes of nightshade in Florida. Researchers have shown that nightshade has developed a tolerance to postemergence applications of both Diquat and Paraquat. There are no preemergence herbicides labeled in tomatoes or green peppers which control nightshade. Enquik, provides some postemergence burndown of nightshade, however, control is incomplete and regrowth can occur quite rapidly. In addition, Enquik is highly corrosive and requires special application equipment, resulting in limited use potential.

Loss of yields can be due to allelopathic affect from nightshade, direct competition for water and nutrients from both weed species, and interference in crop harvest from both weed species. Finally and most importantly, nightshade is an excellent host of the poinsettia strain of silverleaf whitefly. Silverleaf whitefly causes irregular ripening and is a vector for gemini virus in tomatoes. Institute of Food and Agriculture Scientists (IFAS) have shown that gemini virus can reduce tomato yields up to 60 percent. They believe that the use of Cobra herbicide will control nightshade and parthenium which should result in tomato and green pepper estimated net and gross revenues falling within the previous 5 year averages.

Under the proposed exemption, a maximum of two applications per crop would be made at [0.3 to 0.5 lbs of active ingredient (a.i.)] (19 to 32 fl. ozs. per acre) as a preemergence and/or postemergence application. Not to apply within 30 days of harvest. Reentry to treated acres without protective clothing is not allowed until spray has dried.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24(a)(6)]. Exemptions for the use of Lactofen on tomatoes and green peppers have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

A record has been established for this notice under docket number ''[OPP–180976]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the

address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: July 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18254 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50808; FRL–4965–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–80. Issuance. Abbott Laboratories, 1401 Sheridan Road, North Chicago, Il 60064–4000. This experimental use permit allows the use of 270 pounds of the plant growth regulator (S)-trans-2-amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride on 2,450 acres of apples to evaluate its ability to maintain fruit firmness and its effectiveness as a stop drop agent. The program is authorized only in the States of California, Maine, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Virginia, and Washington. The experimental use permit is effective from May 10, 1995 to June 1, 1996. A temporary tolerance for residues of the active ingredient in or on apples has been established. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

241–EUP–120. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 720 pounds (360 pounds each year) of the chemical hybridizing agent potassium 3,4-dichloro-5-isothiazolecarboxylate on 400 acres (200 acres each year) of cotton to evaluate chemical hybridizing. The program is authorized only in the State of Arizona. The experimental use permit is effective from March 3, 1995 to April 12, 1997. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

241–EUP–123. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 560 pounds (280 pounds each year) of the plant growth regulator 1-(3-chlorophthalimido)-cyclohexanecarboxamide on 2,000 acres (1,000 acres each year) on various ornamental crops to evaluate the increase of stem production and quality. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The experimental use permit is effective from May 31, 1995 to May 31, 1997. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

241–EUP–129. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 4,508 pounds (2,254 pounds each year) of the herbicide isopropylamine salt of imazapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-pyridinecarboxylic acid) on 6,000 acres (3,000 acres each year) of nonfood aquatic areas. The program is authorized only in the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The experimental use permit is effective from March 13, 1995 to March 13, 1997. (Robert Taylor, PM 25, Rm. 241, CM #2, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov)

68173–EUP–1. Issuance. Kaken Pharmaceutical Co., c/o Ltd., Stewart Pesticide Registration Association, 2001 Jefferson Davis Highway, Suite 603, Arlington, VA 22202. This experimental use permit allows the use of 30.2 pounds of the fungicide polyoxin D zinc salt on 28 acres of turf to evaluate the control of various turf diseases. The program is authorized only in the States of Georgia, Kansas, Missouri, North Carolina, New Jersey, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from May 11, 1995 to November 1, 1995. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

400–EUP–68. Renewal. Uniroyal Chemical Company, Inc., 74 Amity Rd., Bethany, CT 06524–3402. This experimental use permit allows the use of 120 pounds of the growth retardant potassium salt of 1,2-dihydro-3,6-pyridazinedione on 80 acres of rice to evaluate the suppression of red rice seed production in white rice. The program is authorized only in the State of Louisiana. The experimental use permit is effective from June 12, 1995 to August 31, 1995. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18121 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–630; FRL–4965–4]

Cinnamaldehyde; Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the IR-4 (Interregional Research Project No. 4) a petition to establish an exemption from the requirement of a tolerance for the fungicide cinnamaldehyde in or on all raw agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-630]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703)-308-8097; e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the IR-4, New Jersey Agricultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903-0231, a notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 0E3858 to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the fungicide cinnamaldehyde (also known as cinnamic aldehyde) in or on all raw agricultural commodities.

A record has been established for this rulemaking under docket number [PF-630] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

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

Dated: July 12, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–18483 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50807; FRL–4965–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

4581–EUP–43. Issuance. Elf Atochem North America, Inc., 2000 Market St., 21st Floor, Philadelphia, PA 19103. This experimental use permit allows the use of 128 pounds of the herbicide mono(N,N-dimethylalkylamine) salt of endothall on 50 acres of cotton to evaluate the enhancement of cotton boll opening. The program is authorized only in the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from June 14, 1995 to June 14, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

100–EUP–98. Amended. Ciba-Geigy Corporation. P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 16.066 pounds of the herbicide methyl [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo [3,4-a]pyridazin-1-ylidene)amino]-phenyl]thio]acetate on 1,200 acres of corn and soybeans (200 acres of corn in 1995, 400 acres of corn in 1996 and 200 acres of soybeans in 1995 and 400 acres of soybeans in 1996) to evaluate the control of various weeds. The program is authorized only in the States of Arkansas, Delaware, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Michigan, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. This experimental use permit is effective from March 27, 1995 to December 31, 1996. This permit is

issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

279–EUP–132. Issuance. FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 260 pounds of the herbicide ethyl 2-chloro-3-[2-chloro-4-fluoro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]propanoate on 4,000 acres of corn, sorghum, soybeans, and wheat to evaluate the control of grasses, sedges, and broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming. The experimental use permit is effective from February 9, 1995 to February 9, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18484 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 95–59]

Preemption of Local Zoning Regulations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 15, 1995, the Commission issued a Notice of Proposed Rulemaking proposing to revise our rules regarding the preemption of local zoning regulations of satellite earth stations. The NPRM announced that the Commission would entertain petitions for declaratory relief under the current venison of the rule, on an interim basis. This notice announces the procedures under which such petition may be filed.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara, International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch, (202) 739–0730.

SUPPLEMENTARY INFORMATION: On May 15, 1995, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to revise our rule regarding preemption of local zoning regulations of satellite earth stations. IB Docket No. 95–59, 60 FR 28077 (May 30, 1995). Included in this NPRM was an announcement that the Commission would entertain petitions for declaratory relief under the current version of the rule, on an interim basis, until completion of the rulemaking. Petitions for such relief must show that they have exhausted local administrative remedies.

In addition to demonstrating exhaustion of administrative remedies, petitioners must show that a copy of the petition, a copy of this Public Notice (Report No. SPB–16), and a copy of the Commission's May 15 NPRM have been served on the appropriate local officials concurrent with its filing at the Commission. For administrative purposes, a number will be assigned to each petition filed and should be used whenever possible in corresponding with the Commission on the given petition. The numbers will be designated as File No. ###SAT–DR–YY, where ### IS THE next sequential number in the Satellite Policy Branch Database and the YY is the fiscal year in which the petition is filed (*e.g.*, 120–SAT–DR–95). Informational Public Notices will be issued when petitions are filed.

Oppositions to preemption petitions must be filed within 15 days after the petition is filed and replies must be filed within 10 days after the time for filing oppositions has expired. Additional pleadings may be filed only if specifically requested or authorized by the Commission. All pleadings should be addressed to the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, Attention: Satellite Policy Branch, International Bureau.

Copies of the petitions and related pleadings will be available for public inspection in the International Reference Center, 2000 M Street NW., Ground Floor, Washington, DC 20554, during its normal operating hours. Copies are available for purchase from ITS, Inc. 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18317 Filed 7–25–95; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2085]

Petition for Reconsideration of Actions in Rulemaking Proceedings

July 21, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by August 10, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Preparation for International Telecommunication Union World Radiocommunication Conferences. (IC Docket No. 94–31)

Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18281 Filed 7–25–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before August 21, 1995.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD) Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report title: Report of Commercial Paper Outstanding Placed by Brokers and Dealers (FR 2957a); Report of Commercial Paper Outstanding Placed Directly by Issuers (FR 2957b); Daily Report of Offering Rates on Commercial Paper (FR 2957d)
Agency form numbers: FR 2957a, b, and d
OMB Docket number: 7100-0002
Frequency: Daily, weekly, and monthly
Reporters: Brokers and dealers and direct issuers of commercial paper
Annual reporting hours: 1,858
Estimated average hours per response: 0.20 to 0.75
Number of respondents: 68
Small businesses are not affected.

General description of report: This information collection is voluntary and is authorized by law [12 U.S.C. §225(a), 263, 353, and 461]. The FR 2957a and b are confidential [5 U.S.C. §552(b)(4)].

Abstract: These reports provide information on the amounts outstanding of and selected offering rates on commercial paper, which the Federal Reserve uses to gauge the aggregate flow of funds and to determine the composition of short-term financing components in credit markets.

2. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K
Agency form number: FR K-1
OMB Docket number: 7100-0107
Frequency: On occasion
Reporters: State member and national banks, Edge and corporations, and bank holding companies
Annual reporting hours: 440
Estimated average hours per response: Varies from 10 to 20 hours
Number of respondents: 38
Small businesses are not affected.

General description of report: This information collection is required (sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601-604(a) and 611-631), and the Bank Holding Company Act (12 U.S.C. 1843(c)(13), 1843(c)(14), and 1844(c))). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K-1 is a compilation of all the applications and prior notification requirements in Regulation K that govern the formation of Edge and Agreement corporations and the international and foreign activities of U.S. banking organizations.

The proposed revisions include the addition of one item, expansion of an existing item, and clarifications to the reporting instructions. The Federal Reserve proposes adding a new item that will require foreign banking organizations that are seeking to either establish or acquire control of an existing Edge corporation to furnish information relating to the supervision and regulation of the foreign banking organization by its home country supervisor, as well as information to allow the Federal Reserve to determine whether the foreign banking organization will be able to provide whatever information is deemed necessary to determine and enforce compliance with U.S. law. This is the same type of information that a foreign banking institution must provide (pursuant to the Foreign Bank Supervision Enhancement Act of 1991) in order to acquire ownership or control of a subsidiary bank or commercial lending company or to establish a branch or agency in the United States. The Federal Reserve proposes that Attachment H require applicants seeking to engage in any activity that the Federal Reserve has not previously determined to be of a banking or financial nature to discuss the extent to which such activity is usual in connection with the transaction of banking or other financial operations in the country in which the activity is to be conducted, supported by examples. The proposed revision to item 2.f. would enable the Federal Reserve to determine whether a proposed new activity is usual in connection with the transaction of the business of banking or other financial operations abroad, as the Federal Reserve is required to do under section 211.5(d)(20) of Regulation K.

3. Report title: Bank Holding Company Report of Investments and Activities
Agency form number: FR Y-6A
OMB Docket number: 7100-0124
Frequency: Event generated
Reporters: Bank Holding Companies
Annual reporting hours: 11,000
Estimated average hours per response: 1.0
Number of respondents: 1,746
Small businesses are not affected.

General description of report: This information collection is mandatory [(12 U.S.C. 1844(b) and (c))] and is not routinely given confidential treatment. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

Abstract: The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects information relating to acquisitions, divestitures, changes in activities, and legal authority. The response rate for the FR Y-6A varies depending on the reportable activity engaged in by each bank holding company.

The Federal Reserve proposes the following revisions to the FR Y-6A:

(1) Modify the reporting threshold to collect data from those bank holding companies that control 25 percent or more of any class of non-voting equity of a bank or bank holding company. The current FR Y-6A reporting threshold applies where the bank holding company controls in excess of 25 percent of any class of non-voting equity.

(2) Eliminate the requirement to report investments in Edge and agreement corporations. This information will be proposed to be reported on the Report of Changes in Foreign Investments (FR 2064; OMB No. 7100-0109).

(3) Reformat the Investments Schedule to show one investment transaction and one activities transaction on each report page.

(4) Make certain clarifications to the reporting instructions.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. Report title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2225
Market number: 7100-0216
Frequency: Annual
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 240
Estimated average hours per response: 1.0
Number of respondents: 240
Small businesses are not affected.

General description of report: This information collection is voluntary (sections 11(i), 16, and 19(f) of the Federal Reserve Act). The FR 2225 is a public report subject to the right of individual reporters to request confidential treatment on an ad hoc basis for particular items.

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve's Payments System Risk policy. The report provides the Federal Reserve with the foreign bank's worldwide capital figure which, in connection with a net debit cap multiple, is used to calculate the bank's daylight overdraft limit.

Under the Federal Reserve's Payments System Risk policy, all institutions that maintain a Federal Reserve account are assigned or may establish a net debit cap that represents a maximum limit on daylight overdrafts incurred in that account on a single day or on average during a two-week maintenance period. The net debit cap is a multiple applied to the risk-based capital for a U.S.-chartered institution and to the consolidated U.S. capital equivalency for a U.S. branch or agency of a foreign bank.

The FR 2225 report was designed to minimize the reporting burden for foreign banks by relying as much as possible on publicly available data regarding capital and by requiring most foreign banks to submit their capital and asset figures only once each year, within three months following the end of the bank's fiscal year. A bank may voluntarily submit the report more frequently to have their overdraft limit based on current data. However, the overdraft limit generally would be smaller for any bank that does not provide the requested information because the limit would be based on the imputed capital of the bank's U.S. branches and agencies.

2. Report title: Report of Net Debit Cap
Agency form number: FR 2226
OMB Docket number: 7100-0217
Frequency: Annually
Reporters: Depository institutions, Edge and agreement corporations, and U.S. branches and agencies of foreign banks
Annual reporting hours: 2,250
Estimated average hours per response: 1.0
Number of respondents: 2,250
Small businesses are not affected.

General description of report: This information collection is required (sections 11, 16, and 19 of the Federal Reserve Act) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve is concerned about the risks associated with critical payment systems. The Federal Reserve Banks are directly exposed to the risk of loss if a depository institution uses Federal Reserve intraday credit to settle Fedwire funds or book-entry securities transfer payments and is unable to repay the extension of credit. The Federal Reserve has adopted a payment system risk reduction policy that relies in part on the efforts of individual institutions to identify, control, and reduce their exposure. The Report of Net Debit Cap comprises one or more resolutions filed by an institution's board of directors.

Under the Federal Reserve's Payments System Risk policy, all institutions that maintain a Federal Reserve account are assigned or may establish a net debit cap that represents a maximum limit on daylight overdrafts incurred in that account on a single day or on average during a two-week maintenance period. The net debit cap is a multiple applied to the risk-based capital for a U.S.-chartered institution and to the U.S. capital equivalency for a U.S. branch or agency of a foreign bank.

3. Report title: Applications for the Issuance and Cancellation of Federal Reserve Stock—National Bank, Nonmember Bank, Member Bank
Agency form number: FR 2030, 2030a, 2056, 2086a, 2086b, and 2087
OMB Docket number: 7100-0042
Frequency: On occasion
Reporters: National, State Member and Nonmember Banks
Annual reporting hours: 942 (FR 2030: 43; FR 2030a: 29; FR 2056: 797; FR 2086a: 26; FR 2086b: 24; FR 2087: 23).
Estimated average hours per response: 0.5 (for each form)
Number of respondents: 1,881 (FR 2030: 86; FR 2030a: 57; FR 2056: 1,594; FR 2086a: 52; FR 2086b: 47; FR 2087: 45).
Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. §§35, 222, 282, 287, 288, and 321 and 12 C.F.R. §§209.1, 209.3, 209.5(b), 209.6, 209.7, and 209.8] and is not given confidential treatment.

Abstract: These Federal Reserve Bank stock application forms are required to be submitted to the Federal Reserve System by any national bank, state member bank, or state nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank stock holdings, or cancel such stock.

National banks, chartered by the Comptroller of the Currency, are required to become members of the Federal Reserve System. State-chartered commercial banks may elect to become members if they meet the requirements established by the Board of Governors of the Federal Reserve System. When a bank receives approval for membership in the Federal Reserve System, the bank agrees to certain conditions of

membership which are contained in an approval letter sent to the bank by the Federal Reserve Bank in the District where the bank is located. In addition to the conditions of membership, the bank also is advised by the Reserve Bank that it must subscribe to the capital stock of the Federal Reserve Bank of its District in an amount equal to 6 percent of the bank's paid-up capital and surplus, including reserve for dividends payable in common stock, pursuant to Section 5 of the Federal Reserve Act and Regulation I. However, the bank is required to make payment for only 50 percent of the subscription, which is recorded as paid-in capital on the Reserve Bank's balance sheet. The remaining 50 percent is subject to call by the Board of Governors of the Federal Reserve System. On June 30, 1994, there were 4,160 Federal Reserve member banks, and their consolidated paid-in capital at the twelve Federal Reserve Banks was $3.5 billion.

The applications are necessary in order to obtain account data on the bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock. Another purpose of the applications is to verify that a request has been duly authorized and to prevent unauthorized requests for issuance or cancellation of Federal Reserve Bank stock. The applications are used exclusively by the applying banks and the Federal Reserve Banks. The information collected on the applications is not available from any other source.

4. Report title: Notification of Foreign Branch Status
Agency form number: FR 2058
OMB Docket number: 7100-0069
Frequency: On occasion
Reporters: State member banks, Edge and agreement corporations, and bank holding companies
Annual reporting hours: 20
Estimated average hours per response: 0.25
Number of respondents: 80
Small businesses are not affected.

General description of report: This information collection is required (12 U.S.C. §§321, 601, 602, 615, and 1844(c)). The notifications are not considered confidential.

Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an approved foreign branch. The notice requests information on the location and extent of service provided by the branch, and is filed within thirty days of the change in status. The Federal Reserve needs the information to fulfill its statutory obligation to supervise foreign branches of U.S. banking organizations. Minor clarifying changes will be made to the form and instructions.

Regulation K, ''International Banking Operations,'' sets forth the conditions under which a foreign branch may be established. For their initial establishment of foreign branches, organizations must request prior Board approval as directed in Attachment A of the FR K-1, ''International Applications and Prior Notifications Under Subparts A and C of Regulation K'' (OMB No. 7100-0107). For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System forty-five days prior written notice using Attachment B of FR K-1. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

The proposed changes in the FR 2058 instructions will clarify the scope of the branch status changes that require notification to the Federal Reserve. Information on changes in status of additional branches within the same country in which such a subsidiary is incorporated is not required. The FR 2058 instructions will be clarified to limit the filing requirement to the organization's initial entrant into each foreign country. Also, the instructions will be clarified to reflect that a notice should be filed for foreign branches of subsidiaries acquired or divested by the institution. The FR 2058 notification form also will be better formatted to elicit the effective date of the branch status change and whether the branch is a shell or a full service branch.

Board of Governors of the Federal Reserve System, July 20, 1995

William W. Wiles,

Secretary of the Board

[FR Doc. 95–18314 Filed 7–25–95; 8:45AM]

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: 070395 AND 071495

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
American Stores Company, Rx America, L.L.C., Rx America L.L.C	95–1868	07/03/95
Ciba-Geigy Limited, Rx America, L.L.C., Rx America, L.L.C	95–1869	07/03/95
Modine Manufacturing Company, Enscor Inc., The Equion Corporation	95–1881	07/03/95
Oracle Corporation, Information Resources Inc., Information Resources Inc	95–1946	07/03/95
Lawrence Flinn, Jr., SSDS, Inc., SSDS, Inc	95–1979	07/03/95
University Hospitals Health System, Inc., The Geauga Hospital Association, Inc., The Geauga Hospital Association, Inc	95–2004	07/03/95
Equus II Incorporated, Allwaste, Inc., ARI Glass Newco, Inc	95–2012	07/03/95
The Limited, Inc., Partrick W. Galyan, Galyan's Trading Company, Inc	95–1968	07/05/95
Aurora Health Care, Inc., Catholic Health Corporation, Trinity Memorial Hospital of Cudahy, Inc	95–1899	07/06/95
Quincy Newspapers, Inc., ML Media Partners, L.P., WREX-TV	95–1928	07/06/95
ML-Lee Acquisition Fund, L.P., General Nutrition Companies, Inc., General Nutrition Companies, Inc	95–1965	07/06/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070395 AND 071495

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
General Signal Corporation, MagneTek, Inc., MagneTek Electric, Inc	95–2005	07/06/95
Northwestern Public Service Company, Sherman C. Vogel, Synergy Group Incorporated	95–2006	07/06/95
Time Warner Inc., John Hancock Mutual Life Insurance Company, Daniels Communications Partners Limited Partnership	95–2015	07/06/95
Cedar Fair, L.P., Hunt Midwest Enterprises, Inc., Hunt Midwest Entertainment, Inc	95–2021	07/06/95
Parametric Technology Corporation, Rasna Corporation, Rasna Corporation	95–1926	07/10/95
SSM Health Care, DeanCare Partnership, The Dean Health Plan, Inc	95–1986	07/10/95
Cincinnati Milacron Inc., Talbot Holdings Ltd., Talbot Holdings Ltd	95–1494	07/11/95
Tenneco Inc., The Dow Chemical Company, Dow Hydrocarbons and Resources Inc	95–1951	07/11/95
James W. F. Brooks, MC Bottlers, L.P, Mid-Continent Bottlers, Inc	95–1973	07/11/95
Saratoga Partners III, L.P., Saratoga Partners III, L.P., U.S.I. Holdings Corporation	95–2023	07/11/95
Occidental Petroleum Corporation, BankAmerica Corporation, BA Leasing & Capital Corp. & Seafirst Leasing Corp	95–2025	07/11/95
General American Life Insurance Company, ITT Corporation ITT Lyndon Life Ins. Co./ITT Lyndon Property Ins. Co	95–2026	07/11/95
PhyCor, Inc., Arnett Clinic, Inc., Arnett Health Systems, Inc. and Arnett Optical, Inc	95–2029	07/11/95
The Upjohn Company, Elf Aquitaine (a French company), Sanofi	95–2031	07/11/95
Koninklijke Ahold nv, Stanley P. Kaufelt, Mayfair SuperMarkets, Inc	95–2034	07/11/95
Omnicom Group Inc., Chiat/Day Holdings, Inc., Chiat/Day Inc. Advertising International	95–2041	07/11/95
United States Filter Corporation, Continental H2O Services, Inc., Continental H2O Services, Inc	95–2043	07/11/95
Golden Eagle Industries, Inc., National Gypsum Company, National Gypsum Company	95–2044	07/11/95
Ronald O. Perelman, Power Control Technologies, Inc., Power Control Technologies, Inc	95–2046	07/11/95
Pyxis Corporation, Allied Pharmacy Management, Inc., Allied Pharmacy Management, Inc	95–2047	07/11/95
Corange Limited, GeneMedicine, Inc., GeneMedicine, Inc	95–2048	07/11/95
Omnicom Group Inc., Ross Roy Communications, Inc., Ross Roy Communications, Inc	95–2049	07/11/95
The Deaconess Associations, Inc., Robert I. Clausen, DCL Associates, L.P	95–2052	07/11/95
The Deaconess Associations, Inc., James J. Lloyd, DCL Associates, L.P. d/b/a Cleveland Health Care Center	95–2054	07/11/95
Palmetto MobileNet, L.P., BellSouth Corporation, South Carolina RSA No. 4 Cellular General Partnership	95–2055	07/11/95
Evening Post Publishing Company, ML Media Partners, L.P., ML Media Partners, L.P	95–2057	07/11/95
Sumner M. Redstone, Phyllis Kaminer, Instructional Systems, Inc	95–2061	07/11/95
Vendex International N.V., Barnes & Noble, Inc., Barnes & Noble, Inc	95–2065	07/11/95
H Group Holding, Inc., TRST Denver, Inc., Hyatt Regency Tech Center Hotel	95–2088	07/11/95
Cyprus Amax Minerals Company, Imax Gold Inc., Amax Gold Inc	95–2093	07/11/95
The Allen Group Inc., Handy & Harman, GO/DAN Industries	95–2020	07/11/95
Northwestern Healthcare Network, Ingalls Health System, Ingalls Health System	95–2033	07/12/95
Motorola, Inc., Alan H. Goldfield, CellStar Corporation	95–2062	07/12/95
General Electric Company, Dr. Rolf Gerling, Frankona Ruckversicherungs-Aktien-Gesellschaft	95–2068	07/12/95
General Electric Company Aachener Und Munchener Beteiligungs-AG, Laurensberg Beteiligungs—AG	95–2069	07/12/95
Pierre Peladeau, U S West, Inc., Directory Printing Company	95–2071	07/12/95
Olsten Corporation, IMI Systems, Inc., IMI Systems, Inc	95–2074	07/12/95
Raytheon Company, United Dominion Industries Limited, Litwin Corporation, Litwin Engineers & Constructors	95–2083	07/12/95
The Allen Group Inc., The Allen Group Inc., GO/DAN Industries	95–2084	07/12/95
TCA Cable TV, Inc., Time Warner Inc., Time Warner Entertainment Company, L.P.	95–2050	07/13/95
Pall Corporation, Bayer AG, Bayer Corporation	95–2082	07/13/95
Southern New England Telecommunications Corporation, Southern New England Telecommunications Corporation, Berkshire Cellular Limited Partnership	95–2086	07/13/95
Rheinisch-Westfalisches Elektrizitatswerk AG, KW Control Systems, Inc., KW Control Systems, Inc	95–1768	07/14/95
Sisters of the Humility of Mary, Warren General Health System, Warren General Health System	95–1991	07/14/95
Siebe plc, Joseph Rea, Form Rite Corp	95–2037	07/14/95
Siebe plc, Juliann Good, Form Rite Corp	95–2038	07/14/95
Richfood Holdings, Inc., Super Rite Corporation, Super Rite Corporation	95–2080	07/14/95
Tom E. Turner, Robert D. Farmer, Farmco, Inc. and Farmco-San Antonio, Inc	95–2087	07/14/95
Enron Corp., GKH Investments, L.P., Hanover Compressor Company	95–2089	07/14/95
MDS Health Group Limited, Panlabs International, Inc., Panlabs International, Inc	95–2091	07/14/95
Hughes Supply, Inc., John V. Moore, Moore Electric Supply, Inc	95–2099	07/14/95
U.S. Office Products Company, Clifton B. Phillips, Mills Morris Arrow, Inc	95–2102	07/14/95
Clifton B. Phillips, U.S. Office Products Company, U.S. Office Products Company	95–2103	07/14/95
Belden & Blake Corporation, Quaker State Corporation, QSE&P, Inc	95–2106	07/14/95
GKH Investments, L.P., Mr. Robert G. Irvin, Arcus, Inc	95–2108	07/14/95
Samuel Gary, Kerr-McGee Corporation, Kerr-McGee Refining Corporation	95–2117	07/14/95
Host Marriott Corporation, California Federal Bank, FSB, Point Clear Bay Hotel Limited Partnership	95–2124	07/14/95
Harbour Group Investments III, L.P., TRAK International, Inc., TRAK International, Inc	95–2125	07/14/95
Anna C. Ball, Geo. J. Ball, Inc., Ball Seed Company	95–2126	07/14/95

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, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–18332 Filed 7–25–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–131–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—First Quarter 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during January, February, and March of 1995 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe. We are also providing the content of revisions to the Medicare Coverage Issues Manual published between January 1 and March 31, 1995. On August 21, 1989, we published the content of the Manual (54 FR 34555) and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT: Margaret Cotton, (410) 786–5255 (For Medicare instruction information). Pat Prete, (410) 966–3246 (For Medicaid instruction information). After July 21, 1995, (410) 786–3246. Nancy Ranels, (410) 966–8928 (For all other information). After August 4, 1995, (410) 786–8928.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from January 1 through March 31, 1995.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices June 9, 1988 (53 FR 21730), September 22, 1988 (53 FR 36891), December 16, 1988 (53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues

Manual. These updates, when added to material from the manual published on August 21, 1989 constitute a complete manual as of March 31, 1995. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

Addendum V lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, the parts of the Code of Federal Regulations (CFR) which have changed (if applicable), the agency file code number, the ending date of the comment period (if applicable), and the effective date (if applicable).

IV. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1993. The remaining portions of CD–ROM are updated on a monthly basis.

The CD–ROM disk does not contain Appendix M (Interpretative Guidelines for Hospices). Copies of this appendix may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA–Pub. 14–3) transmittal entitled ''Medical Review,'' use the Superintendent of Documents No. HE 22.8/7 and the HCFA transmittal number 1508.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Issuances Staff, Bureau of Program Operations, Health Care Financing Administration, S1–03–08, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–5255.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, (before July 21, 1995) Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–3246 or (after July 21, 1995) C4–25–02, 7500 Security Boulevard,

Baltimore, MD 21244–1850, Telephone (410) 786–3246.

Questions concerning all other information may be addressed to Nancy Ranels, Office of Regulations, Bureau of Policy Development, Health Care Financing Administration, (before August 4, 1995) Room 132 East High Rise 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–8928 or (after August 4, 1995) C5–14–22, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–8928.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: July 19, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the most recent quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual. For a complete listing of the quarterly updates to the Coverage Issues Manual published between March 20, 1990 through November 14, 1994, please refer to the January 3, 1995 update (60 FR 134).

January 3, 1995 (60 FR 132)
April 6, 1995 (60 FR 17538)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Medicare **Intermediary Manual—Part 2** **Audits, Reimbursement** **Program Administration (HCFA–Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–1)**
402	•	Maximum Payment For Rural Health Clinics Maximum Payment For Federally Qualified Health Centers
403	•	Contractor Performance Evaluation Fiscal Intermediary Performance Criteria—General The RHHI Performance Evaluation RHHI Performance Criteria—General
404	•	Beneficiary Services Provider Services
		Medicare **Intermediary Manual—Part 3** **Claims Process (HCFA–Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1642	•	HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures Ambulatory Surgical Center Pricer Program
1643	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings
1644	•	Frequency of Billing Requirement That Bills Be Submitted In-Sequence for a Continuous Inpatient Stay Need to Reprocess Inpatient Claims In-Sequence
1645	•	PRO Reporting on Medical Review
1646	•	All-Inclusive Rate Providers Billing for Parenteral and Enteral Nutrition Special Billing Instructions for Pneumococcal Pneumonia
1647	•	On-Site CMRs Review Options
		Medicare **Carriers Manual—Part 2** **Program Administration (HCFA–Pub. 14–2)** **(Superintendent of Documents No. HE 22.8/7–3)**
130	•	The FY 1995 Contractor Performance Evaluation
131	•	Beneficiary Services Provider Services
		Medicare **Carriers Manual—Part 3** **Claims Process (HCFA–Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1508	•	Medical Review Local MR Policy The Carrier Advisory Committee

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Data Analysis to Identify Aberrancies
		Aberrancies
		Taking Corrective Actions on Identified Aberrancies
		Conducting Evaluation of Effectiveness of Correction Action
		Standard Postpayment Data Reports
		Categories of MR Screens
		Provider Audit List
		CMR Corrective Actions
		Assessing an Overpayment or Potential Overpayment When the CMR was Based on a Limited Sample/Subsample Determination
		Consent Settlement Documents
1509	•	Participating Physician/Supplier Report
		Completion of Items on Participating Physician/Supplier Report
		Checking Reports
1510	•	Recovery From the Physician/Supplier—Overpayment Demand Letters
		Initial Demand Letter to Physicians/Suppliers
		Follow-up Demand Letter to Physicians/Suppliers
		Overpayment Report
		Optional Overpayment Customizing Paragraphs
		Sample Letter—Check Included For Correct Amount
		Sample Letter—Check Included But Wrong Amount
1511	•	Personal Computer EMC Software
1512	•	HCFA Common Procedure Coding System
		Use and maintenance of CPT–4 in HCPCS
		Local Codes at Regular Carriers
		Use and Acceptance of HCPCS Codes and Modifiers
		HCPCS Update
		Payment Concerns While Updating Codes
		Payment, Utilization Review and Coverage Information on HCFA Tape File
		Deleted HCPCS Codes/Modifiers
		Claims Review and Adjudication Procedures
		HCPCS Release
		Program Memorandum Intermediaries (HCFA–Pub. 60A) (Superintendent of Document No. HE 22.8/7)
A–95–1	•	Hospital Outpatient Procedures: 1995 Update to the List of Radiology Procedures and Other Diagnostic Services Subject to Payment Limitation and Update to the List of HCPCS Codes to Be Grossed-Up
A–95–2	•	Submission of Form HCFA–2552–92 (Hospital and Hospital Health Care Complex Cost Report)
A–95–3	•	Ambulatory Surgical Center—PRICER 9.1
		Program Memorandum Carriers (HCFA–Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–95–1	•	Implementation of 1995 Physician Fee Schedule Payment Policy Changes
		Program Memorandum Intemediaries/Carriers (HCFA–Pub. 60AB) (Superintendent of Documents No. HE 22.8/6–5)
AB–95–1	•	Establishment of Standard Rates for Transmitting Claims Information Between Medicare Contractors and Complementary Insurers
AB–95–2	•	New Interest Rate Payable on Clean Claims Note Paid Timely
AB–95–3	•	Implementation of ''Physician Ownership and Referral'' (Section 1877 of the Social Security Act, as amended by Section 13562 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93))
AB–95–4	•	EDI Enrollment Form
AB–95–5	•	Temporary HCPCS Codes for Dexamethasone Acetate
		Program Memorandum Medicaid State Agencies (HCFA–Pub. 17) (Superintendent of Documents No. HE 22.8/6–5
95–1	•	Title XIX, Social Security Act, Transfers of Assets and Treatment of Trusts

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Program Memorandum **Insurance Commissioners (HCFA–Pub. 80)** **(Superintendent of Documents No. HE 22.8/6–5)**
95–1	•	Medigap Bulletin Series (Number Four)
		State Operations Manual **Provider Certification (HCFA–Pub. 7)** **(Superintendent of Documents No. HE 22.8/12)**
266	•	Survey Procedures for Swing-Bed Hospitals Model Letter—Swing Bed Applicants Nurse Aide Training/Nurse Aide Training and Competency Evaluation Program Line-Item Justification for Direct and Indirect Costs Preparation of the State Survey Agency Certification Workload Report—HCFA–434 Distribution of Approved Funds Disbursement of Approved Funds General Goods, Facilities, Services From Other Staff Agencies or From Local Agencies Personnel Services State Agency Accounts Determination of Necessary Staff Communications and Supplies Equipment Training of State Agency Personnel Long Term Care Facility Workload (SNF/NF) Preparation of the State Agency Budget List of Positions—HCFA–1465A Preparation of the State Agency Schedule for Equipment Purchases—HCFA–1466 Preparation of State Survey Agency Budget Request (Non-LTC)–HCFA–435 Preparation of State Survey Agency Budget Request—Long-Term Care, HCFA–435 Submittal of Budget Request Notification of Approval Need For Additional Title XVIII and Title XIX Funds Financial Reporting Limit on Expenditures Periodic Analysis of Accounts Cash Balances and Expenditure Authority Unliquidated Obligations State Survey Agency Quarterly Expenditure Report, HCFA–435 and State Survey Agency Certification Workload Report HCFA–434—Submittal and Due Date Preparation of State Survey Agency Non-TLC Quarterly Expenditure Report, HCFA–435 Preparation of State Survey Agency Long-Term Care Quarterly Expenditure Report, HCFA–435 State Survey Agency/Certification Workload Report
267	•	Community Mental Health Centers—Citations and Description Certification Process Model Letter to CMHCs CMHC Crucial Data Extract Public Health Service Act Requirements Health Insurance Benefit Agreement Conditions to Be Assessed Prior to Scheduling An RHC Survey
268	•	Essential Access Community Hospital/Rural Primary Care Hospital—Citations and Description Medicare Designation as an EACH Medicare participation by an RPCH RPCH Anti-Dumping Requirements Advance Directives Requirements for RPCHs Model Letter: Transmitting Materials to Rural Primary Care Hospitals Model Letter: Notification to Rural Primary Care Hospital Regarding Scheduling a Survey Survey Tasks and Interpretive Guidelines for Rural Primary Care Hospitals
269	•	Survey Protocol Appendix P, Part I—Survey Procedures for Long-Term Care Facilities Appendix P, Part II—Guidance to Surveyors—Long-Term Care Facilities List of Documents in Certification Packet
		Medicare **Christian Science Sanatorium** **Hospital Manual Supplement (HCFA–Pub. 32)** **(Superintendent of Documents No. HE 22.8/2–2)**
34	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Regional Office Manual **Standards and Certification (HCFA–Pub. 23–4)** **(Superintendent of Documents No. HE 22.8/8–3)**
57	•	Assignment of Provider and Supplier Identification Numbers Essential Access Community Hospital//Rural Primary Care Hospital (EACH/RPCH) Program—Citations and Description Procedures for EACH Approval by the Regional Office (RO) Procedures for RPCH Approval by the RO Procedures for Processing RPCH Swing-Bed Applications Processing Complaints Against EACHs and RPCHs Processing Denials and Terminations for EACHs and RPCHs EACH Approval Letter RPCH Approval Letter EACH Denial Letter RPCH Denial Letter
		Medicare **Hospital Manual (HCFA–Pub. 10)** **(Superintendent of Documents No. HE 22.8/2)**
675	•	HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures
676	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings
677	•	Oral Cancer Drugs Requirement That Bills Be Submitted In-Sequence for a Continuous Inpatient Stay
678	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare **Home Health Agency Manual (HCFA–Pub. 11)** **(Superintendent of Documents No. HE 22.8/5)**
274	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare **Skilled Nursing Facility Manual (HCFA–Pub. 12)** **(Superintendent of Documents No. HE 22.8/3)**
334	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings
335	•	Requirement That Bills Be Submitted In-Sequence For a Continuous Inpatient Stay
336	•	Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare **Rural Health Clinic and Federally** **Qualified Health Centers Manual (HCFA–Pub. 27)** **(Superintendent of Documents No. HE 22.8/19:985)**
18	•	Rural Health Clinics Federally Qualified Health Centers
19	•	Billing of Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines by Rural Health Clinics and Federally Qualified Health Centers
		Medicare **Hospice Manual (HCFA–Pub. 21)** **(Superintendent of Documents No. HE 22.8/18)**
45	•	Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare **Provider Reimbursement Manual Part 1 (HCFA–Pub. 15–1)** **(Superintendent of Documents No. HE 22.8/4)**
380	•	Board Action on Request for Hearing
381	•	Ancillary Services in SNFs
382	•	Principles Land (Non-Depreciable) Historical Cost Purchase of Facility as Ongoing Operation Fair Market Value Donated Assets Net Book Value Acquisitions Sale and Leaseback Agreements—Rental Charges

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Lease Purchase Agreements—Rental Charges Assets Partially or Fully Depreciated on Provider's Books When Provider Enters Program Transfer of Governmental Facilities Assets Donated to Provider Useful Life of Depreciable Assets
		Medicare Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA–Pub. 15–11AF) (Superintendent of Documents No. HE 22.8/4)
1	•	Home Health Agency Cost Report, Form HCFA–1728–94
2	•	Rounding Standards for Fractional Computations Method of Payment Worksheet S—Independent Renal Dialysis Facility Cost Report Certification Worksheet A—Reclassification and Adjustments of Trial Balance of Expenses Worksheet A–2—Adjustments to Expenses Worksheet B, Cost Allocation—General Service Costs and Worksheet B–1—Cost Allocation—Statistical Basis
		Medicare Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (General) (HCFA–Pub. 15–11A) (Superintendent of Documents No. HE 22.8/4)
17	•	Submission of Cost Reports
		Medicare Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA–Pub. 9) (Superintendent of Documents No. HE 22.8/9)
120	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressing
121	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
122	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Peer Review Organization Manual (HFCA–Pub. 19) (Superintendent of Documents No. HE 22.8/15)
44	•	Introduction HCFA-Provided Data PRO-Selected Data Confidentiality of PRO Data
45	•	Training
46	•	Objectives of the Internal Quality Control Program IQC Program Requirements IQC Control Process Analysis and Reporting Requirements
47	•	Introduction Uses for PDC Conducting PDC Concerns Identified During PDC Confidentiality Reports to HCFA Required HCFA Notification/Approval Office of Management and Budget Clearance Related Activities Through PRO/Carrier Intermediary/ESRD Network Cooperation Timeline for PDC Process
48	•	Statutory Basis Grounds for Termination Recommendation to Initiate Termination Notice of Intent to Terminate Contract Termination Panel Termination Decision

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Medicare **Coverage Issues Manual (HCFA–Pub. 6)** **(Superintendent of Documents No. 22. 8/14)**
74	•	Bladder Stimulators (Pacemakers)
		State Medicaid Manual **Part 3—Eligibility (HCFA–Pub. 45–6)** **(Superintendent of Documents No. HE 22.8/10)**
65	•	Persons with Drug Addition or Alcoholism
		State Medicaid Manual **Part 6—Payment for Services (HCFA–Pub. 45–6)** **(Superintendent of Documents No. HE 22.8/10)**
27	•	Physician Services to Children Under 21 Physican Services to Pregnant Women
		End Stage Renal Disease **Network Organizations Manual (HCFA–Pub. 81)** **(Superintendent of Documents No. HE 22.9/4)**
2	•	Introduction Board of Directors Network Staff Network Council Patient Involvement Medical Review Board Other Committees Meetings Goals Internal Quality Control System Continuous Quality Improvement Medicare Benefits for ESRD Patients Hospital Insurance for Persons Needing Kidney Transplant or Dialysis When ESRD Coverage Begins When ESRD Coverage Ends Supplemental Medical Insurance Organizational Conflicts of Interest Among Governing Body of ESRD Network Organizations, Facilities, and Patients Conflict of Interest—Private Arrangements Prohibited Organizational Conflicts of Interest Permitted Activities
		Medicare **Renal Dialysis Facility Manual (HCFA–Pub. 29)** **(Superintendent of Document No. HE 22.8/13)**
71	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare/Medicaid **Sanction/Reinstatement Report**
95–1	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
95–2	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
95–3	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated

Addendum IV—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 74; sections 65–10.1–65–11 Bladder Stimulators (Pacemakers) CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: For services performed on or after 03–01–95.

Section 65–10.1, Bladder Stimulators (Pacemakers).—This section is revised to reflect that pelvic floor stimulators, whether inserted into the vaginal canal or rectum or implanted in the pelvic area, used as a treatment for urinary incontinence either as a bladder pacer or a retraining mechanism are not covered for the reason that the safety

and effectiveness of these devices are unproven.

65–11 BLADDER STIMULATORS (PACEMAKERS)—NOT COVERED

Pelvic floor stimulators, whether inserted into the vaginal canal or rectum or implanted in the pelvic area, used as a treatment for urinary incontinence either as a bladder pacer or a retraining mechanism are not covered for the reason that the safety and effectiveness of these devices are unproven.

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR vol. 60 page	CFR part	File code	Regulation title	End of comment period	Effective date
01/03/95	46–54	410,414	BPD–789–CN	Medicare Program; Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under the Physician Fee Schedule for Calendar Year 1995, and the 5–Year Refinement of RVUs.		01/01/95
01/03/95	130–132		HSQ–224–N	CLIA Program: Approval of the Joint Commission on Accreditation of Healthcare Organizations As An Accrediting Organization.		01/03/95
01/03/95	132–141		BPO–129–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Third Quarter 1994.		01/03/95
1/09/95	2325–2330	400, 405, 410, 484, 485, 486, 498,.	BPD–798–FC	Medicare Program; Providers and Suppliers of Specialized Services: Technical Amendments.	03/10/95	02/08/95
01/13/95	3250–3253		MB–089–N	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1995.		01/13/95
01/17/95	3405–3410		BPD–778–FN	Medicare Program; Special Payment Limits for Home Blood Glucose Monitors.		02/16/95
01/23/95	4418–4423		ORD–070–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: November and December 1994.		01/23/95
01/26/95	5185–5204		BPD–776–FNC	Medicare Program; Additions To and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers.	03/27/95	02/27/95
02/02/95	6537–6547		BPD–812–NC	Medicare Program; Criteria for Medicare Coverage of Lung Transplants.	04/03/95	02/02/95
02/08/95	7514	482	BPD–826–N	Medicare Program; Hospice Wage Index		02/08/95
02/09/95	7774–7780		HSQ–223–N	CLIA Program: Approval of the College of American Pathologists.		02/09/95
02/14/95	8389–8406		BPD–793–NC	Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit.	04/17/95	07/01/94
02/16/95	8951–8955	410	BPD–424–F	Medicare Program; Medicare Coverage of Prescription Drugs Used in Immunosuppressive Therapy.		01/01/95
02/24/95	10395–10396		OPL–004–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council.		02/24/95
03/02/95	11632–11633	485, 486	BPD–798–CN	Medicare Program; Providers and Suppliers of Specialized Services-Technical Amendments; Corrections.		02/08/95
03/13/95	13441		BPD–833–N	Medicare Program; Hospice Wage Index		03/13/95
03/16/95	14223–14224	410	BPD–724–F	Medicare Program; Medicare Coverage of Screening Mammography; Correction.		10/01/94
03/30/95	16481–16486		ORD–073–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1995.		

*GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule: FC—Final Rule with Comment Period; CN—Correction Notice; SN—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling

[FR Doc. 95–18333 Filed 7–25–95; 8:45 am]
BILLING CODE 4120–01–P

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

John J. Tomasula, Mount Sinai Medical Center: On June 29, 1995, ORI found that John J. Tomasula, formerly of the Mount Sinai Medical Center in New York, committed scientific misconduct by falsifying research involving guanabenz treatment of spinal cord injured cats reported in a Public Health Service (PHS) grant application. Additionally, ORI found that Mr. Tomasula had falsified his credentials on three PHS grant applications in which he claimed to have a Ph.D. degree from Northwestern University when, in fact, he had obtained a mail-order

degree from Northwestern College of Allied Sciences in Oklahoma, an unaccredited, now-defunct ''institution.''

Mr. Tomasula has entered into a Voluntary Exclusion Agreement with ORI in which he has accepted ORI's finding and has agreed to exclude himself voluntarily, for the three (3) year period beginning June 29, 1995, from:

(1) applying for or receiving any Federal grant or contract funds; and,

(2) serving in any advisory capacity to the PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–18347 Filed 7–25–95; 8:45 am]

BILLING CODE 4110–60–P

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Jose R. Sotolongo, Jr., M.D., Mount Sinai Medical Center: On July 3, 1995, ORI found that Jose R. Sotolongo, Jr., M.D., formerly of Mount Sinai Medical Center in New York, committed scientific misconduct by falsifying research involving guanabenz treatment of spinal cord injured cats presented in a Public Health Service (PHS) grant application.

Dr. Sotolongo has entered into a Voluntary Exclusion Agreement with ORI in which he has accepted ORI's finding and has agreed to exclude himself voluntarily, for the three (3) year period beginning July 3, 1995, from:

(1) Applying for or receiving any Federal grant or contract funds; and,

(2) Serving in any advisory capacity to the PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

The above voluntary exclusion, however, shall not apply to Dr. Sotolongo's future training or practice of clinical medicine as a licensed practitioner unless that practice involves research or research training.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–18348 Filed 7–25–95; 8:45 am]

BILLING CODE 4110–60–P

National Institutes of Health

Division of Research Grants; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: July 27, 1995.

Time: 9:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Keith Murray, Scientific Review Admin., 6701 Rockledge Drive, Room 5194, Bethesda, MD 20892, (301) 435–1256.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18284 Filed 7–25–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Action Related to Emergency Research Activity

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service is announcing an action related to the applicability of the Title 45 CFR Part 46 (protection of human subjects) requirement for obtaining and documenting informed consent for a specific research activity. The purpose of this action is to invoke 45 CFR 46.101(i) related to an NIH funded research project: ''National Acute Brain Injury Study: Hypothermia.'' This important and necessary research needs to be carried out in human subjects who require emergency therapy and for whom, because of the subjects' medical condition and the unavailability of legally authorized representatives of the subjects, no legally effective informed consent can be obtained.

FOR FURTHER INFORMATION CONTACT: F. William Dommel, Jr., J.D., Senior Policy Advisor, Office for Protection from Research Risks, 6100 Executive Boulevard, Suite 3B01J, National Institutes of Health, MSC 7507, Rockville, MD 20892–7507. Telephone (301) 496—7005 ext. 203 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Waiver

Pursuant to Section 46.101(i) of Title 45 of the Code of Federal Regulations, the Secretary of Health and Human Services, has waived the general requirements for informed consent at 45 CFR 46.116 and 46.117 for the specific research activity known as the ''National Acute Brain Injury Study: Hypothermia'' and funded by the National Institutes of Health (NIH) grant number R01 NS 32786 under the following strictly limited circumstances:

In the course of the conduct of the research funded under NIH grant number R01 NS 32786, human research subjects may be included without seeking informed consent as otherwise required by 45 CFR 46.116 and 46.117 if the proposed research involves the study of activities which would be carried out on persons who are in need of emergency treatment and the IRB(s) responsible for the review, approval, and continuing review of the research approve(s) that research without requiring that legally effective informed consent be obtained and the IRB(s) find(s), document(s), and report(s) to the Office for Protection from Research Risks (OPRR), NIH, that the research is approved in the absence of a requirement for obtaining informed consent for the following reasons:

(i) The opportunity for the subjects to participate in the research is in the health interest of the subjects;

(ii) The waiver of consent will not adversely affect the rights and welfare of the subjects;

(iii) Additional appropriate protections of the rights and welfare of the subjects will be

provided, including , but not limited to, consultation (which may include consultation carried out by the IRB itself) with representatives of the communities from which the subjects will be drawn;

(iv) The research could not practicably be carried out without the waiver; and

(v) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

Background

The NIH, through its National Institute of Neurological Disorders and Stroke, has funded a research project entitled, ''National Acute Brain Injury Study: Hypothermia,'' which is a study of the treatment with hypothermia of severe head injury. This important and necessary research needs to be carried out in human subjects who, because of their injuries, are not conscious and cannot, therefore, consent to their participation. In some instances, but not always, consent from a legally authorized representative can be sought and obtained. Nevertheless, the unavailability of such representatives in many cases is impeding the progress of the research to such an extent, that the NIH determined that the research cannot go forward in the context of the current Department of Health and Human Services (HHS) regulations for the protection of human subjects (45 CFR Part 46) unless certain informed consent requirements of those regulations are waived by the Secretary, HHS in accord with the waiver provisions provided at 45 CFR 46.101(i). A request for consideration of such a waiver was received from the Institutional Review Board, University of Texas Health Science Center, Houston, on July 12, 1995.

Current HHS regulations permit IRBs acting in accord with an Assurance of Compliance with 45 CFR Part 46, to waive the requirement for obtaining informed consent under the following stringently applied conditions found at 45 CFR 46.116(d).

The IRB must find and document that:

- The research involves no more than minimal risk to the subjects;
- The waiver * * * will not adversely affect the rights and welfare of the subjects;
- The research could not practicably be carried out without the waiver * * *; and,
- Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

However, the waiver of informed consent requirements now being authorized under § 46.101(i) could not previously have been approved by an IRB, acting independently of the § 46.101(i) waiver, because the risk involved in this emergency treatment activity is greater than minimal and therefore the ''minimal risk'' requirement for the exercise of an IRB waiver of informed consent could not be met.

NIH notes that testimonies to this effect, in regard to similar research activities, were delivered to (i) the Subcommittee on Regulation, Business Opportunities, and Technology, Committee on Small Business, U.S. House of Representatives (Washington, DC, May 23, 1994); (ii) the Coalition Conference of Acute Resuscitation Researchers (Washington, DC, October 25, 1994); (iii) the meeting of Applied Research Ethics National Association (Boston, MA, October 30, 1994); (iv) the meeting of Public Responsibility in Medicine & Research (Boston, MA, November 1, 1994); and (v) the Food and Drug Administration/National Institutes of Health Public Forum on Informed Consent in Clinical Research Conducted in Emergency Circumstances (Rockville, MD, January 9–10, 1995).

Therefore, the issue for decision by the Secretary was whether this particular research activity, involving greater than minimal risk to the subjects, should be permitted to go forward in the absence of legally effective informed consent. The decision is that under certain strictly limited circumstances such permission is appropriate.

Periodic Review

A periodic review of the implementation by IRBs of this waiver will be conducted by OPRR to determine its adequacy in meeting its intended need or if adjustments to the waiver might be necessary and appropriate.

Dated: July 19, 1995.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 95–18334 Filed 7–25–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Refugee Resettlement

Refugee Resettlement Program; Availability of Formula Allocation Funding for FY 1995 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of availability of formula allocation funding for FY 1995 targeted assistance grants to States for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 1995 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources. The formula has been updated to take into account FY 1994 arrivals.

A notice of proposed allocation of targeted assistance funds was published for public comment in the **Federal Register** on April 17, 1995 (60 FR 19270).

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

APPLICATION DEADLINE: The deadline for applications from States for grants under this notice is on August 25, 1995.

Applications from States for grants under this notice must be received on time. An application will be considered to be received on time under either of the following two circumstances: The application is postmarked indicating it was sent via the U.S. Postal Service or by private commercial carrier not later than the closing date specified in the final notice or the application is hand-delivered on or before the closing date to the Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up to 4:30 p.m. of the closing date.

To be considered complete, an application package must include a

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on ''Authorization.'') The term ''refugee'', used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival, or until they obtain permanent resident alien status, whichever comes first.

signed original and two copies of Standard Form 424, 424A, and 424B, dated April 1988. (We will provide copies of these materials to all targeted assistance States.) The application package should be addressed to the Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, ACF, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 93.584.

FOR FURTHER INFORMATION ON APPLICATION PROCEDURES, STATES SHOULD CONTACT: RON MUNIA AT (202) 401–4559 IN ORR.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $49,397,000 in FY 1995 funds for the targeted assistance program (TAP) as part of the FY 1995 appropriation for the Department of Health and Human Services (Pub. L. 103–333).

The House Appropriations Committee Report reads as follows with respect to targeted assistance funds (H.R. Rept. No. 103–553, p. 93):

> This program provides grants to States for counties which are impacted by high concentrations of refugees and high dependency rates. The Committee intends that $19,000,000 of the total recommended for targeted assistance be provided to continue the current program of support to communities affected as a result of the massive influx of Cuban and Haitian entrants. The Committee also intends that 10 percent of the total appropriated for targeted assistance be used for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians, and Soviet Pentecostals, including secondary migrants who entered the United States after October 1, 1979. The Committee expects these grants to be awarded to communities not presently receiving targeted assistance because of previous concentration requirements and other factors in the grant formulas, as well as those who do currently receive targeted assistance grants.

The Senate Appropriations Committee Report (S. Rept. No. 103–318, p. 154) is consistent with the above-quoted House Report.

The Conference Report on Appropriations (H. Rept. No. 103–733, p. 24) clarifies Congress' intent on the use of the $19 million for communities affected by Cuban and Haitian entrants as follows:

> The conferees are agreed that $19,000,000 of the $49,397,000 appropriated for targeted assistance is to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased.

The Director of the Office of Refugee Resettlement (ORR) will use the $49,397,000 appropriated for FY 1995 targeted assistance as follows:

- $25,457,300 will be allocated under the updated formula, as set forth in this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals.
- $4,939,700 (10% of the total) will be awarded as second-year continuation grants in a two-year project period under a discretionary grant announcement that was issued in FY 1994.

In addition, the Office of Refugee Resettlement has available an additional $6,000,000 in FY 1995 funds to augment the targeted assistance 10% program through the Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 103–306). These funds will be awarded under a separate discretionary grant announcement which will be issued setting forth application requirements and evaluation criteria.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available ''(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.''

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513).

III. Client and Service Priorities

Targeted assistance funding should be used to assist refugee families to achieve economic independence. To this end, ORR expects States and counties to ensure that a coherent plan of services is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. Each service plan should address a family's needs for both employment-related services and other needed social services. In local jurisdictions that have both targeted assistance and refugee social services programs, one plan of services may be developed for a family that incorporates both targeted assistance and refugee social services.

Services funded under the targeted assistance allocations are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. The targeted assistance program, however, is not intended to be limited to cash assistance recipients. TAP-funded services may also be provided to other refugees in need of services, regardless of whether the refugees are receiving cash assistance.

However, effective October 1, 1995, under new provisions in § 400.314 in the final rule published in the **Federal Register** on June 28, 1995, (60 FR 33584), States will be required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b)

unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence. Effective October 1, 1995, States will also be required, in accordance with § 400.315, to limit the provision of targeted assistance services, with the exception of referral and interpreter services, to refugees who have been in the U.S. for 60 months or less.

In addition to the statutory requirement that TAP funds be used ''primarily for the purpose of facilitating refugee employment'' (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that ''employable refugees should be placed on jobs as soon as possible after their arrival in the United States'' (section 412(a)(1)(B)(i) of the INA). Therefore targeted assistance funds must be used primarily for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. Examples of these activities are: Job development; job placement; job-related and vocational English; short-term job training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. General or remedial educational activities—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—may be provided within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year. ORR encourages the continued provision of services after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds cannot be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year. If TAP funds are used for the provision of English language training, such training should be provided concurrently, rather than sequentially, with employment or with other employment-related services, to the maximum extent possible.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director of ORR expects States to ''insure that women have the same opportunities as men to participate in training and instruction.'' In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services. For an employed refugee, TAP-funded day care must be limited to one year after the refugee becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

Targeted assistance services should be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. To the maximum extent possible, particularly during a refugee's initial years of resettlement, targeted assistance services should be provided through a refugee-specific service system rather than through a system in which refugees are only one of many client groups being served.

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. States may use a portion of their targeted assistance funds, either through contracts or through the use of State/county staff, to provide technical assistance and organizational training to strengthen the capability of MAAs to provide employment services, particularly in States where MAA capability is weak or undeveloped. If a State chooses to use State employees to provide technical assistance to MAAs, this would be an administrative cost which must be included within the State administrative cost limit of 5% for the targeted assistance program.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

IV. Discussion of Comment Received

Nine letters of comment were received in response to the notice of proposed availability of FY 1995 funds for targeted assistance. The comments are summarized below and are followed

in each case by the Department's response.

Comment: Five commenters opposed allowing States with more than one eligible county to determine county allocations differently from those specified in the targeted assistance notice. Four of those commenters complained that their State's reallocation plan shifted resources from counties with new arrivals to counties with long-term assistance users.

Response: We believe that States with more than one eligible county should be given the flexibility to determine county allocations differently from those specified in the notice, based on more complete and accurate data that a State may have on county population numbers and welfare dependency rates than what is available at the Federal level.

Effective October 1, 1995, under the new rule, States with more than one eligible targeted assistance county will be allowed to allocate funds differently from the formula in the targeted assistance notice only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. States will be allowed to use welfare data as a factor in its allocation formula, but only in combination with arrival data, not as the only factor.

Comment: Two commenters questioned the 3 percent threshold for the Cuban/Haitian special allocation. One commenter objected to the exclusion of secondary migrants in the entrant population count. The other commenter recommended that the threshold be lowered to 1 percent to provide awards to more counties.

Response: As we have noted in previous years, we are not able to include secondary migrants in the population count for targeted assistance because secondary migration data are not available at the county level.

In order to be consistent with the Conference Report on Appropriations, we have established a 3 percent threshold for allocations under the Cuban/Haitian special allocation in order to target the communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. A lowering of the threshold would disperse the available funds across more communities, which would significantly reduce the grants to the communities which have the greatest need.

Comment: One commenter objected to ORR's intention not to consider data for the purpose of determining the eligibility of new counties for participation in TAP in FY 1995.

Response: In FY 1996 we intend to re-examine the targeted assistance program to determine what policies need to be updated or revised. At that time, the eligibility of all counties will be reviewed against the new qualifying criteria. We do not believe that it makes sense to admit new counties to the program in FY 1995 when these counties may become ineligible in FY 1996. We believe that funds are best used for already established counties rather than for the start up costs for new counties that may only receive funding for one year.

Comment: One commenter recommended that the 10% discretionary program be eliminated because the program allows non-impacted counties to receive grants which, in turn, reduces the grants to the impacted counties.

Response: The communities which receive grants under the TAP 10% discretionary program are impacted communities, even though they may not receive grants under the targeted assistance formula program. The TAP 10% program reflects Congressional intent as expressed in the House Appropriations Committee Report which states: ''The Committee expects these [TAP 10%] grants to be awarded to communities not presently receiving targeted assistance because of previous concentration requirements * * * as well as those who do currently receive targeted assistance grants.''

Comment: One commenter recommended that TAP funds be allocated to counties within 5 months after being appropriated by Congress. The commenter felt that releasing the funds later keeps counties from accessing funds when they are needed and gives Congress and OMB the impression that the counties do not really need the resources.

Response: We hope to issue targeted assistance awards earlier in the fiscal year than has been the case to date.

Comment: Two commenters recommended that the allowances for State and county administrative costs, 5 and 10 percent respectively, be re-examined. The commenters felt that the counties' allowance should be increased. One commenter recommended that counties be allowed as much as 15 to 20 percent in administrative costs since the counties are responsible for directly administering the targeted assistance grants. The other commenter recommended a sliding-scale for State allowances, with a higher percentage for smaller States and a lower percentage for larger States.

Response: Regarding State administrative allowances, section 412(c)(2)(B)(ii) of the INA allows up to 5% of the TAP allocation to be retained by the State.

As we indicated earlier, in FY 1996 we intend to re-examine the targeted assistance program to determine what policies need to be updated or revised. This will provide an appropriate time to re-examine the issue of allowable administrative cost levels.

Comment: One commenter requested that the application procedures for the Cuban/Haitian special allocation be made available as soon as possible if the procedures will be different from previous years.

Response: The application procedures for the Cuban/Haitian special allocation will be provided to participating States shortly.

Comment: One commenter requested that counties receiving awards for the first time under the Cuban/Haitian special allocation be awarded grants from October 1995 through September 1996 to give the State sufficient planning time.

Response: Awards will be made before the end of FY 1995. Counties may obligate targeted assistance funds for up to one year after the end of the Federal fiscal year in which the Department awarded the grant. Therefore, grants awarded this year may be obligated through September 30, 1996. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant.

V. Eligible Grantees

The following requirements, which have previously applied to TAP, will continue to apply with respect to FY 1995 awards:

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1995 targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine

county allocations differently from those set forth in this notice, the FY 1995 allocations proposed by the State must be included in the State's application.

Applications submitted in response to this notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

VI. Qualification and Allocation Formulas

A. Qualifying New Counties

ORR is not considering new counties for participation in TAP in FY 1995. The reason is that in FY 1996 we intend to modify the qualifying criteria and allocations formula for targeted assistance. At that time, the eligibility of all counties for participation in TAP will be reviewed against the new qualifying criteria. We do not believe it makes sense to invite new counties to submit evidence of eligibility in FY 1995 when these counties may become ineligible in FY 1996 under the new qualifying criteria.

B. Allocation Formula

The FY 1995 TAP formula allocations are based on the same formula as in FY 1994, updated to reflect arrivals through September 30, 1994.

Under this formula, one portion of the allocation is based on refugee and Cuban/Haitian entrant arrivals during FY 1980–1982; funds for this portion of the formula are allocated on the same proportionate basis among participating counties as in FY 1994. The second portion of the allocation is based on refugee and entrant placements in these counties during calendar year (CY) 1983–September 30, 1994.

For the participating counties, the $25,457,300 which is allocated by formula is apportioned as follows:

a. $7,891,763 or 31%, is allocated on the basis of the formula which has been used for all previous targeted assistance allocations (''old formula'') and which is based on initial placements during FY 1980–1982 and other factors as described under ''Formula Used to Date'' in the FY 1989 TAP notice published in the **Federal Register** on July 3, 1989 (54 F.R. 27944).

b. $17,565,537 or 69%, is allocated on the basis of arrivals during CY 1983–September 30, 1994 (''new formula'').

The above percentages are based on the proportion of initial placements in these counties during the two periods: 338,247 refugee arrivals, or 31% of the total number of placements, during the old-formula period; and 768,750 or 69%, during the new-formula period.

The old-formula allocation of $7,891,763 follows the same distribution among counties as in the past.

The new-formula allocation of $17,565,537 is based on the number of initial placements in each county during CY 1983–September 30, 1994. Welfare dependency rates were not used as a factor in this portion of the formula.

C. Allocation Formula for Communities Affected by Recent Cuban/Haitian Arrivals

Allocations for recent Cuban and Haitian refugee and entrant arrivals are based on arrival numbers during the 3-year period beginning October 1, 1991 through September 30, 1994. Allocations are limited to targeted assistance counties with 3 percent or more of the total 3-year Cuban and Haitian arrival population (35,863 arrivals) in the 42 targeted assistance counties. We have established a 3 percent threshold for allocations in order to target the most impacted communities.

VII. Allocations

Table 1 lists the participating counties, the number of placements in each county during CY 1983–September 30, 1994, the amount of each county's allocation which is based on the old formula, the amount of each county's allocation which is based on the new formula, and the county's total allocation.

Although Table 1 shows an amount for each county, the Director has decided, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. If a State chooses to make allocations which are different from the notice, the State, as in the FY 1994 TAP, would be responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application a description of this allocation basis, the data to be used, and the allocation proposed for each county.

Table 2 lists the participating counties, the number of Cuban and Haitian refugee and entrant arrivals in each county during FY 1992–FY 1994, each county's percentage of the aggregate total Cuban/Haitian arrivals in the 42 targeted assistance counties, and the allocation amount for each county that has an arrival threshold of 3 percent or above.

Table 3 provides State totals for targeted assistance allocations.

Table 4 indicates the areas that each participating county represents.

BILLING CODE 4184–01–P

TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1995

County	State	Arrivals Jan. 1983–Sept. 1994 (A)	Portion of FY 1995 allocation under old formula (B)	Portion of FY 1995 allocation under new formula (C)	Total FY 1995 allocation[1] (D)
Alameda	CA	15,342	$196,075	$350,380	$546,455
Contra Costa	CA	4,291	56,063	97,998	154,061
Fresno	CA	14,168	108,273	323,569	431,842
Los Angeles	CA	96,344	990,155	2,200,303	3,190,458
Merced	CA	4,419	132,156	100,921	233,077
Orange	CA	45,039	440,587	1,028,600	1,469,187
Sacramento	CA	17,687	167,821	403,935	571,756
San Diego	CA	25,368	328,383	579,354	907,737
San Francisco	CA	25,198	254,838	575,471	830,309
San Joaquin	CA	9,352	169,342	213,581	382,923
Santa Clara	CA	34,488	327,990	787,636	1,115,626
Stanislaus	CA	3,433	30,639	78,403	109,042
Tulare	CA	5,345	0	122,069	122,069

TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1995—Continued

County	State	Arrivals Jan. 1983–Sept. 1994 (A)	Portion of FY 1995 allocation under old formula (B)	Portion of FY 1995 allocation under new formula (C)	Total FY 1995 allocation [1] (D)
Denver	CO	9,865	66,147	225,297	291,444
Broward	FL	3,568	109,568	81,486	191,054
Dade	FL	55,816	1,911,490	1,274,725	3,186,215
Hillsboro	FL	3,496	34,433	79,842	114,275
Palm Beach	FL	3,595	45,517	82,103	127,620
Honolulu	HI	3,417	72,838	78,037	150,875
Cook/Kane	IL	36,430	342,151	831,988	1,174,139
Sedgwick	KS	4,038	81,534	92,220	173,754
Orleans	LA	3,899	55,699	89,045	144,744
Montgomery/Prince Georges	MD	8,851	67,761	202,139	269,900
Middlesex	MA	6,355	53,529	145,135	198,664
Suffolk	MA	16,114	122,853	368,011	490,864
Hennepin	MN	10,446	86,311	238,566	324,877
Ramsey	MN	10,263	121,357	234,386	355,743
Jackson	MO	4,319	31,685	98,637	130,322
Essex	NJ	5,925	18,336	135,315	153,651
Hudson	NJ	2,941	122,698	67,167	189,865
Union	NJ	1,812	24,631	41,382	66,013
New York	NY	135,631	273,761	3,097,538	3,371,299
Multnomah	OR	17,076	185,998	389,981	575,979
Philadelphia	PA	18,643	127,317	425,769	553,086
Providence	RI	4,850	90,936	110,764	201,700
Dallas/Tarrant	TX	26,002	0	593,833	593,833
Harris	TX	21,917	149,237	500,540	649,777
Salt Lake	UT	7,210	45,368	164,662	210,030
Arlington	VA	3,183	78,619	72,693	151,312
Fairfax	VA	9,006	94,800	205,679	300,479
King/Snohomish	WA	29,276	226,469	668,605	895,074
Pierce	WA	4,719	48,398	107,772	156,170
Total	.....	769,137	7,891,763	17,565,537	25,457,300

[1] Based on arrivals through September 30, 1994.

TABLE 2.—TARGETED ASSISTANCE ALLOCATIONS FOR COMMUNITIES AFFECTED BY RECENT CUBAN AND HAITIAN ARRIVALS: FY 1995

County	State	FY 92–94 total Cuban & Haitian refugee & entrant arrivals	% of total arrivals	Amount to be allocated: $19,000,000 Final Allocation: 3% arrival threshold
Alameda	CA	6	0.02	.....
Contra Costa	CA	1	0.00	.....
Fresno	CA	3	0.01	.....
Los Angeles	CA	660	1.80	.....
Merced	CA	0	0.00	.....
Orange	CA	24	0.07	.....
Sacramento	CA	13	0.04	.....
San Diego	CA	199	0.54	.....
San Francisco	CA	274	0.75	.....
San Joaquin	CA	2	0.01	.....
Santa Clara	CA	4	0.01	.....
Stanislaus	CA	0	0.00	.....
Tulare	CA	0	0.00	.....
Denver	CO	58	0.16	.....
Broward	FL	2,000	5.46	$1,237,866
Dade	FL	24,932	68.10	15,431,234
Hillsboro	FL	832	2.27	.....
Palm Beach	FL	2,621	7.16	1,622,223
Honolulu	HI	0	0.00	.....
Cook/Kane	IL	250	0.68	.....
Sedgwick	KS	6	0.02	.....
Orleans	LA	94	0.26	.....
Montgom./Pr. G.	MD	59	0.16	.....
Middlesex	MA	82	0.22	.....

TABLE 2.—TARGETED ASSISTANCE ALLOCATIONS FOR COMMUNITIES AFFECTED BY RECENT CUBAN AND HAITIAN ARRIVALS: FY 1995—Continued

County	State	FY 92–94 total Cuban & Haitian refugee & entrant arrivals	% of total arrivals	Amount to be allocated: $19,000,000 Final Allocation: 3% arrival threshold
Suffolk	MA	392	1.07	
Hennepin	MN	51	0.14	
Ramsey	MN	0	0.00	
Jackson	MO	310	0.85	
Essex	NJ	371	1.01	
Hudson	NJ	1,079	2.95	
Union	NJ	121	0.33	
New York	NY	1,145	3.13	708,678
Multnomah	OR	139	0.38	
Philadelphia	PA	154	0.42	
Providence	RI	11	0.03	
Dallas/Tarrant	TX	349	0.95	
Harris	TX	137	0.37	
Salt Lake	UT	0	0.00	
Arlington	VA	12	0.03	
Fairfax	VA	3	0.01	
King/Snohomish	WA	219	0.60	
Pierce	WA	0	0.00	
Total		36,613	100.00	19,000,000

TABLE 3.—TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1995

State	FY 1995 allocation [1]
California	$10,064,542
Colorado	291,444
Florida	[2] 21,910,486
Hawaii	150,875
Illinois	1,174,139
Kansas	173,754
Louisiana	144,744
Maryland	269,900
Massachusetts	689,528
Minnesota	680,620
Missouri	130,322
New Jersey	409,529
New York	[2] 4,079,977
Oregon	575,979
Pennsylvania	553,086
Rhode Island	201,700
Texas	1,243,610
Utah	210,030
Virginia	451,791
Washington	1,051,244
Total	44,457,300

[1] Based on arrivals through September 30, 1994.

[2] The allocations for Federal and New York include $18,291,322 and $708,678 respectively for communities affected by Cuban and Haitian entrants and refugees. This is referred to in the Conference Report on the appropriations: ''to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased.''

TABLE 4.—TARGETED ASSISTANCE AREAS

State	Targeted assistance area [1]	Definition
CA	ALAMEDA	
CA	CONTRA COSTA	
CA	FRESNO	
CA	LOS ANGELES	
CA	MERCED	
CA	ORANGE	
CA	SACRAMENTO	SAN DIEGO
CA		
CA	SAN FRANCISCO	MARIN, SAN FRANCISCO, & SAN MATEO COUNTIES.
CA	SAN JOAQUIN	
CA	SANTA CLARA	
CA	STANISLAUS	
CA	TULARE	
CO	DENVER	ADAMS, ARAPHOE, BOULDER, DENVER & JEFFERSON COUNTIES.
FL	BROWARD	
FL	DADE	
FL	HILLSBOROUGH	
FL	PALM BEACH	
HI	HONOLULU	
IL	COOK/KANE	
KS	SEDGWICK	
LA	ORLEANS	JEFFERSON & ORLEANS PARISHES.
MD	MONTGOMERY/PRINCE GEORGES	
MA	MIDDLESEX	
MA	SUFFOLK	
MN	HENNEPIN	
MN	RAMSEY	
MO	JACKSON	JACKSON COUNTY, MO. & WYANDOTTE COUNTY KS.
NJ	ESSEX	
NJ	HUDSON	
NJ	UNION	
NY	NEW YORK	BRONX, KINGS, NEW YORK, QUEENS, & RICHMOND COUNTIES.
OR	MULTNOMAH	CLACKAMAS, MULTNOMAH, & WASHINGTON COUNTIES, OR. & CLARK COUNTY, WA.
PA	PHILADELPHIA	
RI	PROVIDENCE	
TX	DALLAS/TARRANT	
TX	HARRIS	
UT	SALT LAKE	DAVID, SALT LAKE & UTAH COUNTIES.
VA	ARLINGTON	
VA	FAIRFAX	FAIRFAX COUNTY & THE INDEPENDENT CITIES OF ALEXANDRIA, FAIRFAX AND FALLS CHURCH.
WA	KINGS/SNOHOMISH	
WA	PIERCE	

[1] Consists of a named county/counties unless otherwise defined.

BILLING CODE 4184–01–M

VIII. Application and Implementation Process

Under the FY 1995 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

TAP funds will be awarded through a more streamlined grant process similar to that used for the ORR social services formula grant program. An application and assurances are still required of the States eligible to receive TAP funding. FY 1995 funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. There will be no carryover of unobligated funds into the FY 1996 grant award. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last filed report.

Although additional funding to Florida and New York for communities affected by Cuban and Haitian entrants and refugees whose arrivals in recent years have increased is part of the appropriation amount for targeted assistance, the scope of activities for these additional funds will be administratively determined. Applications for these funds are therefore not subject to provisions contained in this notice but to other requirements which will be conveyed separately. Similarly, the requirements regarding the 10% portion of the targeted assistance appropriation as well as the supplemental funds to the 10% portion of the targeted assistance appropriation that will be awarded separately have been addressed in the grant announcements for those funds.

IX. Application Requirements

The State application requirements for grants for the FY 1995 targeted assistance formula allocation are as follows:

States that are currently operating under approved management plans for their FY 1994 targeted assistance program and wish to continue to do so for their FY 1995 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application for FY 1995 funding shall provide:

A. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1995 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be identified in the application and are subject to ORR review and approval. Any proposed changes must address and reference all appropriate portions of the FY 1994 application content requirements to ensure complete incorporation in the State's management plan.

B. Assurance that effective October 1, 1995, targeted assistance funds will be used in accordance with the new ORR regulations published in the **Federal Register** on June 28, 1995.

C. Assurance that targeted assistance funds will be used primarily for the provision of services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 1995 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

D. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project.

States administering the program locally: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary must describe any ancillary services or subcomponents such as day care, transportation, or language training.

States with two or more counties receiving targeted assistance funds: As in FY 1994, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from those set forth in Table 1 of this notice, the State must provide a description of the State's proposed allocation plan and the basis for the proposed allocations. The application must contain a description of the allocation approach, data used in its determination, the calculated allocation amount for each county, and the rationale for the proposed allocations. States are encouraged to revise allocation formulas to assure appropriate funding among eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. Where the State chooses not to determine county allocation amounts, the State must provide the allocations which are specified in this notice.

X. Reporting Requirements

States will be required to submit quarterly reports on the outcomes of the targeted assistance program, using the same form which States use for reporting on refugee social services formula grants. This is Schedule A and Schedule C of the ORR–6 Quarterly Performance Report form. ORR is no longer using the ORR–12 form which was originally used to report on the outcomes of the targeted assistance program. ORR is consolidating its reporting requirements. The new reporting form will consolidate social services and targeted assistance performance reporting in one format in order to simplify and coordinate reporting. The new form will be available when reporting on FY 1995 grants begins, which would be at the end of the first quarter of FY 1996.

Dated: July 19, 1995.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 95–18335 Filed 7–25–95; 8:45 am]

BILLING CODE 4184–01–P

Substance Abuse and Mental Health Services Administration Proposed Data Collection

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice.

SUMMARY: SAMHSA is publishing this notice to solicit public comment on a proposed data collection: Evaluation of High Risk Substance Abuse Prevention Initiatives. Written comments are requested within 60 days of the publication of this notice.

AUTHORITY/JUSTIFICATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that Federal agencies provide a 60-day notice in the **Federal Register** concerning each proposed collection of information.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request copies of data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of High Risk Substance Abuse Prevention Initiatives—New—The Center for Substance Abuse Prevention (CSAP), SAMHSA will conduct a cross-site evaluation of approximately 50 demonstration projects targeting high risk youth to: (1) Assess the effectiveness of the Demonstration Program in preventing and/or reducing substance abuse among at-risk youth and intervention strategies

in reducing selected risk factors or enhancing protective factors; and (2) document the process of service delivery and program implementation. Data will be collected from both program participants and comparison group youth at four points in time over a 4-year period. The annual burden estimates are as follows:

	Number of respondents	Number of responses per respondent	Average burden/response
Demonstration Project Staff	245	.75	1.1 hours.
Youth	11,000	1.0	1.0 hour.

Dated: July 20, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–18324 Filed 7–25–95; 8:45 am]

BILLING CODE 4162–20–P

Food and Drug Administration

Muscle Monitoring Devices; Decision Not to Rely on Dental Products Panel Recommendations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it does not intend to rely on recommendations arising out of the October 13 and 14, 1994, meeting of the Dental Products Panel of the Medical Devices Advisory Committee concerning the classification of muscle monitoring devices. It is FDA's view that the October 1994 meeting was flawed and should not be the basis for decisions made about the use of these devices. FDA plans to fully and comprehensively consider the classification of muscle monitoring devices at a future meeting of the Dental Products Panel of the Medical Devices Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 1994 (59 FR 47880 at 47881), FDA announced that a meeting of the Dental Products Panel of the Medical Devices Advisory Committee would be held on October 13 and 14, 1994, to consider the classification of muscle monitoring devices. Because of substantive and procedural issues in connection with the October 1994 meeting, including the scope of products included and concerns that all interested parties may not have received adequate notice of the devices to be discussed at the meeting, FDA does not intend to rely on the Panel's discussion or recommendations for the use or classification of these devices. In addition, it is FDA's view that the October 1994 meeting should not be the basis for decisions about the use of these devices. FDA plans a full and comprehensive consideration of muscle monitoring devices at a future meeting of the Dental Products Panel.

The Dental Products Panel of the Medical Devices Advisory Committee meeting tentatively scheduled for August 8, 9, and 10, 1995, which was announced in the **Federal Register** on March 9, 1995 (60 FR 12960 at 12962), will not include discussion of muscle monitoring devices. FDA will announce future meetings of the Dental Products Panel of the Medical Devices Advisory Committee in the **Federal Register** at least 15 days in advance of the upcoming meetings.

Dated: July 21, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18450 Filed 7–24–95; 11:46 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket Nos. FR–3622–N–07 and FR–3878–N–03]

Announcement of Funding Awards Fair Housing Initiatives Program FY 1994

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of FY 1994 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Maxine Cunningham, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–3216. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The FHIP has four funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, the Private Enforcement Initiative, and the Fair Housing Organizations Initiative.

In the FY 1995 FHIP Notice of Funding Availability (NOFA) published in the **Federal Register** on April 11, 1995 (60 FR 18444), the Department announced the availability of up to $1,457,446 for funding of FY 1994 awards. This Notice announces the

award of these FY 1995 funds to eight recipients who had applied under the FY 1994 FHIP NOFA (59 FR 25532) to continue their FY 1993-funded projects. Because at the time the FY 1994 awards were made, these recipients were still administering their FY 1993 activities and would not be able to use FY 1994 funds for some time, the Department determined to award the FY 1994 funds to qualifying applicants who could sooner begin the implementation of their projects. The qualifying FY 1993 continuation projects under the FY 1994 NOFA were held over to be awarded out of FY 1995 funds in the amounts here announced.

The Department reviewed, evaluated and scored the applications received based on the criteria in the FY 1994 FHIP NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows below.

Dated: July 12, 1995.

Elizabeth K. Julian,

Acting Deputy Assistant Secretary for Policy and Initiatives, Fair Housing and Equal Opportunity.

FY94 FAIR HOUSING INITIATIVES PROGRAM AWARDS MADE WITH FY 95 FUNDS

Applicant name and address	Contact name and phone number	Region	Single or multi-year funding	Amount requested
Education and Outreach Initiative—National Program Component				
Fair Housing Council, 835 West Jefferson Street, Louisville, Kentucky 40201.	Galen Martin, Executive Director, (502) 583–3247.	4	S	$130,251
Fair Housing Organization Initiative—Continuing Development Component				
Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, 294 Washington Street, Boston, Massachusetts 02103.	Ozell Hudson, Jr., Executive Director, (617) 482–1145.	1	S	194,415
Fair Housing Partnership of Greater Pittsburgh, Inc., Bishop Boyle Center, 120 E. Ninth Avenue, Homestead, Pennsylvania 15120.	Donna C. Chernoff, Executive Director, (412) 462–5405.	3	S	137,859
Fair Housing Council, 835 West Jefferson Street, Room 108, Louisville, Kentucky 40201.	Galen Martin, Executive Director, (502) 583–3247.	4	S	164,838
Chicago Lawyers' Committee for Civil Rights Under Law, 185 North Wabash Avenue, Suite 2110, Chicago, Illinois 60601.	Roslyn C. Lieb, Executive Director, (312) 630–9744.	5	S	176,310
Private Enforcement Initiative—One Year Component				
Connecticut Housing Coalition, Inc., 30 Jordan Lane Wethersfield, Connecticut 06109.	Jeffrey Freiser, Executive Director, (203) 563–2943.	1	S	353,328
The Legal Aid Society, 15 Park Row-22nd Floor, New York, New York 10038.	Archibald R. Murray, Executive Director, (212) 577–3313.	2	S	105,445
Tenants' Action Group, 21 South 12th Street, 12th Floor, Philadelphia, Pennsylvania 19107.	Elizabeth G. Hersh, Executive Director, (215) 525–0700.	3	S	195,000

[FR Doc. 95–18309 Filed 7–25–95; 8:45 am]
BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

[NV–930–1430–01; N–46965]

Notice of Realty Action; Lease of Public Land for Recreation and Public Purposes; Storey County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Classifying Public land.

SUMMARY: Approximately 16.256 acres have been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*), within the following described public land:

T. 17 N., R. 21 E., Mount Diablo Meridian, Nevada

Section 28—Lot 7 excluding portions within Mineral Patents and portions within R&PP Classification N–53123; and
Section 29—Lot 9 excluding portions within Mineral Patents.

Upon satisfactory completion of a cultural resources inventory and clearance, a five-year lease with option to renew will be offered to Storey County School District. A high school has already been constructed on a portion of the site, and the remaining land would be used for baseball, track, and football fields plus additional vehicle parking in conjunction with the school.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will be made subject to any and all rights that holders thereof may have pursuant to the laws of the United States and the State of Nevada, unless such claims are relinquished prior to issuance of a lease.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register,** the subject land will be segregated from all forms of appropriation under the public land laws, including location under the

general mining laws but not the Recreation and Public Purposes Act, the mineral leasing laws, or the mineral material sales laws. The segregative effect will terminate as specified in an opening order published in the **Federal Register.**

For a period of 45 days from the date of publication of this Notice in the **Federal Register,** interested parties may submit comments to the BLM District Manager, 1535 Hot Springs Road, Carson City, Nevada 89706. Any adverse comments will be reviewed by the Nevada State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: July 17, 1995.

John Matthiessen,

Area Manager, Walker Resource Area.

[FR Doc. 95–18302 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Land Management

[AZ-055–05–1210–04: AZA–25497]

Arizona: Eagletail Mountains Wilderness; Implementation of Recreational Management Provisions in the Eagletail Mountains Wilderness Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Restriction of portions of the Eagletail Mountains Wilderness to day use only.

SUMMARY: The Bureau of Land Management (BLM) Yuma District has initiated implementation of the wilderness management provisions of the Eagletail Mountains Wilderness Management Plan which restricts certain recreational activities in an area located within unsurveyed Township 1 North, Range 11 West, sec 9., to day use only, in order to protect wilderness and cultural values. Activities specifically prohibited in this area are overnight camping, and the use of campfires. The restricted area includes a one-quarter (¼) of a mile wide corridor encompassing the canyon, canyon walls, and bench area above the canyon, from the point commonly known as Indian Springs or Willow Springs for a distance of three-quarters of a mile through the canyon in a southerly direction, and all areas within one-quarter (¼) of a mile of Indian or Willow Springs outside the canyon corridor, as depicted on maps located at the Yuma District Office and at the Courthouse Rock trailhead. The restricted area includes 300 acres more or less. The restriction is in effect until further notice.

EFFECTIVE DATE: This action will take effect August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Ken Howell, Wilderness Specialist, Yuma Resource Area, 3150 Winsor Avenue Yuma, Arizona, 85365, telephone (520) 726–6300.

SUPPLEMENTARY INFORMATION: This action is authorized by Title 43, Code of Federal Regulations, Subpart 8560, Section 1–1 and is being taken to protect wilderness and cultural values. The action was called for in the Eagletail Mountains Wilderness Management Plan which was available for a 45-day public review and comment period that ended on November 3, 1994.

Public notice of this action will be posted at the Yuma District Office, and at entry points to the Eagletail Mountains Wilderness. Violations of this order as provided for by Title 43, Code of Federal Regulations, Subpart 8560, Section 5, are punishable by a fine not to exceed $1000.00 or imprisonment not to exceed 12 months or both.

Dated: July 18, 1995.

Clinton R. Oke,

Acting Associate District Manager.

[FR Doc. 95–18303 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

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.*):

Applicant: Pete Trottier, Fairbanks, AK, PRT–804722

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by A.G. Spaeth, Doornboom, Bedford, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Colton W. Brinkoeter, Beeville, TX, PRT–804905

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mrs. Pat Cawood, Gannahoek, Cradock, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: K. Payne Hughes, Duluth, GA, PRT–804902

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Andrew Austin, Splitzkop, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Circus Tihany, Sarasota, FL, PRT–768272

The applicant requests a permit to re-export and re-import captive-born tiger (*Panthera tigris*) and leopard (*Panthera pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: The Institute of Wildlife and Environmental Toxicology, Pendleton, SC, PRT–804440

The applicant requests a permit to import 25 non-viable eggs from wild Morelet's crocodile (*Crocodylus moreletii*) from Sapote Lagoon, Belize for the purpose of enhancement of the survival of the species through scientific research.

Applicant: Duke University Primate Center, Durham, NC, PRT–804437

The applicant request a permit to import 0.2 live captive-born Crowned lemur (*Eulemur coronatus*) from Parc Tsimbazaza in Antananarivo, Madagascar for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

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 to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington,

Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 21, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–18385 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Draft Climbing Management Plan and Environmental Assessment for City of Rocks National Reserve, Idaho

ACTION: Notice of availability of Draft Climbing Management Plan and Environmental Assessment.

SUMMARY: This Notice announces the availability of a draft Climbing Management Plan and Environmental Assessment (EA) for City of Rocks National Reserve, Idaho.

DATES: Written comments on the Plan/EA should be received no later than Friday, 15 September 1995.

ADDRESSES: Copies of the Plan/EA are available on request from the Superintendent, City of Rocks National Reserve, P.O. Box 169, Almo, Idaho 83312; telephone (208) 824–5519. Written comments should be sent to the above address.

SUPPLEMENTARY INFORMATION: Rock climbing is one of the most popular recreation activities at City of Rocks National Reserve. While recognizing the legitimacy of this activity at the Reserve, the National Park Service prepared the Climbing Management Plan to help ensure that such use will not impair the Reserve's natural and cultural resources. The plan/EA describes four alternatives and analyzes their associated environmental impacts: (1) No Action; (2) Permit System; (3) Regulatory Approach; and (4) Proposed Action, which combines elements from the other alternatives. Because the Twin Sisters formation is such a prominent and significant feature of the Reserve, the plan/EA gives special attention to managing climbing on that resource.

Dated: July 14, 1995.

Rory D. Westberg,

Superintendent, Columbia Cascades System Support Office, National Park Service.

[FR Doc. 95–18278 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–70–M

Petroglyph National Monument; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 2 p.m., Monday, August 21, 1995, at the Technical-Vocational Institute, Board Room 100, Smith Brasher Hall, 717 University Boulevard SE, Albuquerque, New Mexico.

The matters to be discussed at this meeting include:

—Superintendent's Report
—Update on General Management Plan
—Public Comment
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the Commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Stephen Whitesell, Superintendent, Petroglyph National Monument, 123 4th Street SW, Room 101, Albuquerque, New Mexico 87102, telephone 505/766–8375.

Minutes of the Commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

The Petroglyph National Monument Advisory Commission will take a guided tour of the monument from 8:15 a.m. to noon on Monday, August 21, 1995 at the Las Imagines Visitor Center, 4735 Unser Boulevard NW, Albuquerque, New Mexico.

The Petroglyph National Advisory Commission was established pursuant to Public Law 101–313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

Dated: July 18,1995.

Vickie E. White,

Superintendent, Petroglyph National Monument.

[FR Doc. 95–18279 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–705 (Final)]

Furfuryl Alcohol From Thailand

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (the Act),[2] that an industry in the United States is materially injured by reason of imports from Thailand of furfuryl alcohol,[3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[4]

Background

The Commission instituted this investigation effective May 5, 1995, following an affirmative final determination by the Department of Commerce that imports of furfuryl alcohol from Thailand were being sold at LTFV within the meaning of section 735(b)(3) of the Act.[5] Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 24, 1995.[6] A hearing was scheduled to be held in Washington, DC, on June 13, 1995. However, based on a request from the only party filing a notice of appearance in this investigation, the hearing was cancelled on June 9, 1995.[7] Notice of cancellation of the hearing

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] 19 U.S.C. § 1673d(b).

[3] Furfuryl alcohol ($C_4H_3OCH_2OH$), also called furyl carbinol, is a primary alcohol that is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. It is classifiable under subheading 2932.13.00 of the *Harmonized Tariff Schedule of the United States* (HTS). The chemical has an assigned Chemical Abstracts Service registry number of CAS 98–00–0.

[4] The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act (''URAA''). This investigation, thus, remains subject to the substantive and procedural rules of the pre-existing law. See Public Law 103–465, approved Dec. 8, 1994, 108 Stat. 4809, at section 291.

[5] 19 U.S.C. 1673d(b)(3).

[6] 60 FR 27554.

[7] The Commission held a hearing in the companion investigations, Invs. Nos. 731–TA–703 and 704 (Final): Furfuryl Alcohol From China and South Africa, on May 3, 1995.

was published in the **Federal Register** of June 15, 1995.[8]

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 18, 1995. The views of the Commission are contained in USITC Publication 2909 (July 1995), entitled ''Furfuryl Alcohol From Thailand: Investigation No. 731–TA–705 (Final).''

Issued: July 21, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–18376 Filed 7–25–95; 8:45 am]

BILLING CODE 7020–02–P

[8] 60 FR 31494.

[Investigations Nos. 753–TA–1 through 31]

Countervailing Duty Orders

Determinations

Pursuant to section 753(b)(4) of the Tariff Act of 1930 (19 U.S.C. 1675b(b)(4)) (the Act), the Commission hereby determines that industries in the United States are not likely to be materially injured by reason of imports of the subject merchandise if the countervailing duty orders listed in the attachment were to be revoked.

Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request the Commission to initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Further, section 753(a)(3) requires that such requests must be filed with the Commission within 6 months of the date on which the country from which the subject merchandise originates became a signatory to the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), as referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

On May 26, 1995, the Department of Commerce (Commerce) published in the **Federal Register** notice of opportunity to request injury investigation(s) under section 753 of the Act (60 F.R. 27963, May 26, 1995). In that notice, Commerce stated that, for those countries becoming signatories to the Subsidies Agreement on January 1, 1995, requests for injury investigations must be filed with the Commission no later than June 30, 1995.

The Commission did not receive requests for investigation under section 753(a) with regard to the orders listed in the attachment. Section 753(b)(4) of the Act provides that, if a request for an injury investigation is not made within 6 months of the time the country of origin of the subject merchandise became a signatory to the Subsidies Agreement, the Commission shall notify the administering authority that it has made a negative determination with regard to the question of the likelihood of material injury by reason of imports of the subject merchandise if the order is revoked. Accordingly, pursuant to section 753(b)(4) of the Act, the Commission hereby notifies Commerce of its negative injury determinations with regard to imports subject to those orders.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810.

Authority

These determinations are being made under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 17, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Attachment

Inv. No.	Country	Product
753–TA–1	Argentina	Apparel.
753–TA–2	Argentina	Carbon steel cold-rolled flat products.
753–TA–3	Argentina	Leather wearing apparel.
753–TA–4	Argentina	Line pipe.
753–TA–5	Argentina	Nonrubber footwear.
753–TA–6	Argentina	Standard pipe.
753–TA–7	Argentina	Textile mill products.
753–TA–8	Argentina	Heavy-walled rectangular tubing.
753–TA–9	Argentina	Light-walled rectangular tubing.
753–TA–10	Malaysia	Carbon steel wire rod.
753–TA–11	Mexico	Ceramic tile.
753–TA–12	Mexico	Leather wearing apparel.
753–TA–13	Mexico	Textile mill products.
753–TA–14	New Zealand	Brazing copper rod & wire.
753–TA–15	New Zealand	Steel wire.
753–TA–16	New Zealand	Steel wire nails.
753–TA–17	New Zealand	Carbon steel wire rod.
753–TA–18	Peru	Cotton sheeting and sateen.
753–TA–19	Peru	Cotton yarn.
753–TA–20	Peru	Rebar.
753–TA–21	Peru	Textile mill products.
753–TA–22	South Africa .	Ferrochrome.
753–TA–23	Sri Lanka	Textile mill products.
753–TA–24	Thailand	Apparel.
753–TA–25	Thailand	Butt-weld pipe fittings.
753–TA–26	Thailand	Malleable iron pipe fittings.
753–TA–27	Thailand	Pipe and tube.
753–TA–28	Thailand	Rice.
753–TA–29	Thailand	Steel wire nails.
753–TA–30	Venezuela	Circular welded nonalloy steel pipe.
753–TA–31	Venezuela	Ferrosilicon.

[FR Doc. 95–18377 Filed 7–25–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 470X)]

CSX Transportation, Inc.—Abandonment Exemption—In Seminole and Orange Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by CSX Transportation, Inc., of a portion of its Jacksonville Division, Aloma Subdivision, between milepost AU–778.3 at Wagner and milepost AU–785.5 at Oviedo, and between milepost ST–830.6 at Oviedo and milepost ST–822.05 at Aloma, a total distance of 15.75 miles in Seminole and Orange Counties, FL, subject to standard labor protective conditions and an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 25, 1995. Formal expressions of intent

to file an OFA under 49 CFR 1152.27(c)(2)[1] must be filed by August 7, 1995, petitions to stay must be filed by August 10, 1995, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 15, 1995, and petitions to reopen must be filed by August 21, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 470X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423, and (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 11, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–18404 Filed 7–25–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See *Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James Simon Tashjian, M.D.

Revocation of Registration

On December 12, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Simon Tashjian, M.D., at 3657 Grand Avenue, Oakland, California proposing to revoke his DEA Certificate of Registration, AT8440668, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Tashjian's lack of authorization to handle controlled substances in the State of California.

The DEA received the return receipt which indicated that the Order to Show Cause was accepted on December 19, 1994. More than thirty days have elapsed since the Order to Show Cause was served and the DEA has received no response from Dr. Tashjian. The Deputy Administrator finds that Dr. Tashjian has waived his opportunity for a hearing and hereby issues his final order in this matter. 21 CFR 1301.54 and 1301.57.

The Deputy Administrator finds that on November 25, 1991, the Pennsylvania Board of Medicine entered into a Consent Agreement and Order with Dr. Tashjian which provided for the voluntary surrender of his license to practice medicine. The Consent Agreement and Order also provided that Dr. Tashjian was preluded from ever applying for reactivation, renewal or reinstatement of his medical license in the Commonwealth of Pennsylvania.

On August 31, 1992, the California Medical Board filed an Accusation against Dr. Tashjian. The Accusation was based on the disciplinary action taken by the Pennsylvania Board of Medicine. On August 12, 1993, the California Medical Board issued a Default Decision and Order revoking Dr. Tashjian's medicial license, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in that state.

The DEA does not have the stuatory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 801(21), 21 U.S.C. 823(f) and 824(a)(3). This prerequiste has been consistently upheld. See, *Lawson A. Akpulonu, M.D.*, 60 FR 33434 (1995); *Robert C. Davis, M.D.*, 59 FR 66049 (1994); *Elliott F. Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Avner Kauffman, M.D.*, 50 FR 34208 (1985).

The Deputy Administrator finds that Dr. Tashjian is not currently licensed to practice medicine or authorized to handle controlled substances in the State of California. Therefore, his DEA registration must be revoked.

Accordingly, the Deputy administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AT8440668, previously issued to James Simon Tashjian, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 25, 1995.

Dated: July 19, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–18378 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

July 7, 1995.

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Wednesday, August 9, 1995, and ending at 4:00 p.m. on August 9, 1995. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the United States Department of Justice, located at 10th and Constitution Avenue, N.W., Conference Room 5111, Washington, D.C. 20530. The Coordinating Council, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. The public is advised that it must enter the building via the Constitution Avenue Visitors' Center. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business August 2, 1995. The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911. The public is further advised that a pictured identification is required to enter the building.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–18354 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–18–P

Information Collections Under Review

The Office of Management and Budget (OMB) has sent the following collection(s) of information proposals

for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7304 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian.

(2) Form I–363. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. The Form I–363 is used to determine whether an affidavit of financial support and intent to petition for legal custody, Form I–363 requires enforcement.

(4) 50 annual respondents at .50 per response.

(5) 25 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated; July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18364 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Immigration User Fee.

(2) Form=None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Business or other for-profit. Others: None. The information requirements have been developed to facilitate compliance with Section 286 of the Immigration and Nationality Act [8 U.S.C. 1356]. The information requirements further seek to ensure sound and prudent budgeting, financial management and collection and debt management activities of the Immigration User Fee Account. The information will also assist Immigration and Naturalization Service auditing activities to ensure substantial compliance with the law. Given the structure and nature of collection activities established by statute for the Immigration User Fee, the information requirements are necessary for the Federal Government to oversee collection activities and to manage the Immigration User Fee Account itself. Section 286 of the Act authorizes the Attorney General to ''charge and collect $5 per individual for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of a passenger in a place outside the United States prior to such arrival, aboard a commercial aircraft or a commercial vessel.'' Exceptions are enumerated in section 286(e) of the Act.

(4) 2,550 annual respondents at .25 per response.

(5) 2,138 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18363 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Request for Hearing on a Decision in Naturalization Processing Under Section 336 of the Act.

(2) Form N–336. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Form I–9 provides a method for applicants whose applications for naturalization are denied, to request a new hearing by an Immigration Officer of the same or higher rank as the denying officer, within 30 days of the original decision.

(4) 5,000 annual respondents at 2.75 hours per response.

(5) 13,750 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18362 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Employment Eligibility Verification.

(2) Form I–9. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Form I–9 is used by the Immigration and Naturalization Service to facilitate compliance with Section 101 of the Immigration Reform and Control Act of 1986. Making employment of unauthorized aliens unlawful.

(4) 90,000,000 annual respondents at 10 minutes per response.

(5) 16,600,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comments on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18361 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

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(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department

of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget , Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 580, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Notice of Appeal.
(2) Form I–694. Immigration and Naturalization Service, United States Department of Justice.
(3) Primary: Individuals or households. Others: None. Form I–694 is used by the Immigration and Naturalization Service in considering appeals of denials of temporary and permanent resident status by legalization applicants and special agricultural workers.
(4) 20,000 annual respondents at .50 per response.
(5) 10,000 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.
Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18360 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:
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(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and,
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.
Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Biographical Information.
(2) Form G–325. Immigration and Naturalization Service, United States Department of Justice.
(3) Primary: Individuals or households. Others: None. Form G–325 is used by the Immigration and Naturalization Service when it is necessary to check other agency records (FBI, CIA, etc.) on applications or petitions submitted by applicants for benefits under the Immigration and Naturalization Act. Also, the form is required from applicants for adjustment to permanent resident status and specific applicants for naturalization.
(4) 1,144,994 annual respondents at .25 (15 minutes) per response.
(5) 286,249 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.
Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18359 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:
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(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.
Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimates or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application by Refugee for Waiver of Grounds of Excludability.
(2) Form I–602. Immigration and Naturalization Service, United States Department of Justice.
(3) Primary: Individuals or households. Others: None. Form I–602 will be used by the Immigration and Naturalization Service to determine approved refugee applicants eligibility for waivers. The burden is upon the applicant to show that the waiver should be granted based upon: a. Humanitarian purposes, b. Family unity, or c. public interest.

(4) 2,500 annual respondents at .25 (15 minutes) per response.

(5) 625 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18358 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of the information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

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(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20503.

Extension of a Currently Approved Collection

(1) Immigrant Petition for Alien Workers.

(2) Form I–140. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: Business or other for-profit. The information furnished on Form I–140 will be used by the Immigration and Naturalization Service to determine if the applicant is eligible to receive the requested immigration Benefit. This form will be used to provide petitioning procedures for employment-based immigrants under sections 203(b) (1) through (5) of the Immigration and Nationality Act.

(4) 186,000 annual respondents at (1.0) per response.

(5) 186,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18357 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collection Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

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(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Canadian Border Boat Landing Permit.

(2) Form I–68. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None Section 235 of the Immigration and Nationalization Act (8 U.S.C. 1225) provides for the inspection of persons entering the United States. 8 CFR 235.1(e) allows certain persons who enter the United States from Canada by small pleasure craft to be inspected only once during the navigational season, rather than each time they enter. Crafts of less than 5 net tons, without merchandise, may, after being inspected by an immigration officer apply on Form I–68, for the privilege of entering the United States for the duration of the navigation season without further inspection.

(4) 68,000 annual respondents at .166 (10 minutes) per response.

(5) 11,288 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18356 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

[Program Announcement CRS–95–02]

Shelter Care and Child Welfare Services to Alien Unaccompanied Minors; Availability of Funding for Cooperative Agreements

AGENCY: Community Relations Service (CRS), DOJ.

ACTION: Notice of availability of Funding for Cooperative Agreements to support a program which provides shelter care and other related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service (INS).

SUMMARY: This announcement governs the award of Cooperative Agreements to public or private non-profit organizations or agencies, and, under certain conditions, to for-profit organizations or agencies, to provide shelter care and related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service. The programs providing such services shall hereafter be referred to as the Alien Unaccompanied Minors Shelter Care Programs (AUMSCPs).

AUMSCPs have the specific goal of providing shelter care and other related child welfare services to male and female alien minors under 18 years of age who are referred to the CRS by the INS. These child welfare services will afford alien minors a structured, safe and productive environment which meets or exceeds respective State guidelines and standards for similar services designed to serve minors in AUMSCP care and custody. Applications submitted pursuant to this announcement must plan for the delivery of services to a population of alien minors (8–10 beds in the San Francisco, California area; 24 beds in the Los Angeles, California area; and 24 beds in the San Diego, California area).

DATES: *Closing Date.* 5:00 p.m. Eastern Daylight Time; September 11, 1995.

APPLICATION REQUESTS AND CONTACT PERSON: Eligible applicants may request Proposal Application Packages from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Orin McCrae, Grants Officer.

Proposal Application Packages may also be obtained by contacting CRS at (301) 492–5995, or FAX (301) 492–5984.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The purpose of the AUMSCPs is to provide temporary shelter care and other related services to alien minors in INS custody. Shelter care services will be provided for the interim period beginning when the minor is transferred into the AUMSCP and ending when a final disposition of the child's status is implemented. Final disposition may result in either the bond, release, or removal of the minor from the United States.

These minors, although released to the physical custody of the CRS Recipient, shall remain in the legal custody of the INS.

The population level of alien minors is expected to fluctuate as arrivals and case dispositions occur. Program content must, therefore, reflect differential planning of services to children in various stages of personal adjustment and administrative processing. Although the population of minors is projected to consist primarily of adolescents, the Recipient is expected to be able to serve some minors who are 12 years of age or younger.

The CRS Recipients are expected to facilitate the provision of assistance and services for each alien minor including, but not limited to: Physical care and maintenance, access to routine and emergency medical care, comprehensive needs assessment, education, recreation, individual and group counseling, access to religious services and other social services.

Other services that are necessary and appropriate for these minors may be provided if CRS determines in advance that the service is reasonable and necessary for a particular minor.

The Recipients are expected to develop and implement an appropriate individualized service plan for the care and maintenance of each minor in accordance with his/her needs as determined in an intake assessment. In addition, the Recipients are required to implement and administer a case management system which tracks and monitors clients' progress on a regular basis to ensure that each minor receives the full range of program services in an integrated and comprehensive manner.

Shelter care services shall be provided in accordance with applicable State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures. Services must be delivered in an open type of setting without a need for extraordinary security measures.

However, the Recipients are required to design programs and strategies to discourage runaways and prevent the unauthorized absence of minors in care.

Service delivery is expected to be accomplished in a manner which is sensitive to the culture, native language, and needs of these children.

Application Review

Applications submitted by the closing date and meeting the requirements of this Notice will be competitively reviewed, evaluated, rated, and numerically ranked by an independent panel of experts on the basis of weighted criteria listed in this Notice. All final funding decisions are at the discretion of the Associate Director, Office of Immigration and Refugee Affairs, Community Relations Service. The awards made are subject to the availability of funds and the concurrence of the Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service.

Authorization

Authority for the provision of shelter care and related child welfare services to alien minors detained in the custody of the Immigration and Naturalization Service is contained in a Memorandum of Agreement and Cost Reimbursable Agreement, dated October 1, 1994, between the Immigration and Naturalization Service and the Community Relations Service.

Legislative authority for CRS Cuban/Haitian Entrant child welfare activities is contained in Title V, Section 501(c), of Public Law 96–422 (The Refugee Education Assistance Act of 1980).

Available Funds

Funds will be available on a Fiscal Year basis to support the number of shelters needed to provide 56–58 beds. The number of shelters to be funded will depend on the design of the programs proposed.

The awards made will not exceed a 36 month program performance period. Funding will be for 12 month budget periods. Continuation of funding is dependent upon successful completion of prior year objectives, the level of need as defined by the Federal Government, and the availability of future fiscal year funding.

The number of beds listed above do not bind CRS to any specific number of Cooperative Agreements or to any specific level of funding.

Award Instrument

The awards issued by CRS to support AUMSCP services will be in the form of Cooperative Agreements, as defined in the Federal Grant and Cooperative

Agreement Act of 1977, P.L. 95–224. The administration of the Cooperative Agreement awards will require the substantial programmatic involvement of the Federal Government.

CRS will negotiate Cooperative Agreements with the applicants approved by the Associate Director for Immigration and Refugee Affairs, CRS. Prior to these negotiations, the CRS will visit the proposed program locations to conduct a management review and to evaluate the applicants' financial and programmatic capability.

Eligible Applicants

Non-profit organizations incorporated under State law which have demonstrated child welfare, social service or related experience and are appropriately licensed or can expeditiously meet applicable State licensing requirements for the provision of shelter care, foster care, group care, and related services to dependent children are eligible to apply.

For-profit organizations incorporated under State law which have demonstrated child welfare, social service or related experience, and are appropriately licensed or can expeditiously meet State licensing requirements for the provision of shelter care, foster care, group care, and other related services to dependent children, and which can clearly demonstrate that only actual costs and not profit, fees, or other elements above cost have been budgeted, are also eligible to apply.

Client Population

It is anticipated that the client population will consist primarily of males, 13–17 years of age. Females generally comprise 15% of the total population of alien minors. These minors are primarily nationals of El Salvador, Nicaragua, Guatemala, Honduras, and the People's Republic of China; however, the Recipients should expect to provide services to children from other countries. The Recipients should also be prepared to provide emergency shelter care to a limited number of children 12 years of age and younger.

Clients would generally be considered to be dependent children without significant behavioral or psychological problems. Many children, however, have inconsistent or sporadic educational histories, and some children may be illiterate in their own language.

Definition of Alien Minor

An alien minor is defined as a male or female foreign national under 18 years of age who is detained in the custody of the Immigration and Naturalization Service and is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act.

Designated Program Area

The shelters should be within a fifty mile radius of the INS District Office—San Diego, California; the INS District Office—Los Angeles, California; and the INS District Office—San Francisco, California.

Geographical Location

The geographical location of the applicants is not restricted to its selected area of service; however, the applicants must be able to substantiate that its network of local affiliates or its subcontractor(s) or subrecipient(s) will be able to deliver the required services effectively and appropriately and that local service provider organizations are licensed under applicable State law to provide emergency shelter care and related services to dependent children.

Technical Assistance Conference

The CRS will hold a public meeting regarding this solicitation. Further information regarding the time, date and location will be included in the Proposal Application Package.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice and as supplemented by the ''Alien Unaccompanied Minors Shelter Care Program—Program Guidelines and Requirements'' (available with the application package). Applicants are required to set forth in detail the following:

A. Program Abstract. The Program Abstract is intended to be a brief summary of the proposal.

B. Organization/Agency Background. Applicants must include a detailed discussion of:

1. The applicant's professional history, philosophy, and goals;

2. Its particular demonstrated experience with respect to: provision of services to unaccompanied alien minors; the administration of residential shelters for minors; or, the administration of similar type of shelters; and

3. The applicant's history of service delivery and institutional presence in the proposed city where the shelter will be located.

If the applicant is a national-level organization which proposes to deliver services through a local-level affiliate, the proposed affiliate must be identified. Within the context of the topics outlined above, the application must address the local-level affiliate's qualifications and provide a rationale for its particular selection as their service provider and for the use of such a subcontractual arrangement.

C. Program Design: The applicants must set forth in detail information concerning the following:

1. Target Population

A comprehensive overview of the applicant agency, agency qualifications and history, including philosophy, goals and history of experience with respect to the provision of child welfare or related services to minors under 18 years of age.

2. Management Plan

a. A plan for overall fiscal and program management and accountability.

b. A description of the organizational structure and lines of authority.

c. A comprehensive program staffing plan and information regarding staff qualifications.

d. A comprehensive plan for coordination of activities between the various program components and coordination with other community and governmental agencies.

e. Staff supervisory model.

f. Provisions for staff training.

g. Proposed staff schedule(s).

h. A description of the role(s) and responsibility(ies) of the proposed consultants and the rationale for their use.

3. Individual Client Service Plans

Applicants shall describe in detail:

a. The methodology regarding the development of individual client service plans;

b. The process to ensure that service plans will be periodically reviewed and updated; and

c. The staff who will have responsibility for the development and updating of the plans.

4. Case Management

Describe in detail the case management system for tracking and monitoring client progress on a regular basis to ensure that each minor receives the full range of program services in an integrated and comprehensive manner. Identify the staff positions responsible for coordinating the implementation and maintenance of the case management system.

5. Structure and Accountability

Applicants must fully describe:

a. The plan for developing and maintaining internal structure, control

and accountability through programmatic means.

b. Utilization of daily logs, statistical reports, etc.

c. Other security measures.

D. Characteristics of Program Site

Residential/Office Facility. Applicants are required to set forth in detail comprehensive information regarding:

1. A physical description of the proposed facility including the proposed allocation of shelter and office space; and

2. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially based social service program. Copies of relevant documents must be submitted at the time of application.

If a properly zoned, licensed, or inspected facility is not available at the time of application, the applicant must submit a report on the progress made in obtaining the appropriate documentation, as noted above. This report must consist of a description of the required documents, copies of correspondence to relevant local officials or offices from which they will be obtained, and the means and time-lines for obtaining the documentation.

E. Community Support

Applicants must identify those measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

F. Client Services

Applicants are required to describe, in a detailed and comprehensive manner, the following services and the methodology for service delivery:

1. Physical Care and Maintenance;
2. Routine and Emergency Medical/ Dental Care;
3. Orientation;
4. Individual Counseling;
5. Group Counseling;
6. Acculturation/Adaptation;
7. Education;
8. Recreational, Social and Work Activities;
9. Visitation Procedures;
10. Access to Legal Services; and,
11. Family Reunification Services.

G. Client Records

Applicants must provide descriptive information regarding the development, maintenance and content of individual client case records, including a description of all material/information which will be maintained in these records.

H. Program Records

Applicants are required to set forth comprehensive information regarding the types of program records to be maintained by the program (daily activity logs, records of staff meetings, cash disbursement systems, daily and weekly status of population reports, etc.).

I. Program Evaluation

Applicants must set forth a plan for program evaluation including identification of evaluation criteria.

J. Budget and Budget Narrative

Applicants are required to submit a comprehensive line item budget.

The following budget structure should be used to provide appropriate costs breakdown:

a. Personnel;
b. Fringe Benefits;
c. Travel Costs;
d. Equipment, including computer hardware and software;
e. Supplies;
f. Contractual Obligations;
g. Rearrangement and Alteration Costs (if applicable);
h. Direct Client Costs;
i. Other; and
j. Indirect Costs.

A narrative explanation for each line item, included in each object class, must accompany the proposed budget.

K. Supportive Addenda Material

Applicants are required to submit the following supporting material as an addendum to the program proposal:

1. Administrative Requirements

a. Agency Administration and Organization

(1) Agency organizational *chart* describing the agency as a whole and the organizational relationship of the proposed program to other agency programs;

(2) Comprehensive organizational *chart* of the proposed program;

(3) Copies of Article of Incorporation;

(4) Proof of IRS status as a non-profit organization, if applicable;

(5) List of Officers and Board Members, if applicable;

(6) List of professional affiliations and certifications, and;

(7) Copy(ies) of applicable State child welfare license(s).

b. Organizational Standards/Polices and Policies Regarding Clients.

(1) Personnel Handbook and Standards of Conduct;

(2) Statement regarding professional and agency liability;

(3) Copy of Disciplinary Procedures;

(4) Copy of Agency policy regarding the confidentiality of client information and records;

(5) Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information;

(6) Copy of Grievance Policy and Procedures, and;

(7) Fire and earthquake evacuation procedures, as applicable.

c. Staff

(1) Job/Position Description and resumes (if individuals have been identified for certain positions) for all personnel to be hired for the program including documented evidence of the availability of bi-lingual and culturally sensitive personnel, and;

(2) Resumes and qualifications of program consultants.

d. Community Support of the Program

(1) Letters of program support from local political representatives, social service agencies, etc. Letters should reflect writers' awareness of program's intent, potential Federal funding source and location of the program. Letters should also contain a recommendation or comment regarding the proposed program;

(2) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided, and;

(3) A listing of voluntary and/or donated resources, including letters of intent from the agency or entity providing the resources, if applicable.

e. Implementation Plan

A plan for program implementation including time-lines regarding significant milestones.

2. Finance

a. A copy of the most recent agency/ organization audit.

b. A description of the agency/ organization Financial Management System.

c. A listing of other Federal, State, local or foundation grants, cooperative agreements or contracts, etc., being administered by the applicant. This material should include information regarding the funding source(s); grant, cooperative agreements or contract number; level of financial support; purpose of award; grant, cooperative agreement or contract performance period; and name, address and telephone number of grant, cooperative agreement and/or contract officer (Federal, State or local).

d. Subrecipients and/or Subcontractors.

(1) Identify all proposed services which are to be awarded to subrecipients/subcontractors;

(2) Provide relevant background material regarding the proposed subrecipient(s)/subcontractor(s), and;

(3) Provide letters from the proposed subrecipient(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

e. Budget.

(1) Itemized budget.

(2) A narrative explaining the budget.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Review Panel. An application may be rejected if:

1. The application is from an ineligible applicant;

2. The application is received after the closing date;

3. The application omits:

a. Documented written evidence of community support for the program;

b. A comprehensive line-item budget with appropriate descriptive narrative, or;

c. A copy of the latest financial audit of the applicant.

Criteria for Evaluating Applications

Applications will be reviewed, evaluated, and ranked numerically according to the following weighted criteria:

1. The degree to which the entire proposed plan for developing, implementing and administering a shelter care program is clear, succinct, integrated, efficient, cost effective and likely to achieve program objectives. (15 POINTS)

2. The quality of the applicant's program management and staffing plans as demonstrated by:

a. The adequacy of the plan for program management and the plan for coordination between the components of the program.

b. The adequacy of the plan for coordination with community and governmental agencies.

c. The adequacy of the qualifications of the applicant organization, and the extent to which this organization has a demonstrated record as a provider of child welfare or other social services.

d. The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.

e. The extent to which subrecipient(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.

f. The adequacy of the plans for staff supervision and intra-program communication.

g. The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibilities of the staff in the program, and the education and relevant experience required for the position.

h. Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 POINTS)

3. Program Services—The applicant's response to the required program services, including a description of program resources which demonstrates:

a. The capacity of the program to offer comprehensive, integrated and differential services which meet the needs of the clients.

b. Utilization of resources in a manner which enhances program control, structure and accountability.

c. Provision of service in a manner which promotes and fosters cultural identification and mutual support.

d. Sensitivity to the issues of culture, race, ethnicity and native language. (20 POINTS)

4. The degree to which the applicant provides effective strategies of programmatic control, predictability and accountability as evidenced by the structure and continuity inherent in the program design. (15 POINTS)

5. The adequacy of the plans for:

a. developing and updating individual client service plans; and,

b. the proposed system of case management. (10 POINTS)

6. The reasonableness of the proposed budget and budget narrative, in relation to proposed program activities. (10 POINTS)

7. The plan for program evaluation, including the methodology and criteria for evaluation of the program. (5 POINTS)

8. The degree to which the application has provided written documented evidence of community support and acceptance of the program. (5 POINTS)

Application Submission

Applicants must submit a signed original and two copies of the Proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Orin McCrae, Grants Officer by 5 p.m. (Eastern Time) of the closing date.

Applications Delivered by Mail

An applicant must show proof of mailing consistency of the following:

1. A legible 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.

If an application is sent through the U.S. Postal Service, CRS 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.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office. Applicants are encouraged to use registered or at least First Class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before 5 p.m. (Eastern Daylight Time), September 11, 1995, shall be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

The Grants Management Office will accept hand delivered applications between 9 a.m. and 5 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 5 p.m., Eastern Daylight Time, on the closing date. Applications hand delivered on or before the closing date shall be considered as timely applications.

Public Program Orientation Meeting for Prospective Applicants

CRS will hold a public program orientation meeting for prospective applicants in regard to this Notice. Information regarding the time, date and location of the meeting(s) will be included in the proposal application package.

Proposal Review

Proposals will be reviewed, evaluated, and ranked numerically by an independent review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Associate Director for Immigration and Refugee Affairs, CRS. Awards will be subject to the availability of funds.

Processing Time

CRS expected that all eligible submissions will be reviewed and rated within 45 days of the closing date.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Any costs incurred by an applicant prior to an award being made are incurred solely at the applicant's own risk, and will not be reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Justice to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, the Department of Justice has no obligation to provide any additional future funding beyond the first budget period. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Justice.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or, (3) other arrangements satisfactory to the Department of Justice are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Primary Applicant Certification

All primary applicants must submit a completed OJP Form–4061–6, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying'':

A. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

B. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

C. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000;

D. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower-tier covered transactions at any tier under the award to submit, if applicable, a completed OJP Form 4061–6, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower-Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' OJP Form 4061–6 is intended for the use of Recipients and should not be transmitted to the Department of Justice. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Justice in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds, and for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Disclosure of Federal Participation

Recipients and subrecipients receiving Federal funds must adhere to the requirements of Section 136 of the Department of Defense Appropriation Act (Steven's Amendment of October 1, 1988). The Stevens' Amendment requires grantees and subgrantees to state clearly in writing, during time of application submission: 1) the percentage of the total cost of the program or project which will be financed with Federal money; and 2) the dollar amount of Federal funds for the project or program. All grantees and subgrantees shall make this statement when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

Federal Policies and Procedures

Recipients and subrecipients are subject to all applicable Federal laws and Federal, Department of Justice, and CRS policies, regulations, and procedures applicable to Federal financial assistance awards.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all States have the option of designing procedures for review and comment on applications for Federally assisted programs from State and local applicants.

Each applicant is required to notify each State in which it is proposing activities under this announcement and to comply with the State's established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC).

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 30 days after the date of publication, addressed to: Kenneth Leutbecker, Associate Director, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

(Catalog of Federal Domestic Assistance Number: 16.201)

Dated: July 20, 1995.

Jeffery Weiss,

Acting Director, Community Relations Service.

[FR Doc. 95–18380 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA)

Advisory Committee on Preservation. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees. The Committee Management Secretariat, General Services Administration, has also concurred with the renewal of the Advisory Committee on Preservation in correspondence dated June 29, 1995.

The Archivist of the United States has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

Dated: July 14, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–18304 Filed 7–25–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 125th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 4, 1995 from 8:30 a.m. to 7:00 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting will be open to the public. Topics for discussion will include a Legislative Update, updates from the deputy chairmen and the chairman of the President's Committee on the Arts and the Humanities, a discussion of the FY 97 Budget, a discussion on Blind Judging, reports from the Council Millenium and Council Design Committees, and guidelines and/or program reviews for the Music, Arts in Education, and Theater Programs.

If, in the course of application discussion review, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TTY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682/5570.

Dated: July 21, 1995.

Yvonne M. Sabine,

Director, Council and Panel Operations.

[FR Doc. 95–18344 Filed 7–25–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication Generic Letter 89–10, Supplement 7, Valve Mispositioning in Pressurized-Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue Generic Letter 89–10, Supplement 7 to notify addressees that the NRC is removing the recommendation that MOV mispositioning be considered by pressurized-water reactor licensees in responding to GL 89–10, as was done for boiling-water reactor licensees in Supplement 4. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter supplement presented under the Supplementary Information heading. This proposed generic letter supplement and supporting documentation were discussed in meeting number 276 of the Committee to Review Generic Requirements (CRGR) on July 11, 1995. The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the NRC Public Document Room under accession number 9507170370. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter supplement. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter supplement be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires August 25, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David C. Fischer, (301) 415–2728.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 89–10, Supplement 7: Consideration of Valve Mispositioning in Pressurized-Water Reactors

Addressees

All holders of operating licenses (except those licenses that have been amended to a possession only status) or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to notify addressees about a revised NRC position regarding consideration of valve mispositioning within the scope of Generic Letter (GL) 89–10 for pressurized-water reactors (PWRs). Although this generic letter forwards a new staff position, no specific action or written response is required.

Background

In GL 89–10 (June 28, 1989), ''Safety-Related Motor-Operated Valve Testing and Surveillance,'' the staff recommended, among other things, that any motor-operated valve (MOV) in a safety-related system that is not blocked

from inadvertent operation from either the control room, the motor control center, or the valve itself be considered capable of being mispositioned (referred to as position-changeable MOVs) and be included in licensee MOV programs. When determining the maximum differential pressure or flow for position-changeable MOVs, the licensees were asked to consider ''the fact that the MOV must be able to recover from mispositioning * * *'' Supplement 1 to GL 89–10 limited the prevention of inadvertent MOV operation within the context of the generic letter to the potential for MOV mispositioning from the control room.

The Boiling Water Reactor Owners Group (BWROG) submitted a backfit appeal on the recommendations for position-changeable valves. The staff, with the assistance of Brookhaven National Laboratory (BNL), reviewed and evaluated the issues concerning the mispositioning of valves from the control room and determined that the recommendations in GL 89–10 should be changed for BWRs. The BNL study, which used probabilistic risk assessment (PRA) techniques, and the NRC staff evaluation and conclusions were transmitted in a letter from the NRC to the BWROG dated February 12, 1992. The conclusions were communicated to industry and the public at large via Supplement 4 to GL 89–10, also dated February 12, 1992. Supplement 4 indicated that the NRC would perform a similar review for PWRs and stated that GL 89–10 might be revised, if warranted, to clarify the NRC position regarding consideration of MOV mispositioning within the scope of GL 89–10 for PWRs.

Description of Circumstances

By letter dated July 21, 1992, the Westinghouse Owners Group (WOG) asked the NRC staff to notify PWR licensees that the provisions of GL 89–10 for valve mispositioning are not applicable to PWRs, based on arguments similar to those made by the BWROG.

Discussion

Under contract to the NRC staff, BNL performed a study similar to the one performed for BWRs of the safety significance of inadvertent operation of MOVs in safety-related piping systems of three PWRs. Consistent with Supplement 1 to GL 89–10, the scope of the study was limited to MOVs in safety-related systems that could be mispositioned from the control room. However, because the available PRA models do not include active mispositioning of MOVs or the physical phenomena that could inhibit repositioning, BNL's study of available plant models was limited in its ability to address this issue. Given this limited scope, BNL concluded that the risk insights from the mispositioning of unlocked MOVs were similar for both PWRs and BWRs. Although PWRs tend to have a higher core damage frequency (CDF) than BWRs, which would suggest that the net increase in CDF from mispositioning of MOVs would be higher for PWRs than for BWRs, PWRs typically have a lower conditional containment failure probability, which would tend to balance the overall risk to the public.

The NRC is removing the recommendation that MOV mispositioning be considered by PWR licensees in responding to GL 89–10, as was done for BWR licensees in Supplement 4, in light of the following:

- Corrective actions have been taken by licensees subsequent to the Davis-Besse event (i.e., detailed control room design reviews, independent valve position verification programs, and operator training improvements).
- Corrective actions are being applied to many of the most important valves under the other provisions of GL 89–10.
- Other operational events are absent (other than Davis-Besse) in which mispositioning MOVs from the control room actually set up conditions that prevented repositioning.
- The results of the BNL study for PWRs.

Implementation of this relaxation by licensees is voluntary.

Staff Position

The staff no longer considers the recommendations for inadvertent operation of MOVs from the control room to be within the scope of GL 89–10 for PWRs. However, the staff believes that consideration of valve mispositioning benefits safety.

Modifying the provisions in GL 89–10 for valve mispositioning does not affect the GL 89–10 recommendations for licensees to review safety analyses, emergency procedures, and other plant documentation to determine the design-basis [1] fluid conditions under which all MOVs in safety-related piping systems may be called upon to function. This position also does not supersede the NRC generic recommendations or regulations on valve mispositioning that pertain to such other issues as interfacing-systems loss-of-coolant accidents (ISLOCAs) or fire protection (10 CFR Part 50, Appendix R).

Backfit Discussion

This letter represents a relaxation of recommendations set forth in GL 89–10 and prior supplements. Implementation of this relaxation is voluntary and this generic letter supplement requests neither actions nor information from licensees. Therefore, this generic letter supplement is not considered a backfit and the staff has not performed a backfit analysis.

Dated at Rockville, Maryland, this 19th day of July 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18320 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

[1] Design-basis conditions are those conditions during both normal operation and abnormal events that are within the design basis of the plant.

Privacy Act of 1974; Revisions to System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed revision of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Nuclear Regulatory Commission (NRC) is issuing public notice of our intent to modify the system of records maintained by the Office of the Inspector General (OIG), NRC–18, currently titled ''Office of the Inspector General Index File and Associated Records—NRC.'' The proposed modifications will rename the system ''Office of the Inspector General (OIG) Investigative Records—NRC,'' permit disclosures to consumer reporting agencies, and add two other Privacy Act exemptions. The routine uses for the system are being revised and other technical and editorial revisions to the system notice are being made to make it more accurate.

EFFECTIVE DATE: The revised system of records will become effective without further notice on September 5, 1995, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice. NRC will not withhold records under the (j)(2) or (k)(5) exemptions until adoption of the final rule amending 10 CFR 9.95 to add these exemptions to this system of records.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, Attention: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Copies of comments may be examined at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Freedom of Information/ Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION: NRC is republishing System of Records NRC–18, currently titled ''Office of the Inspector General Index File and Associated Records—NRC,'' to rename the system; revise all current routine uses to more clearly describe the disclosures for OIG's investigative system of records; add new routine use g. permitting disclosures to other agencies, including the Department of Justice, to obtain advice on OIG matters; add new routine use h. permitting disclosures to the National Archives and Records Administration and the General Services Administration for records management inspections; authorize disclosures to consumer reporting agencies under 5 U.S.C. 552a(b)(12); add the (j)(2) and (k)(5) exemptions; and update other information in the previously published notice of this system of records.

NRC is renaming NRC–18 ''Office of the Inspector General (OIG) Investigative Records—NRC'' to cover only investigative records of the OIG. Audit records that were previously included in this system have been deleted from NRC–18 because they are not retrieved by personal identifier.

Other information in the system is being updated to reflect changes in the way information is retrieved and safeguarded, and to more accurately describe the categories of individuals covered and the categories of records being maintained.

The NRC is exempting NRC–18 from certain provisions of the Privacy Act under 5 U.S.C. 552a(j)(2) to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for criminal law enforcement purposes. The OIG is an agency component that performs as one of its principal functions activities pertaining to the enforcement of criminal laws.

NRC–18 is also being exempted from certain provisions of the Privacy Act under 5 U.S.C. 552a(k)(5) to the extent that the system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

In a separate notice published in the proposed rule section of today's issue of the **Federal Register**, the NRC is giving public notice of a proposed rule to amend 10 CFR 9.95 to exempt this system of records from certain provisions of 5 U.S.C. 552a under subsections (j)(2) and (k)(5).

A report on the proposed revisions to this system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget (OMB) Circular No. A–130, has been sent to the Chairman, Committee on Government Reform and Oversight, U.S. House of Representatives; the Chairman, Committee on Governmental Affairs, U.S. Senate; and OMB.

Accordingly, the NRC proposes to amend NRC–18 as follows:

NRC–18

SYSTEM NAME:

Office of the Inspector General (OIG) Investigative Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, 11545 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises four parts: (1) An automated Text Management System containing reports of investigations and inspections closed since 1989 and brief descriptions of investigative cases open and pending in the OIG since 1989 that have not yet resulted, but will result, in investigative or inspection reports; (2) paper files of all OIG and predecessor Office of Inspector and Auditor (OIA) reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data, and work papers pertaining to all closed and pending investigations and inspections; (3) paper index card files of OIG and OIA cases closed from 1970 through 1989; and (4) an automated Allegations Tracking System that includes allegations referred to the OIG since 1985, whether or not the allegation progressed to an investigation or inspection, and dates that the investigation or inspection, if any, was opened and closed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App. 3; 42 U.S.C. 2035(c), 2201(c), and 5841(f) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, OIG may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To any Federal, State, local, tribal, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity when records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of law, whether administrative, civil, criminal, or regulatory in nature.

b. To public or private sources to the extent necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

c. To a Federal, State, local, tribal, or foreign agency, or a public authority or professional organization if necessary to obtain information relevant to a decision by NRC or the requesting organization concerning the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, or other personnel action related to the record subject.

d. To a court, adjudicative body before which NRC is authorized to appear, Federal agency, individual or entity designated by NRC or otherwise empowered to resolve disputes, counsel or other representative, or witness or potential witness when it is relevant and necessary to the litigation if any of the parties listed below is involved in the litigation or has an interest in the litigation:

1. NRC, or any component of NRC;

2. Any employee of NRC where the NRC or the Department of Justice has agreed to represent the employee; or

3. The United States, where NRC determines that the litigation is likely to affect the NRC or any of its components.

e. To a private firm or other entity with which OIG or NRC contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an investigation, audit, inspection, inquiry, or other activity related to this system of records. The contractor, private firm, or entity needing access to the records to perform the activity shall be required to maintain Privacy Act safeguards with respect to information. A contractor, private firm, or entity operating a system of records under 5 U.S.C. 552a(m) shall be required to comply with the Privacy Act.

f. To another agency to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

g. To a member of Congress or to a congressional staff member in response to his or her inquiry made at the written request of the subject individual.

h. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from the Text Management System alphabetically by the name of an individual, by case number, or by subject matter. Information in the paper files backing up the Text Management System and older cases closed by 1989 is retrieved by subject matter and/or case number, not by individual identifier. Information is retrieved from index card files for cases closed before 1989 by the name or numerical identifier of the individual or entity under investigation or by subject matter. Information in the Allegations Tracking System is retrieved by allegation number, case number, or name.

SAFEGUARDS:

The automated Text Management System is accessible only on one terminal in the OIG, is password protected, and is accessible only to OIG investigative personnel. Paper files backing up the Text Management System and older case reports and work papers are maintained in approved security containers and locked filing cabinets in a locked room; associated indices, records, diskettes, tapes, etc., are stored in locked metal filing cabinets, safes, storage rooms, or similar secure facilities. Index card files for older cases (1970–1989) are under visual control during working hours and are available only to authorized investigative personnel who have a need to know and whose duties require access to the information. The Allegations Tracking System is double-password-protected and is available to a limited number of OIG investigative employees on only one terminal in a locked room.

RETENTION AND DISPOSAL:

a. *Investigative Case Files.*

1. Files containing information or allegations that are of an investigative nature but do not relate to a specific investigation—Destroy when 5 years old.

2. All other investigative files, except those that are unusually significant—Place in inactive file when case is closed. Cut off inactive file at end of fiscal year. Destroy 10 years after a cutoff.

3. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

b. *Index/Indices.* Destroy or delete with the related records or sooner if no longer needed.

c. *Text Management System.* Delete after 10 years or when no longer needed, whichever is later.

d. *Allegation Tracking System.* Destroy when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORDS ACCESS PROCEDURES:

Same as ''Notification procedure.'' Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality; Management Directive 8.8, ''Management of Allegations'' (formerly NRC Manual Chapter 0517); and other procedures concerning confidentiality as determined by the Inspector General and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, the individual record subject; NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), the Commission has exempted this system of records from subsections (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (5), and (8), and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

Dated at Rockville, MD, this 18th day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18321 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 81–924]

Application and Opportunity for Hearing: Charles E. Smith Residential Realty, Inc.

July 20, 1995.

Notice is Hereby Given that Charles E. Smith Residential Realty, Inc. (''Applicant'') has filed an application pursuant to Section 12(h) of the Securities Exchange Commission Act of 1934, as amended (the ''Exchange Act'') for an order exempting applicant from the provisions of Section 16 of the Exchange Act with respect to its ownership of and transactions in units of limited partnership interest of Charles E. Smith Residential Realty L. P.

For a detailed statement of the information presented, all persons are referred to said application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is Further Given that any interested person not later than August 9, 1995 may submit to the Commission in writing its views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such a request, and the issues of fact and law raised by the application which it desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after said date, an order granting application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18286 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21219; 812–9638]

Pioneer Winthrop Real Estate Investment Fund, et al.; Notice of Application

July 19, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Pioneer Winthrop Real Estate Investment Fund (''Pioneer Winthrop Fund''); Pioneer Variable Contracts Trust (''Variable Trust'') on behalf of its Real Estate Growth Portfolio series (together with Pioneer Winthrop Fund, the ''Funds''); and Pioneering Management Corporation (''PMC'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a).

SUMMARY OF APPLICATION: Apollo Real Estate Advisors, L.P. (''Apollo'') has agreed to acquire W.L. Realty, L.P. (''Realty LP''), including the investment advisory business of its indirect subsidiary Winthrop Advisors Limited Partnership (''WALP''), from The Nomura Securities Co. (''Nomura'') and certain principals of Realty L.P. The reorganization will result in the assignment, and thus the termination, of existing investment advisory contracts of the applicant investment companies. Applicants seek an order to permit the implementation, without shareholder approval, of interim investment advisory contracts during a period of up to 120 days following July 3, 1995. The order also will permit the applicant investment adviser to receive from the applicant investment companies fees earned under the interim investment advisory contracts following approval by the investment companies' shareholders.

FILING DATES: The application was filed on June 20, 1995 and amended on July 19, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 14, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth St. NW., Washington, DC 20549. Applicants, 60 State St., Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds, each a Delaware business trust, are registered open-end management investment companies. Pioneer Winthrop Fund continuously offers its shares for sale to the general investing public. Real Estate Growth Portfolio continually offers its shares for sale primarily to insurance company segregated accounts that fund variable annuity and life insurance contracts.

2. The Funds each have entered into an investment advisory agreement with Pioneer Winthrop Associates (''PWA''), a general partnership and registered investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), under which PWA provides advisory and management services to the Funds (the ''Advisory Agreements''). Also, the Funds each have entered into subadvisory agreements with PMC and WALP, (the ''Subadvisory Agreements,'' and together with the Advisory Agreements, the ''Prior Agreements''), each a registered investment adviser under the Advisers Act.

3. PMC currently serves as investment adviser to each of the mutual funds, other than the Funds, in the Pioneer complex of mutual funds. PMC is a wholly-owned subsidiary of The Pioneer Group, Inc. (''PGI''). WALP is a wholly-owned subsidiary of Winthrop Financial Associates (''WFA''). PGI and WFA each own 50% of the partnership interests of PWA.

4. WFA's indirect parent company, Realty LP, is a majority owned subsidiary of Nomura, an international brokerage and financial services firm. The remaining minority interests in Realty LP are owned by Arthur J. Halleran and Stephen G. Kasnet, (collectively, the ''Management Investors''), principals of WFA. The Management Investors serve as trustees

and officers of Pioneer Winthrop Fund and officers of Variable Trust.

5. On May 11, 1995, Apollo and Nomura announced that they had entered into negotiations pursuant to which Apollo intended to acquire from Nomura its controlling interest, and from the Management Investors their remaining minority interest, in Realty LP (the ''Reorganization''). On July 17, 1995, the Reorganization was consummated. PMC agreed to provide the investment advisory services now provided to the Funds by PWA and WALP.

6. PMC has entered into an employment agreement with the key employee of WALP, pursuant to which such employee has agreed to provide to PMC real estate securities advice equivalent to that which he currently provides to the Funds through WALP. In addition, PMC is in the process of entering into a consulting agreement with Winthrop Commercial Partnership (''WCP''), a subsidiary of WFA, under which WCP will continue to provide information regarding real estate properties and markets that it currently provides to the Funds through WALP. WCP will provide this information to PMC under the consulting agreement at cost, which will be borne by PMC.

7. Immediately upon being notified of the agreements in principal, the respective Boards of Trustees of the Funds (the ''Boards'') held special meetings on June 6, 1995 to discuss the Reorganization. During those meetings, the Boards, including a majority of the Board members who are not ''interested persons,'' as that term is defined in the Act (the ''Independent Trustees''), of the respective Funds, with the advice and assistance of counsel to the Independent Trustees, made a full evaluation of the interim investment advisory agreements between the Funds and PMC (the ''Interim Agreements''). In accordance with section 15(c) of the Act, the Boards voted to approve the Interim Agreements. The Boards concluded that payment of the advisory and subadvisory fees during the Interim Period would be appropriate and fair because there will be no diminution in the scope and quality of services provided to the Funds, the fees to be paid are unchanged from the fees paid under the Prior Agreements,the fees would be maintained in an interest-bearing escrow account until payment is approved or disapproved by shareholders, and the nonpayment of fees would be inequitable to PMC in view of the substantial services to be provided by PMC to the Funds, and the expenses incurred by PMC. The Boards of each Fund also voted to recommend that shareholders of each Fund approve the Interim Agreements, as well as the new advisory agreements with PMC.

8. Applicants seek an exemption from section 15(a) of the Act to permit the implementation, without shareholder approval, of the Interim Agreements. On June 20, 1995, the date of the filing of the original application, applicant anticipated that the Reorganization would be consummated on July 3, 1995. Accordingly, the exemption would cover the period commencing on July 3, 1995 and continuing through the date the Interim Agreements are approved or disapproved by shareholders of the respective Funds, which period shall be no longer than 120 days (the ''Interim Period'').

Applicants' Legal Conclusions

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Section 2(a)(4) defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Section 2(a)(9) defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. Beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to constitute control.

3. Upon consummation of the Reorganization, Apollo will acquire all of Realty LP's outstanding voting securities and thus an indirect, controlling interest in each of WFA and WALP, Including WFA's 50% general partnership interest in PWA. Thus, the Reorganization will result in an ''assignment,'' within the meaning of section 2(a)(4), of the Advisory Agreements and WALP Subadvisory Agreements. Therefore, each such agreement will terminate by its terms.[1]

4. Rule 15a–4 provides, among other things, that if an advisory contract is terminated by assignment, the investment adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company, and if the investment adviser or a controlling person of the investment adviser does not directly or indirectly receive money or other benefit in connection with the assignment. Because Nomura and the Management Investors will receive a benefit in connection with the assignment of the contracts, applicants may not rely on rule 15a–4.

5. Applicants assert that because the Funds did not have sufficient advance notice of the Reorganization, it was not possible for the Funds to obtain shareholder approval of the new advisory agreements in accordance with section 15(a) prior to the closing of the Reorganization. Applicants believe that the requested relief will enable the Funds to receive the same scope and quality of advisory services after the Reorganization as they received prior to the Reorganization, and that the engagement of PMC as the Funds' sole investment adviser is in the best interests of the Funds and their shareholders.

6. Applicants believe that the requested relief will allow the Funds to continue to operate on an orderly basis until the shareholders have the opportunity to consider new investment advisory agreements. The 120 day Interim Period will facilitate the orderly and reasonable consideration of the new agreements.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the requested exemptive relief that:

1. The Interim Agreements will have the same terms and conditions as the Advisory Agreements, except in each case for the names and identities of the parties, the dates of execution and termination, and the inclusion of escrow arrangements.

2. Fees earned by PMC during the Interim Period in accordance with the Interim Agreements will be maintained in an interest-bearing escrow account, and amounts in such account (including interests earned on such paid fees) will be paid to PMC only upon approval of the Funds' respective shareholders or, in the absence of such approval, to the respective Funds.

[1] The PMC Subadvisory Agreements terminate by their terms upon the termination of the Advisory Agreements.

3. The Funds will hold meetings of shareholders to vote on approval of the Interim Agreements and new investment advisory agreements, on or before the 120th day following July 3, 1995.

4. PMC will bear the cost of preparing and filing this application and the costs relating to the solicitation of the approvals of the Funds' shareholders of the Interim Agreements necessitated by the Reorganization.

5. PMC will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services under the Interim Agreements, PMC will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independent Directors, are satisfied that the services provided by PMC will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18287 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35990; File No. SR-NASD–95–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mediation of Disputes

July 19, 1995.

On June 6, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2], and Rule 19b–4 thereunder.[3] The proposed rule change amends the Code of Arbitration Procedure (''Code'')[4] by adding a new Part IV to set forth rules to govern the administration of mediation proceedings (''Mediation Rules'') and by amending Sections 37, 43 and 44 of the Code[5] to add fee and other provisions relating to the administration of mediation proceedings.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35830, June 9, 1995) and by publication in the **Federal Register** (60 FR 31522, June 15, 1995). No comment letters were received. This order approves the proposed rule change.

More than 5,500 arbitration cases were filed with the NASD in calendar year 1994, which represents 82 percent of all securities arbitrations filed in all arbitration for a combined (including the American Arbitration Association) and 86 percent of all arbitrations filed with self-regulatory organizations. The volume of arbitration cases has been growing dramatically since the U.S. Supreme Court recognized the enforceability of predispute arbitration agreements with respect to claims arising under the Act[6] and under the Securities Act of 1933.[7]

As the volume of arbitrations has increased, cases have grown more complex and time-consuming such that some of the advantages of arbitration as a low cost and swift alternative to litigation are disappearing. This has led to interest in other forms of alternative dispute resolution that may be less expensive than adversarial proceedings in arbitration or in court. A goal of mediation is to explore and come to a settlement of an outstanding dispute without resort to adversarial adjudication.

Amendments to Existing Rules

Record of Sessions. Section 37 of the Code has been amended by adding a new paragraph (b) to prohibit keeping a verbatim record of any mediation session conducted pursuant to the proposed rules. The NASD believes that a verbatim record is not consistent with the methods of mediation: a free-flowing and confidential exchange of views, opinions, proposals and admissions.

Fees. Sections 43 and 44 of the Code have been amended to include fees for NASD mediation sessions. The administrative fees of the NASD set forth in new Subsection 43(i) and 44(j) for administering a mediation will be charged only when there is no Association arbitration pending. When there is no arbitration pending, the NASD will charge each party $150 under new Subsection 43(i) to administer the mediation of a public customer matter and will charge each party $250 under new Subsection 44(j) to administer the mediation of an industry matter.

The fees will be assessed for each matter submitted to mediation. Pursuant to new Section 51, discussed below, a matter is deemed submitted to mediation when the Director of Mediation[8] has received an executed mediation Submission Agreement from all parties.[9]

In addition, new Subsections 43(j) and 44(k) obligate the parties to pay all of the mediator's charges, including travel and other expenses. The Submission Agreement will set forth the mediator's charges and these charges will be apportioned equally among the parties unless they agree otherwise. The NASD will estimate initially the mediator's charges based on the anticipated length of the session or sessions. The parties will be required to deposit their proportional share of such estimated charges with the NASD prior to the first mediation session.

The NASD's standard mediator charges will be $150 per hour, although the parties may agree to pay different charges for a particular mediator. The NASD intends to make its best efforts to make mediators available at the specified hourly rate; however, some qualified mediators may decline to serve unless compensated at a higher rate.

Finally, the mediator's hourly fee for joint sessions (except for the first session) and separate sessions will be assessed for each half hour or portion thereof. In addition, the mediator's hourly rate for separate meetings will be apportioned equally among all parties without regard to the actual amount of time each party has spent with the mediator because all parties should benefit equally from the mediator's efforts in meeting with each party even if the mediator spends more time with one than the other.

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[1] The NASD amended the proposed rule change subsequent to its original filing on May 19, 1995. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (June 2, 1995).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶3701 *et seq.*

[5] NASD Manual, Code of Arbitration Procedure, Part III, Secs. 37, 43 and 44, (CCH) ¶¶3737, 3743, 3744.

[6] *Shearson/American Express, Inc.* v. *McMahon,* 482 U.S. 220 (1987).

[7] *Rodriguez de Quijas* v. *Shearson/American Express, Inc.* 490 U.S. 477 (1989).

[8] New Section 50 provides for the appointment of a Director of Mediation (''Director'') to administer mediations. See infra text accompanying n. 10.

[9] The NASD is developing a standard form mediation Submission Agreement. A copy of the Submission Agreement will be provided to all parties.

Mediation Rules

General Scope and Authority. New Section 50 establishes the scope and authority of the Mediation Rules. This Section provides that the Mediation Rules will apply to mediations administered by the Association and calls for the designation of a Director to administer mediations. Section 50 also specifies that the Director will consult the National Arbitration Committee (''Committee'') on administering the NASD mediation program. The Committee, as necessary, may make recommendations concerning the administration of the mediation program to the Director and recommend amendments to the rules to the NASD Board, Finally, Section 50 states that neither any mediator nor the NASD shall have any authority to compel a party to submit to mediation or to settle a matter. This last provision is intended to clarify the voluntary nature of mediation.[10]

Submission of Eligible Matters. New Section 51 provides that any matter, or part of a matter (such as procedural issues), eligible for arbitration under the Code may be mediated. The Director has the sole authority to determine the eligibility of any particular matter for mediation. New Section 51 also provides that a matter will be deemed submitted when the Director has received an executed mediation Submission Agreement from each party. The submission of a matter will trigger the obligation to pay applicable fees and will trigger the NASD's activities in finding a mediator and making arrangements for facilities for the mediation.

As noted above, the NASD has stated that it intends to solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits and explore whether mediation might meet the needs of the parties. Parties may volunteer to mediate a matter even if the Director has not solicited indications of interest in mediation. If a party expresses interest in mediating a matter, the Director will seek commitments to participate from other parties. If commitments are obtained from all parties, either orally or in writing, the Director will forward a mediation Submission Agreement to the parties for execution.

Stay or Delay of Arbitration Pending Mediation. New Section 52 provides that any arbitration pending at the time of a mediation will not be stayed or delayed unless the parties agree. This provision is intended to prevent gamesmanship through the use of mediation as a delaying tactic.

Mediator Selection. New Section 53 provides for the appointment of mediators and permits parties to select a mediator from a list supplied by the Director, or to obtain, on their own, a non-NASD mediator. If the parties do not act to select a mediator, the Director will assign a mediator. The parties also will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Section 53 also requires mediators to comply with the same background disclosure requirements as arbitrators.[11]

Finally, new Subsection 53(c) prohibits a mediator from serving as an arbitrator or from representing any party to a mediation in any subsequent arbitration proceeding relating to the subject matter of the mediation. A mediator functions as a third party neutral who assists parties in exploring the strengths and weaknesses of their case. Mediation can function effectively only if parties can fully trust the mediator to provide impartial guidance and not to divulge confidential information disclosed. Parties are unlikely to trust a mediator if that mediator is permitted to serve as an arbitrator or represent a party to a mediation in a subsequent adversarial proceeding relating to the subject matter of the mediation. With respect to judicial proceedings, state law, attorney codes of ethics, and mediator codes of conduct[12] should provide sufficient protection for parties in judicial forums.

Liability Limitation. New Section 54 provides for the limitation of liability of mediators, the Association, and its employees, for any act or omission in connection with a mediation administered by the NASD under the rules.

Ground Rules. New Subsection 55(a) states that Section 55 sets forth standard Ground Rules governing mediations and permits the parties to amend any of the Ground Rules at any time. The Subsection also provides that the Ground Rules are intended to be standards of conduct for the parties and for the mediation. Parties will be able to tailor the ground rules governing their mediation to meet their needs.

New Subsection 55(b) states that mediation is voluntary and that parties may withdraw from a mediation at any time prior to the execution of a settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director. This provision is intended to clarify that, while the goal of mediation is to explore and settle outstanding disputes, if possible, the proposed rules are process oriented, not result oriented. Mediation is wholly voluntary and any party may withdraw from a mediation at any time and for any reason, or for no reason at all.

New Subsection 55(c) establishes that the mediator's role is to act as a neutral and impartial facilitator, without authority to impose decisions or a settlement on the parties.

New Subsection 55(d) requires that the parties and their representatives meet jointly with the mediator, in person or by conference call as determined by the mediator or by mutual agreement of the parties. The mediator will facilitate through joint sessions, caucuses and/or other means, discussions between the parties on the subject matter of the mediation.

New Subsection 55(d) also provides that the mediator will determine the procedure for the mediation. Under this subsection, parties would agree to cooperate with the mediator in conducting the mediation expeditiously, to make reasonable efforts to be available for mediation sessions, and to be represented at all sessions either in person or by a representative with authority to settle the matter. This subsection is intended to avoid common obstacles to expeditious, effective mediation and it sets forth rules that are intended to prevent gamesmanship and discourage dilatory conduct.

New Subsection 55(e) permits the mediator to meet with and communicate separately with each party, provided the mediator notifies the other parties. This is intended to permit the mediator to pursue a candid discussion with all parties of the issues and priorities in the dispute and the strengths and weaknesses of their positions. However, Subsection 55(g), discussed below, bars the mediator from disclosing one party's

[10] The NASD has stated that it intends to solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits and explore whether mediation might meet the needs of the parties. These efforts are intended to increase the number of matters submitted to mediation and reduce the number of matters submitted to arbitration.

[11] See NASD Manual, Code of Arbitration Procedure, Part III, Sec. 23, (CCH) ¶ 3723.

[12] The American Bar Association (''ABA'') is considering draft mediator standards of conduct. Draft Standard III states in pertinent part that ''[w]ithout the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.''

confidential information to another party without authorization.

New Subsection 55(f) sets forth the goal of mediation—to explore and come to a good faith settlement of an outstanding dispute without resort to adversarial adjudication. This Subsection also permits parties to negotiate directly outside the mediation process.

New Subsection 55(g) provides that mediation is intended to be private and confidential. This Subsection obligates the parties and the mediator not to disclose or otherwise communicate anything disclosed during the mediation in any other proceeding, unless authorized by all other parties to the mediation. The Subsection permits disclosure if compelled by law, which provides for situations when a party is subpoenaed or when there are regulatory requirements, such as the disclosures required in Form U–4 or under Article IV, Section 5 of the Rules of Fair Practice.[13] This Subsection also provides expressly that the fact that a mediation occurred is not confidential.

New Subsection 55(g) also makes clear that the confidentiality provisions will not operate to shield from disclosure documentary or other information that the Association or any other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities. Accordingly, the fact that documentary or other information had been disclosed during the course of a mediation would not render it confidential or shield it from disclosure to the NASD or an opposing party in civil litigation where it otherwise would be available to these parties.

In addition, the Subsection bars the mediator from disclosing one party's confidential information to another party without authorization, which memorializes a standard practice of mediators.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[14] because the rule change will protect investors and the public interest by providing a voluntary alternative to adversarial adjudication of disputes that may result in lower-cost, quicker resolution of disputes. The proposed rule change approved today provides a forum for a non-binding discussion by all interested parties, and a form of dispute resolution that can be more effective than direct negotiations and that increases the likelihood of early settlement of a dispute at cost savings.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–95–25 be, and hereby is, approved, effective August 1, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18285 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[13] NASD Manual, Rules of Fair Practice, Art. IV, Sec. 5 (CCH) ¶ 2205.

[14] 15 U.S.C. 78*o*–3.

[(Release No. 34–36000; File No. SR–CHX–95–16)]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading Floor Dress Code

July 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 6, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and amended such proposed rule change on July 12, 1995,[2] 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 Exchange proposes to add interpretation and policy .03 to Rule 3 of Article XII of the Exchange's rules relating to the Exchange's dress code.

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

Article XII, Rule 3, interpretation and policy .01, provides that violations of the Exchange's dress code are Class B violations of the exchange's decorum rules.[3] The CHX dress code, which has been in existence for many years, is not codified in the Exchange's rules. The purpose of the proposed rule change is to incorporate the existing CHX dress code into the Exchange's rules as a formal interpretation and policy.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is consistent with Section 6(b)(6) of the Act[5] in that it will assist the Exchange in appropriately disciplining its members and persons associated with its members for violations of the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrected a citation in the original filing to one of the Exchange's rules and referenced Section 6(b)(6) of the Act as a statutory basis for the proposed rule change. See letter from David T. Rusoff, Esq., Foley & Lardner, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC (July 11, 1995).

[3] Chicago Stock Ex. Guide (CCH) ¶1613 (Sept. 1994). A member whose violative conduct is classified as a Class B offense may be fined summarily an amount not to exceed $100.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C.78f(b)(6).

effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Chicago Stock Exchange. All submissions should refer to File No. SR–CHX–95–16 and should be submitted by August 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18339 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35999; File No. SR–Phlx–95–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Reducing the Value of the Semiconductor Index

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 June 5, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Phlx proposes to reduce the value of its Semiconductor Index (''Index'') option (''SOX'') to one-half its present value.[1] The Index is a price-weighted industry index designed by the Exchange, composed of 16 highly capitalized and widely held stocks representing the semiconductor industry. The other contract specifications for the SOX remain unchanged.

The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange began trading the SOX in September , 1994.[2] The Index value was created with a value of 200 on its base date of December 1, 1993, which rose to 237 in July, 1994, shortly before the time it began trading on the Phlx. Currently, the index value is 427 (on May 31, 1995). Thus, the value has doubled over the course of less than two years. Consequently, the premium for SOX options has also risen.

As a result, the Exchange proposes to conduct a ''two-for-one split'' of the Index, such that the value would be reduced by one-half. The number of SOX contracts will be doubled, such that for each SOX contract currently held, the holder would receive two contracts at the reduced value, with a strike price one-half of the original strike price. For instance, the holder of a 290 SOX call will receive two 145 SOX calls. In addition to the strike price being reduced by one-half, the position and exercise limits applicable to the SOX will be doubled, from 7,500 contracts to 15,000 contracts until the last expiration then trading.[3] This procedure is similar to the one employed respecting equity options where the underlying security is subject to a two-for-one stock split. The trading symbol will remain as SOX.

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower index value, pursuant to Phlx Rule 1101A. The Exchange will announce the effective date by way of an Exchange memorandum to the membership, also serving as notice of the strike price and position limit changes.

The purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, a near-term, at-the-money call option series currently trades at approximately $1,200 per contract. The Exchange believes that certain investors and traders may currently be impeded from trading at such levels. With the Index split, that same option series (once adjusted), with all else remaining equal, could trade at approximately $600 per contract. The Exchange believes that this reduced premium value should encourage additional investor interest.

The Exchange believes that SOX options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the underlying semiconductor stocks. By reducing the value of the Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, as well as

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] 17 CFR 200.30–3(a)(12).

[1] The Exchange will accomplish this reduction in value by doubling the divisor used in calculating the Index. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and James T. McHale, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, on July 12, 1995.

[2] Securities Exchange Act Release No. 34546 (August 18, 1994), 59 FR 43881 (August 25, 1994).

[3] According to the Exchange, this will be in March, 1996. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and James T. McHale, Attorney, MOS, Division, Commission, on July 19, 1995.

to protect investors and the public interest, by establishing a lower index value, which should, in turn, facilitate trading in SOX options. The Exchange believes that reducing the value of the Index does not raise manipulation concerns and would not cause adverse market impact, because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the index split.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in order to implement the change for the July expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[4] Specifically, the Commission believes that reducing the value of the Index will serve to promote the public interest and help to remove impediments to a free and open securities market, by providing a broader range of investors with a means of hedging exposure to market risk associated with securities representing the semiconductor industry. Further, the Commission notes that reducing the value of SOX contracts should help attract additional investors, thus creating a more active and liquid trading market. The Commission also notes that the Phlx proposes to provide market participants with adequate prior notice of the Index level change in order to avoid investor confusion. Moreover, the Commission believes that the Phlx's position and exercise limits and strike price adjustments are appropriate and consistent with the Act. In this regard, the Commission notes that the position and exercise limits and strike price adjustments are identical to the approach used to adjust outstanding options on stocks that have undergone a two-for-one stock split.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register** to allow the Phlx to reduce the value of the Index without further delay. The Commission notes that the Index has increased in value dramatically over the last two years, which has caused a resulting increase in the SOX contract premium. The high contract premium could adversely affect liquidity in the SOX. The Commission believes that because the only change to be made to the actual Index is the adjustment in its value, it is appropriate to allow the Phlx to quickly address its SOX liquidity concerns, and accordingly finds that it is consistent with Section 19(b)(2) of the Act[5] to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–41 and should be submitted by August 16, 1995.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–95–41), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18340 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–35992; File No. SR–MSTC–95–08]

Self-Regulatory Organizations; the Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Procedures for the Destruction of Expired Rights and Warrants

July 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] (''Act''), notice is hereby given that on May 24, 1995, the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by MSTC. 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

MSTC proposes to add a new section 3 to Rule 1 of Article VI of its rules to establish procedures for the orderly destruction of certain expired rights and warrants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add a new section 3 to Article 1, Rule 1 of MSTC's rules to establish procedures for the orderly destruction of certain expired rights and

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by MSTC.

warrants. MSTC proposes this rule change in order to reduce the burden and cost of maintaining expired warrants and rights in its vault.

MSTC will adhere to the following procedures relating to expired rights and warrants. First, MSTC shall contact the transfer agent or the issuer of the securities after their expiration date to verify that the respective warrants or rights have expired. Second, MSTC will obtain written confirmation from the transfer agent or the issuer that the certificates representing such warrants or rights have expired. If there is no transfer agent, MSTC personnel shall exercise all reasonable due diligence to confirm that the respective certificates have expired. Third, MSTC will notify participants of the following: (1) That according to the judgment of the transfer agent or in the event that a transfer agent does not exist of other appropriate parties, the securities certificates are expired; (2) that MSTC will delete such securities positions from participants' accounts on or after the thirtieth day following the date of the notice; and (3) that MSTC shall appropriately mark the securities certificates and destroy them. At MSTC's discretion, it may retain copies of the certificates on microfilm or on other media.

MSTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposal will assure the safeguarding of securities or funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MSTC will notify the Commission of any written comments received by MSTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on May 24, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(e)(6) [4] thereunder. In particular, the Commission believes the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–95–08 and should be submitted by August 16, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18337 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[4] 17 CFR 240.19b–4(e)(6) (1994).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36001; File No. SR–NYSE–95–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Amendments to Rules 600 (Arbitration), 619 (General Provision Governing Subpoenas, Production of Documents, etc.), 629 (Schedule of Fees), and 637 (Failure to Honor Award)

July 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 26, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes 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 proposed amendment to Rule 600(d)(iii) clarifies that all class actions, including claims involving members, allied members, member organizations, and associated persons are ineligible for submission to arbitration. The proposed amendment to Rule 619(c) provides that parties may provide a list of documents they intend to present at the hearings in lieu of exchanging copies of documents that have already been produced. The proposed amendment to Rule 619(c) further requires that the list identifying witnesses include the address and business affiliation of the witnesses listed. In addition, Rule 619(c) would now require prehearing exchanges to occur twenty days in advance of the hearing, instead of ten days in advance as is presently required. The proposed amendment to Rule 629(e) provides that the filing fee for an industry party shall be $500 when the dispute does not specify a money claim. The proposed amendment to Rule 637 provides that the failure of a member, allied member, registered representative, or member organization to honor an arbitration award, including those issued at another self-regulatory organization or by the American Arbitration Association, shall subject the member, allied member, registered representative, or member organization to disciplinary proceedings

[1] 15 U.S.C. 78s(b)(1).

at the Exchange or to the imposition of a fine by way of a summary proceeding.

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 proposed rule changes are based primarily on proposals developed by the Securities Industry Conference on Arbitration. The purpose of the proposed change to Rule 600(d)(iii) is to make it clear that under this rule all class action claims involving members, allied members, member organizations, and associated persons are ineligible for submission to the Exchange's arbitration facility. The proposed amendment to Rule 619(c) allows parties to provide a list of documents that have been produced previously to the other side. This would provide for more efficient prehearing exchanges by not requiring the parties to again exchange those documents that have been produced previously. This proposal also provides that the list identifying witnesses include the address and business affiliation of the witnesses listed. This would allow the parties to receive advance notice as to the background of witnesses and the location of nonparty witnesses. In addition, the proposed amendment to Rule 619(c) requires prehearing exchanges to occur twenty days in advance of the hearing, instead of ten days as is presently required. This part of the proposal would serve to avoid surprise and provide the parties with time to organize and present their cases in an efficient manner. The proposed amendment to Rule 629(e) provides that the filing fee for an industry party shall be $500 when the dispute does not specify a money claim. This would unify the filing fee for all industry claims at $500. The proposed amendment to Rule 637 provides that the failure of a member, allied member, registered representative, or member organization to honor an arbitration award, including those issued at another self-regulatory organization or by the American Arbitration Association, shall subject the member, allied member, registered representative, or member organization to disciplinary proceedings at the Exchange or to the imposition of a fine by way of a summary proceeding. This would establish the enforceability of arbitration awards issued by other self-regulatory organizations and by the American Arbitration Association.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b)[2] of the Act in general and furthers the objectives of Section 6(b)(5)[3] in particular in that they are designed to promote just and equitable principles of trade by ensuring that members, member organizations, and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule changes will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

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 Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR–NYSE–95–25 and should be submitted by August 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18338 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2783; Amdt 2]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective July 13, 1995, to include the following counties in the State of Missouri as a disaster area due to damages caused by severe storms, hail, tornadoes, and flooding beginning on May 13, 1995 and continuing through June 23, 1995: Barton, Cass, Dallas, Nodaway, Saline, St. Francis, Stone, and Sullivan.

In addition, applicants for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Christian, Greene, Iron, Madison, Mercer, Taney, and Webster Counties in Missouri; Boone County in Arkansas; and Taylor County in Iowa.

Any counties contiguous to the above-named primary countries and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 11, 1995, and for loans for

economic injury the deadline is March 12, 1996.

The economic injury numbers are 853400 for Missouri, 853900 for Iowa, and 855400 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–18341 Filed 7–25–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2775 Amendment #2]

Louisiana; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective July 14, 1995, to extend the deadline for filing applications for physical damages as a result of this disaster. The new deadline is August 10, 1995.

The termination date for filing applications for loans for economic injury remains February 12, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–18342 Filed 7–25–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2798]

West Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 12, 1995, and an amendment thereto on July 18, I find that Mercer, Mineral, and Nicholas Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms, heavy rain and flash flooding beginning on June 23, 1995 and continuing through June 28, 1995. Applications for loans for physical damages may be filed until the close of business on September 11, 1995, and for loans for economic injury until the close of business on April 12, 1996, at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Braxton, Clay, Fayette, Grant, Greenbrier, Hardy, McDowell, Monroe, Raleigh, Summers, Webster, and Wyoming Counties in West Virginia, and Tazewell County in Virginia.

Any counties contiguous to the above-named counties and not listed herein have been previously declared in a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 279806. For economic injury the numbers are 857100 for West Virginia and 856100 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 20, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–18343 Filed 7–25–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended July 14, 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: OST–95–312.

Date filed: July 11, 1995.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/C 0626 dated March 7, 1995, Standard Revalidating Resolutions 002, Correction—COMP Reso/C 0636 dated April 13, 1995.

Proposed Effective Date: October 1, 1995.

Docket Number: OST–95–313.

Date filed: July 11, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 746, Introduce Osaka-Guangzhou fares, r-1—0431, r-4—063ii, r-7—087k, r-2—053i, r-5—076t, r-8—092f, r-3—063i, r-6—085hh, r-9—092v.

Proposed Effective Date: August 1, 1995.

Docket Number: OST–95–319.

Date filed: July 13, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 745, Japan-Korea fares r-1 to r-9.

Proposed Effective Date: July 25, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–18267 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on August 9, 1995, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexander, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Louis C. Cusimano, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS–800), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8452; FAX: (202) 267–5094.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on August 9, 1995, at 9:30 a.m., at the Helicopter Association International, 1635 Prince Street, Alexandria, VA. The agenda for this meeting will include status reports from the part 103 (Ultralight Vehicles) Working Group and the VHS Navigation and Communications Working Group. In

addition, the IFR Fuel Requirements/ Destination and Alternate Weather Minimums Working Group will present a revised concept briefing at the meeting, and the ARAC members will vote whether or not the working group should include the revised concept when it drafts its recommendation. Members of the public may contact Cindy Herman, ARM–108, Federal Aviation Administration, 800 Independence Avenue, S.W. Washington, DC 20591, (202) 267–7627, fax (202) 267–5075 to obtain a copy of the briefing prior to the meeting.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on July 19, 1995.

Roger M. Baker, Jr.,

Acting Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–18384 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–922]

OMI Patriot Transport, Inc., et al.; Application for Modification of Operating-Differential Subsidy Agreements

By application of April 27, 1995, pursuant to Title VI of the Merchant Marine Act, 1936, as amended, and Article II–25 of Operating-Differential Subsidy Agreements (ODSAs) No. MA/MSB–167 (a), (b), (c) and (d), OMI Patriot Transport, Inc., OMI Courier Transport, Inc., and OMI Rover Transport, Inc. requested approval for modification of Article I–3(a) of the ODSAs to incorporate the OMI COLUMBIA in the ODSAs and approval to include the OMI COLUMBIA in an Operating-Differential Subsidy (ODS) sharing system among the vessels named in the ODSAs. The vessels currently named in the ODSAs, under an ODS sharing arrangement are the COURIER, PATRIOT, RANGER, ROVER, OMI MISSOURI, and OMI SACRAMENTO.

The OMI COLUMBIA, which is owned by OMI Challenger Transport, Inc., is a 138,698 DWT U.S.-flag crude oil tanker that began operating in 1983 on a time charter basis in the Alaska North Slope crude oil trade, following its reconstruction and documentation under U.S.-flag pursuant to the Wrecked Vessel Act (46 app. U.S.C. 14). The applicants note that for the last two years, however, the OMI COLUMBIA has been operating in the spot market and has been in laid up status for most of that time.

The applicants believe that a subsidy sharing arrangement for the OMI COLUMBIA would result in critically needed operating flexibility for the vessel. The OMI COLUMBIA is a highly efficient, diesel powered vessel that could compete effectively in the foreign trade with subsidy. The applicants point out that the entry of the OMI COLUMBIA into the foreign trade would enhance the presence of the U.S.-flag fleet in a trade where the U.S.-flag presence is far too small. Furthermore, the expansion of U.S.-flag service in the foreign commerce is the primary goal of the ODS program and one that would be furthered by permitting the OMI COLUMBIA to be incorporated into the subsidy sharing agreement enjoyed by other OMI-owned vessels.

At a time when the U.S. merchant marine is fighting to remain strong and competitive, the applicants aver that every permitted use of available subsidy should be allowed. In the applicant's view, no statutory restriction limits subsidy to tank vessels under 100,000 DWT; the restriction is a matter of informal policy only. The applicants maintain that circumstances have changed markedly, providing a substantial basis for modification of the deadweight limitation policy.

The applicants' position is that the modification needed is modest. The deadweight tonnage of the OMI COLUMBIA is not significantly higher than the informal limitation. In addition, the total amount of subsidy to be paid is not increased by this contract modification. Consequently, the subsidy is simply used to maintain another U.S.-flag vessel in active service in the U.S. merchant marine.

Granting the OMI COLUMBIA subsidy sharing rights, the applicants conclude, will enable the OMI COLUMBIA to enhance U.S.-flag service in the foreign trade and will help maintain a trained base of U.S. seafarers.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on Aug. 2, 1995. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Subsidy Board.
Dated: July 21, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–18379 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 95–57; Notice 1]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has determined that some of its vehicles fail to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps Reflective Devices, and Associated Equipment,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301-''Motor Vehicle Safety'' on the basis that the noncompliance in inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 108, Paragraph S5.5.10(d) requires that ''all other lamps [not mentioned in Paragraphs S5.510(a–c) which includes all stop lamps such as enter high-mounted stop lamps (CHMSLs)] shall be wired to be steady-burning.''

During the 1995 model year, GM manufactured a total of 96,607 GMC and Chevrolet Suburban, GMC Yukon, and

Chevrolet Tahoe vehicles that have CHMSLs that were inadvertently wired in a manner which permits the CHMSLs to momentarily flash under certain conditions while the driver is in the process of activating or deactivating the hazard flashers. As a result, they do not meet the requirement stated in Paragraph S5.5.10(d) that they be ''wired to be steady-burning.'' While GM designed the subject vehicles to meet this requirement, it subsequently discovered a transient contact condition inside the multi-function (brake lamp, CHMSL, turn signal, and hazard flasher) switch which occasionally causes the CHMSL to flash while the driver is in the process of turning the hazard flasher switch ''on'' or ''off.'' The error was corrected in production in March 1995 by adding a brake lamp relay to the I/P harness to provide isolation from the multi-function switch transient.

GM supports its application for inconsequential noncompliance with the following:

The CHMSL preforms properly at all times when the service brakes are applied. The transient condition will not occur if the service brakes are applied when the driver activates or deactivates the hazard flasher switch. Therefore, the CHMSL will not flash when it is required to be steady-burning. The CHMSL will not flash if the ignition switch is in the ''off'' position. Thus, the condition will not occur if the hazard flashers are turned ''off'' or ''on'' when the ignition is off and the vehicle is parked at the side of the road, for example.

If the CHMSL flashes at all, it will illuminate a maximum of three times during the transient condition, with each pulse lasting 0.5 [millisecond (ms)] to 4.0 ms. The entire unintended event, in its worst case, lasts no more than 125.8 ms. This extremely short duration is likely to go entirely unnoticed by following drivers in many instances. In the event that it is noticed, it is not likely to be confused with anything other than the hazard flashers. Since the flashers will be activated while the unintended condition occurs, but the brake lamps will not be, this will not present a safety risk.

The CHMSL otherwise meets all of the requirements of FMVSS 108.

In a 1989 interpretation, NHTSA discussed the difference between the requirements that stop lamps be steady-burning and hazard warning lights flash. NHTSA explained:

Standard No. 108 requires stop lamps to be steady-burning, and hazard warning signal lamps to flash (generally through the turn signal lamps). The primary reason for the distinction is that the stop lamps are intended to be operated while the vehicle is in motion, while hazard warning lamps are intended to indicate that the vehicle is stopped. Each lamp is intended to convey a single, easily recognizable signal. If a lamp which is ordinarily steady burning begins to flash, the agency is concerned that the signal will prove confusing to motorists, thereby diluting the effectiveness.

August 8, 1989 letter from S.P. Wood, Acting Chief Counsel, NHTSA, to L.P. Egley

While this condition technically causes a lamp which is ordinarily steady burning to begin to flash, it will not likely ''prove confusing to motorists, thereby diluting its effectiveness,'' because it will not occur if the service brakes are applied. Even if the condition were mistaken for a brake signal (which is doubtful since CHMSLs do not flash with brake lamp activation), the following driver would not likely react to it. According to recent research studies conducted by GM, as well as field data, it takes a following driver at least 0.5 seconds to react to a signal and apply the service brakes once [a] preceding vehicle's brake lamps are activated. Given the extremely short duration of the transient CHMSL condition, the misinterpreted signal would be gone long before the following driver could respond.

Hazard flashers are not frequently used. Thus, the exposure of following drivers to the noncompliant condition would be very limited. This is particularly true because of the transient nature of the condition, its short duration, and the fact that it will not occur at all if the service brakes are applied or the vehicle's ignition is off.

GM is not aware of any accidents, injuries, owner complaints, or field reports related to this condition.

Interested persons are invited to submit written data, views, and arguments on the application of GM described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 25, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 21, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–18383 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–59–P–M

DEPARTMENT OF THE TREASURY

Customs Service

Privacy Act of 1974: Altered System of Records

AGENCY: Customs Service, Treasury.

ACTION: Notice of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the United States Customs Service gives notice of an altered Privacy Act system of records, Internal Security Records System—Treasury/Customs .127. The title, as amended, will be Internal Affairs Record System—Treasury/Customs .127.

DATES: Comments must be received no later than August 25, 1995. The altered system of records will be effective September 5, 1995, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments will be made available at the Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Peterson, Chief, Disclosure Law Branch, Office of Regulations and Rulings, (202) 482–6970.

SUPPLEMENTARY INFORMATION: This report is to give notice of an altered U.S. Customs Service system of records entitled ''Internal Security Records System—Treasury/Customs .127'' which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

The Customs Service is amending its present system of records covering personnel and administrative records for the following reasons:

1. To more fully describe, by the addition of photographic images, the records about the individual in the system,

2. To show additional categories of individuals covered by the system.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities

for Maintaining Records About Individuals, dated July 15, 1994.

The proposed altered system of records, Treasury/Customs .127 Internal Affairs Records System is published in its entirety below.

Dated: July 18, 1995.

Alex Rodriguez,

Deputy Assistant Secretary Administration.

Treasury/Customs .127

SYSTEM NAME:

INTERNAL AFFAIRS RECORDS SYSTEM—TREASURY/CUSTOMS.

SYSTEM LOCATION:

Security Programs Division, Office of Internal Affairs, 1301 Constitution Avenue NW., Washington, DC 20229–0004. –

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees; contractor applicants/employees; and applicants for positions that require an investigation; and others that are principals or non-principals in an investigation or integrity issue.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background investigations, integrity investigations, and photographic images.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order Number 165, revised, as amended.

PURPOSE(S):

To maintain all records on applicants, employees, contractors, and contractor applicants relating to investigations conducted by Internal Affairs, and to support personnel and administrative programs of the Customs Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Investigative records are maintained in computers, as well as in file folders, in metal security cabinets secured by government approved three-position combination locks, and in a mobile filing system within a secured area that is alarmed with motion detectors.

RETRIEVABILITY:

These records are indexed by name and/or numerical identifier in a manual filing system and/or computerized system.

SAFEGUARDS:

In addition to being stored in secured metal containers with government approved combination locks, mobile filing system, etc., the containers are located in a locked, alarmed room, the keys of which are controlled and issued to the custodians of the files. The security specialists and administrative personnel who maintain the files are selected for their experience and afforded access only after having been cleared by a full-field background investigation and granted appropriate security clearances for critical sensitive positions. Those departmental officials who may occasionally be granted access consistent with their positions to employ and concur in the granting of security clearances have also been investigated prior to filling critical-sensitive positions.

RETENTION AND DISPOSAL:

The file records are maintained as long as the subject of the investigation is employed by the U.S. Customs Service and then for 1 year after the subject terminates employment. The files are then transferred to the Federal Records Center for retention. After transfer, records are retained by the Federal Records Center for the following period of time and then destroyed: Background Investigations—15 years; Conduct and Special Inquiry Investigations—25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Programs Division, Office of Internal Affairs, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229–0004.

NOTIFICATION PROCEDURE:

See Customs Appendix A (57 FR 14007, April 17, 1992).

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Sources of information are: Employers; educational institutions; police; government agencies; credit bureaus; references; neighborhood checks; confidential sources; medical sources; personal interviews; photographic images, military, financial, citizenship, birth and tax records; and the applicant's, employee's or contractor's personal history and application forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4), (G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5).

[FR Doc. 95–18346 Filed 5–25 –95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

July 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0020.
Form Number: IRS Form 709.
Type of Review: Extension.
Title: United States Gift (and Generation-Skipping Transfer) Tax Return.
Description: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. IRS uses the information to enforce these taxes and to compute the estate tax.
Respondents: Individuals and households.
Estimated Number of Respondents/ Recordkeepers: 110,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 40 minutes
Learning about the law or the form: 59 minutes
Preparing the form: 1 hour, 43 minutes
Copying, assembling, and sending the form to the IRS: 1 hour, 3 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 484,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–18288 Filed 7–25–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 19, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0575.
Form Number: IRS Form 5330.
Type of Review: Extension.
Title: Return of Excise Taxes Related to Employee Benefit Plans.
Description: Internal Revenue Code (IRS) sections 4971, 4972, 4973(a), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.
Respondents: Business or other for-profit, individuals or households.
Estimated Number of Respondents/ Recordkeepers: 8,403.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping 16 hours, 59 minutes
Learning about the law or the form 7 hours, 56 minutes
Preparing the form 8 hours, 34 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 281,416 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–18289 Filed 7–25–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 19, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0181.
Form Number: IRS Form 4768.
Type of Review: Extension.
Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.
Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 18,500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 13 min.
Learning about the law or the form: 16 min.
Preparing the form: 22 min.
Copying, assembling, and sending the form to the IRS: 20 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 22,015 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–18290 Filed 7–25–95; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 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, ''A Great Heritage: Renaissance and Baroque Drawings from Chatsworth'' (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 exhibition or display of the listed exhibit objects at the National Gallery of

[1] A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Art from on or about October 8, 1995, through December 31, 1995; the Pierpont Morgan Library, New York, N.Y., from on or about January 18, 1996 through April 21, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 20, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–18393 Filed 7–25–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 143

Wednesday, July 26, 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).

FEDERAL COMMUNICATION COMMISSION

FCC To Hold Open Commission Meeting Friday, July 28, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, July 28, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No, Bureau, Subject

1—Wireless Telecommunications—Title: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552); Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252) and Implementation of Section 309 (j) of the Communications Act—Competitive Bidding 220–222 MHz (PP Docket No. 93–253). Summary: The Commission will consider action concerning establishment of a new framework for the operations and licensing of the services in the 220–222 MHz band.

2—Mass Media and General Counsel—Title: Fox Television Stations, Inc., for Renewal of License of Station WNYW-TV, New York, New York (File No. BRCT–940201KZ). Summary: The Commission will consider further issues related to the application of Fox Television Stations, Inc.

3—Mass Media—Title: Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules (MM Docket No. 94–123). Summary: The Commission will consider modification of the Prime Time Access Rule (PTAR).

4—Mass Media—Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider action concerning several issues in its Advanced Television Proceeding.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated July 21, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc 95–18505 Filed 7–24–95; 3:11 pm]

BILLING CODE 6712–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 31, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 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: July 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18464 Filed 7–24–95; 1:42 pm]

BILLING CODE 5120–01–P

Federal Register

Wednesday
July 26, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 400, 405, et al.

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1996; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 410, 411, 412, 413, 414, 415, 417, and 489

[BPD–827–P]

RIN 0938–AG96

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule discusses several policy changes affecting payment for physician services including:

- Medicare payment for physician services in teaching settings.
- Changes in calculating the default Medicare volume performance standard beginning in fiscal year 1996.
- Our efforts to implement the statutory requirement in the Social Security Act Amendments of 1994 to develop a resource-based system for practice expenses.

The rule would redesignate current regulations on teaching hospitals, on the services of physicians to providers, on the services of physicians in providers, and on the services of interns and residents. This redesignation would consolidate related rules affecting a specific audience in a separate part and, thereby, make them easier to use.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 25, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–827–P, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Before August 4, 1995

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

After August 6, 1995

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–827–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 966–1309 (after September 1, 1995, (410) 786–1309) (for all issues except those related to physician services in teaching settings). William Morse, (410) 966–4520 (after September 1, 1995, (410) 786–4520) (for issues related to physician services in teaching settings).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations (CFR).

Table of Contents

In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA American Medical Association
ASC Ambulatory surgical center
CF Conversion factor
CFR Code of Federal Regulations
COBRA Consolidated Omnibus Budget Reconciliation Act
CPEP Clinical Practice Expert Panel
CPT [Physicians'] Current Procedural Terminology [4th Edition, 1994,

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CRNA Certified Registered Nurse Anesthetist
CY Calendar year
DEFRA Deficit Reduction Act
EKG Electrocardiogram
ESRD End-stage renal disease
FQHC Federally Qualified Health Centers
FTE Full-Time Equivalent
FY Fiscal year
GAF Geographic adjustment factor
GPCI Geographic practice cost index
GPVS Group-Specific Volume Performance Standards
HCFA Health Care Financing Administration
HCPAC Health Care Professional Advisory Council
HCPCS HCFA Common Procedure Coding System
HHA Home health agency
HHS [Department of] Health and Human Services
I.L. Intermediary Letter
IPL Independent Physiological Laboratory
MAC Maryland Access to Care
ME Malpractice Expense
MVPS Medicare volume performance standards
NCI National Cancer Institute
OBRA Omnibus Budget Reconciliation Act
OMB Office of Management and Budget
ORA Omnibus Reconciliation Act
OTIP Occupational Therapists in Independent Practice
PE Practice Expense
PMP Primary Medical Provider
PPS Prospective Payment System
PTIP Physical Therapists in Independent Practice
RCE Reasonable compensation equivalency
RFA Regulatory Flexibility Act
RFP Request for Proposal
RHC Rural Health Clinics
RUC [AMA Specialty Society] Relative [Value] Update Committee
RVU Relative Value Unit
SNF Skilled Nursing Facility
TEFRA Tax Equity and Fiscal Responsibility Act
TEG Technical Expert Group
VI Volume and Intensity

I. Background

A. Legislative History

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). Since January 1, 1992, Medicare pays for physician services under section 1848 of the Act, ''Payment for Physicians' Services.'' This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a Medicare volume performance standard (MVPS) for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense (PE), and malpractice expense (ME).

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to preserve budget neutrality.

B. Published Changes to the Fee Schedule

We published a final rule on November 25, 1991, (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physician services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA's) Physicians' Current Procedural Terminology (CPT) through an ''interim RVU'' process every year. The updates to the RVUs and fee schedule policies follow:

- November 25, 1992, as a final notice with comment period on new and revised RVUs only (57 FR 55914).
- December 2, 1993, as a final rule with comment period (58 FR 63626) to revise the refinement process used to establish physician work RVUs and to revise payment policies for specific physician services and supplies. (We solicited comments on new and revised RVUs only.)
- December 8, 1994, as a final rule with comment period (59 FR 63410) to revise the geographic adjustment factor (GAF) values, fee schedule payment areas, and payment policies for specific physician services. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act.

This proposed rule would affect the regulations set forth at 42 CFR part 400, which consists of an introduction to, and definitions for, the Medicare and Medicaid programs; part 405, which encompasses regulations on Federal health insurance for the aged and disabled; part 410, which consists of regulations on supplementary medical insurance benefits; part 414, which covers regulations on payment for Part B medical and other health services; and new part 415, which contains regulations on services of physicians in providers, supervising physicians in teaching settings, and residents in certain settings. We are making technical and conforming amendments to parts 411, 412, 413, 417, and 489.

II. Specific Proposals for Calendar Year (CY) 1996

A. Budget-Neutrality Adjustments for Relative Value Units (RVUs)

We make annual adjustments to RVUs for the physician fee schedule to reflect changes in CPT codes and changes in estimated physician work. As stated earlier, the statute requires that these revisions may not change physician expenditures by more than $20 million compared to estimated expenditures that would have occurred if the RVU adjustments had not been made. To maintain this statutorily-mandated budget neutrality, we make an adjustment across all RVUs in the physician fee schedule.

We have received a number of suggestions (including those from the American Medical Association (AMA), private payers, and State Medicaid programs that base payments on the Medicare RVUs) that we apply these adjustments to the conversion factors (CFs) rather than across all RVUs. This would reduce the number of billing system changes required by the annual revisions to the physician fee schedule.

We agree with the commenters that it would be administratively simpler to apply the adjustments to the CFs rather than the RVUs. We propose that these budget-neutrality adjustments be applied to the physician fee schedule CFs. The impact on payment amounts would be minimal (slight differences could be caused by rounding). This alternative approach would be administratively simpler for Medicare and other payers that base payments on the Medicare RVUs, including many State Medicaid programs. In addition, this change would provide for consistent RVUs from year to year, thus making it easier to analyze payment and policy changes. For example, CPT code 99215 had 1.53 work RVUs in 1994. Because of the 1.1 percent budget-neutrality adjustment in 1995, this code has 1.51 work RVUs this year. If the proposed policy had been in effect in 1995, the work RVUs for CPT code 99215 would have remained at 1.53, but all 1995 CFs would have been reduced 1.1 percent.

Therefore, in § 414.28 (''Conversion factors''), we propose to revise paragraph (b) (''Subsequent CFs'') to state that beginning January 1, 1996, the

CF for each CY may be further adjusted to maintain budget neutrality.

B. Bundled Services

1. Hydration Therapy and Chemotherapy

Hydration therapy intravenous (IV) infusion is billed under CPT codes 90780 (up to 1 hour) and 90781 (each additional hour, up to 8 hours). The saline solution used in hydration therapy IV infusion is billed and paid separately under the appropriate HCFA Common Procedure Coding System (HCPCS) ''J'' code. Chemotherapy IV infusion is billed under CPT codes 96410 (up to 1 hour), 96412 (each additional hour, up to 8 hours), and 96414 (more than 8 hours). The chemotherapy drug is billed and paid separately under the appropriate HCPCS ''J'' code.

Hydration therapy IV infusion may be administered at the same time as chemotherapy. In some cases, the saline solution is mixed with the chemotherapy drug. We believe that paying for hydration therapy IV infusion and chemotherapy IV infusion administered at the same time represents duplicate payment. Therefore, we propose not paying separately for CPT codes 90780 and 90781 when billed on the same day as CPT codes 96410, 96412, and 96414. We would continue to pay separately for the saline solution and the chemotherapy drug. This proposal reflects a policy change that is not explicitly addressed in our regulations.

2. Evaluation of Psychiatric Records and Reports and Family Counseling Services

At present, we allow separate payment for the following codes:

- CPT code 90825 (Psychiatric evaluation of hospital records, other psychiatric reports, psychometric and/or projective tests, and other accumulated data for medical diagnostic purposes).
- CPT code 90887 (Interpretation or explanation of results of psychiatric, other medical examinations and procedures, or other accumulated data to family or other responsible persons, or advising them how to assist the patient).

We believe that these activities are generally performed as part of the prework and postwork of other physician services. For example, the work involved in a psychiatric evaluation of records and tests as described by CPT code 90825 is a fundamental element of the prework and postwork of other psychiatric services, such as individual psychotherapy (CPT codes 90842 through 90844). The interpretation or explanation of the results of medical examinations or procedures as described by CPT code 90887 is also an integral part of the prework and postwork of other physician services. Counseling of the family is part of the postwork of evaluation and management services.

When these types of activities are performed in conjunction with evaluation and management services or with surgical services, payment for them is included in the prework and postwork components of the visit or procedure. The psychiatric evaluation of hospital records and the interpretation or explanation of psychiatric examinations are not significantly different from other types of medical evaluations of records or interpretation of other examinations. With the exception of family counseling services, the RVUs for psychiatric services (CPT codes 90801 and 90835 through 90857) already include the prework and postwork activities described by CPT codes 90825 and 90887. Thus, continuing to allow separate payment for these procedures, in addition to payment for other psychiatric services, results in duplicate payments and is inconsistent with our policy for other services. (We also note that the times associated with the individual medical psychotherapy CPT codes 90842 through 90844 are face-to-face times. While payment for the review and preparation of records is included in the fee schedule payment for these codes, the time spent in those activities should not be counted for purposes of determining and reporting the level of the individual psychotherapy code.)

With respect to family counseling services, Medicare has a longstanding policy of covering these services if they are needed to assess the capability of the family in, and to assist family members in, managing the patient. The service must relate primarily to the management of the beneficiary's problems and not to the treatment of problems of the family member. Counseling principally concerned with the effects of the beneficiary's condition on the family member is not considered part of the physician's personal service to the beneficiary; thus, it is not covered under Medicare. While we have always considered counseling activities to be included in the evaluation and management services, such as office and hospital visits that are described by CPT codes 99201 through 99353, we have not had the same policy for the psychotherapy codes. We believe it is appropriate to bundle covered family counseling procedures into the other psychiatric codes so that our policy is consistent with our policy on services furnished by other physician specialties.

Therefore, we propose to change the status indicator for CPT codes 90825 and 90887 to ''B'' to show that payment for these codes is bundled into the payment for another service, and separate payment would not be allowed. We would implement this change in a budget-neutral manner by redistributing the RVUs for CPT codes 90825 and 90887 across the following psychiatric codes: 90801, 90820, 90835, 90842 through 90847, and 90853 through 90857. This proposal reflects a policy change that is not explicitly addressed in our regulations.

3. Fitting of Spectacles

The fitting, repair, and adjustment of prosthetic devices (including spectacles) are covered under section 1861(s)(8) of the Act. Services under section 1861(s)(8) are not included in the definition of physician services as defined in section 1848(j)(3) of the Act and should not be payable under the physician fee schedule. Nevertheless, we inadvertently established payment amounts for the fitting of spectacles and low vision systems under the physician fee schedule. Payment for the fitting of spectacles is included in the payment for the spectacles in the same way that payment for other prosthetic fitting services is included in the payment for the prosthetic device.

Therefore, we propose to cease paying separately for the fitting of spectacles and low vision systems to end this duplicate payment for the fitting service. We propose to assign a ''B'' status indicator for the following CPT codes to indicate that the services are covered under Medicare, but payment for them is bundled into the payment for the spectacles:

CPT code	Description
92352	Fitting of spectacle prosthesis for aphakia; monofocal.
92353	Fitting of spectacle prosthesis for aphakia; multifocal.
92354	Fitting of spectacle mounted low vision aid; single element system.
92355	Fitting of spectacle mounted low vision aid; telescopic or other compound lens system.
92358	Prosthesis service for aphakia, temporary (disposable or loan, including materials).
92371	Repair and refitting spectacles; spectacle prostheses for aphakia.

This proposed change clarifies both the coverage and payment policies. The

coverage policy is clarified in that the fitting service is clearly covered as part of the prosthesis. The payment policy is clarified in that the payment for the spectacles includes the fitting services. This proposal reflects a policy change that is not explicitly addressed in our regulations.

C. X-Rays and Electrocardiograms (EKGs) Taken in the Emergency Room

This issue concerns our policy regarding the interpretation of x-rays or electrocardiograms (EKGs) by a hospital emergency room physician and a second interpretation by a hospital's radiologist or cardiologist. The emergency room physician may be an emergency medicine specialist, a physician covering the emergency room, or the patient's personal physician.

Our current national policy, issued in 1981 in section 2020G of the Medicare Carriers Manual, states that when a hospital radiologist interprets an x-ray that has already been interpreted by another physician, the service of the radiologist almost always constitutes a physician service and should be paid by the Medicare carrier. The instruction also states that any interpretation performed by the physician in the emergency room is paid through his or her emergency room visit fee. (This manual section also applies this policy to the interpretation of EKGs by cardiologists.)

Some Medicare carriers are paying separately for the interpretations of both the emergency room physician and the radiologist or cardiologist.

In our deliberations about the nature of the appropriate Medicare policy on payments for these interpretations, we have taken into account the following factors:

- The statement in the existing manual instruction about the inclusion of the x-ray interpretation in the emergency room visit is inconsistent with the AMA's CPT coding system that we use to describe and process claims for physician services. In discussing the guidelines for the evaluation and management service codes, the CPT states on page 2 of the 1995 Edition:

> The actual performance of diagnostic tests/studies for which specific CPT codes are available is not included in the levels of E/M [evaluation and management] services. Physician performance of diagnostic tests/studies for which specific CPT codes are available should be reported separately, in addition to the appropriate E/M code.

We note that the AMA has not distinguished between the evaluation and management codes applicable to the emergency room and other evaluation and management codes in this regard.

- Somewhat differently, the questionnaire used by the Harvard School of Public Health (in a cooperative agreement with us) to develop work RVUs for the physician fee schedule specifically indicates that the interpretation of x-rays is included in the emergency room codes (but not in the other evaluation and management codes). However, we do not believe that the use of the term ''interpretation'' in this context indicates that the emergency room physician has furnished an in-depth interpretation with a report analogous to an interpretation and a report performed by a radiologist. We believe it is common practice for an emergency room physician to ''review'' x-rays and use the information gained in diagnosing and treating the patient, but that this review, without a report for inclusion in the patient's medical record maintained by the hospital, does not meet the requirement for payment of a professional component radiologic service.
- Section 13514 of the Omnibus Reconciliation Act of 1993, Public Law 103–66, enacted on August 10, 1993, requires us to make separate payment for EKG interpretations and to exclude the RVUs for EKG interpretations from the RVUs for visits and consultations.
- In a July 1993 report entitled, ''Medicare's Reimbursement for Interpretations of Hospital Emergency Room X-rays,'' the Office of Inspector General (OIG) recommended that we pay for a reinterpretation of x-rays only if the attending physician specifically requests a second physician's interpretation to furnish appropriate medical care before the patient is discharged. The report stated that any other reinterpretation of the attending physician's original interpretation should be treated and paid as part of the hospital's quality assurance program. (We note that the costs of quality control activities as discussed above are taken into account in determining payments made to the hospital by the hospital's Medicare fiscal intermediary.) The net effect of the OIG's proposal would be that, in many cases, Medicare carriers would not pay separately for the interpretation of x-rays by either the radiologist or the emergency room physician since the OIG operated on the assumption (as set forth in the Medicare Carriers Manual) that the emergency room physician is paid for the interpretation through the emergency room visit charge.
- The CPT coding system differs in its treatment of EKGs and x-rays. For EKGs, there is a separate code for the taking of an EKG tracing (CPT code 93005) and for the interpreting *and* reporting of the procedure (CPT code 93010). For x-rays, the code represents all aspects of the procedure, and a CPT modifier −26 is used when only the professional component is billed. On page 230 of the 1995 Edition, the CPT states: ''A written report, signed by the interpreting physician, should be considered an integral part of a radiologic procedure or interpretation.''
- Under § 405.550(b)(2) (proposed to be redesignated as § 415.100(b)(2)), the Medicare carrier pays for services of physicians to patients of hospitals only if the services contribute directly to the diagnosis and treatment of an individual patient.
- There is no legal basis for a Medicare carrier to deny payment to any physician for the interpretation of a reasonable and necessary diagnostic test if payment for the interpretation is not made in some other way.

We believe that, in any situation in which the interpretation of the radiologist or cardiologist is furnished contemporaneously with the diagnosis and treatment of the patient, the Medicare carrier should pay for the interpretation made by the radiologist or cardiologist and deny any claim submitted by an emergency room physician for the x-ray interpretation. However, in the case of emergency room services, the specialist often does not perform the interpretation and prepare the report until a significant period of time (days in some situations) after the patient has been diagnosed, treated, and discharged. We believe that there are situations in which an emergency room physician performs the interpretation and report required by the patient and that a later interpretation furnished by the cardiologist or radiologist is essentially a quality control activity, the costs of which may be taken into account by Medicare fiscal intermediaries in their payments to hospitals. Nevertheless, if the hospital elects to have the cardiologist or radiologist perform and receive payment for the interpretation in every emergency room case, the hospital should ensure that other physicians who practice on its premises do not also bill for the same interpretation.

We believe that when a physician bills for the interpretation of an EKG or the professional component of an x-ray furnished to a beneficiary in an emergency room, the physician is indicating that he or she has prepared a written report of the findings for inclusion in the patient's medical record maintained by the hospital. We note that this also means the physician is

assuming legal responsibility for the interpretation and report.

We believe that, in most situations, the Medicare carrier should receive only one claim for an interpretation of each procedure. However, when multiple claims are received for the interpretation and report or professional component of an x-ray or an EKG, the carrier should pay for the service that directly contributed to the diagnosis and treatment of the beneficiary.

We will provide further guidance to the Medicare carriers through operating instructions. However, in practice, the carrier would almost always pay the first claim received (since the carrier would not know if a second bill will arrive). If a second bill is received, the Medicare carrier would suspend the claim to determine whether to pay the claim.

Listed below are the elements of our proposed policy. If the policy is adopted, we will incorporate the policy in a new Medicare Carriers Manual instruction.

- The carrier should generally pay separately for only one interpretation of an EKG or x-ray procedure furnished to an emergency room patient. However, there should be provision for an additional interpretation under unusual circumstances such as a questionable finding for which the physician performing the initial interpretation believes another physician's expertise is needed.
- The professional component of a diagnostic procedure furnished to a beneficiary in a hospital includes an interpretation and written report for inclusion in the beneficiary's medical record maintained by the hospital. We propose to place this requirement in the radiology section of the regulations on services of physicians in providers at § 405.554(a). (Under the recodification proposed in this regulation, this section would become 415.120(a).)
- We would distinguish between an ''interpretation and report'' of an x-ray or an EKG procedure and a ''review'' of the procedure. An interpretation and report of the procedure is separately payable by the carrier. A review of the findings of these procedures, without a written report, does not meet the conditions for separate payment of the service since the review is already included in the emergency room visit payment.
- In the case of multiple bills for the same interpretation and report, we would instruct the carriers to adopt the following procedures:

+ End the policy of considering physician specialty to be the prime consideration in deciding which interpretation and report to pay regardless of when the service is performed.

+ Pay for the interpretation and report that directly contributed to the diagnosis and treatment of the individual patient.

+ Pay for the interpretation billed by the cardiologist or radiologist if the interpretation of the procedure is performed contemporaneously with the diagnosis and treatment of the beneficiary. (This interpretation may be a verbal report conveyed to the treating physician that will be written in a report at a later time.)

- We propose to minimize the carrier's need to make decisions about which claim to pay when multiple claims for the interpretation and report of the same procedure are received by—

+ Encouraging hospitals to exercise their authority over the medical staff to ensure that only one claim per interpretation is submitted;

+ Advising hospitals that if they allow a physician to perform and bill for a medically necessary service (the interpretation and report) in an emergency room and permit another physician to perform and bill for the same service, the Medicare carrier will not pay two claims;

+ Advising hospitals that the Medicare carrier may determine that the hospital's ''official interpretation'' is for quality control and liability purposes only and is a service to the hospital rather than to an individual beneficiary; and

+ Advising hospitals that Medicare fiscal intermediaries consider costs incurred for quality control activities in determining payments to hospitals.

- When the Medicare carrier receives only one claim for an interpretation and the procedure is reasonable and necessary, the carrier will pay the claim. When the claim is from a cardiologist or radiologist, we will not require the Medicare carrier to make a determination of whether the service is a quality control service. We will presume that the one service billed was a service to the individual beneficiary.

D. Extension of Site-of-Service Payment Differential to Services in Ambulatory Surgical Centers (ASCs)

Services that are performed more than 50 percent of the time in office settings are subject to a site-of-service payment differential if they are performed in hospital outpatient departments and inpatient settings. For these procedures, the PE RVUs are reduced by 50 percent. We base the PE RVUs on charge data from the office setting. We assume that office charge data accurately reflect physician PEs in the office setting. Therefore, for office-based services, the PE RVUs reflect office practice costs. The payment differential reflects the fact that PEs are lower for services performed in hospital settings using hospital equipment, personnel, and space. We developed the site-of-service payment differential under the authority of section 1848(c)(4) of the Act, which permits the Secretary to establish ancillary policies necessary to implement the physician fee schedule. Services furnished in ASCs were originally exempt from the site-of-service payment differential because ASC-approved procedures were performed less than 50 percent of the time in a physician's office, that is, the ASC list and site-of-service payment differential were mutually exclusive.

However, now a procedure furnished more than 50 percent of the time in a physician's office may be an ASC-approved procedure, for example, when the ASC setting is more appropriate in cases when a patient needs anesthesia. Therefore, we propose extending the site-of-service payment differential to office-based services if those services are performed in an ASC.

We see no reason for exempting these procedures from the site-of-service payment differential because payments for overhead and other expenses included in the PE RVUs duplicate the expenses paid in the ASC facility payment rate, that is, the physician does not bear these expenses himself as he would in his own office. Therefore, in § 414.32 (''Determining payments for certain physician services furnished in facility settings''), we propose to remove from paragraph (d) (''Services excluded from the reduction'') the subordinate paragraph (d)(2), which would have the effect of applying the site-of-service payment differential to ASC services.

The following procedure codes currently on the ASC list are furnished more than 50 percent of the time in a physician's office. Therefore, we propose adding them to the list of services subject to the site-of-service payment differential.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST

HCPCS	Description
11042	Cleansing of skin/tissue.
11404	Removal of skin lesion.
11424	Removal of skin lesion.
11444	Removal of skin lesion.
11446	Removal of skin lesion.
11604	Removal of skin lesion.
11624	Removal of skin lesion.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST—Continued

HCPCS	Description
11644	Removal of skin lesion.
12021	Closure of split wound.
13100	Repair of wound or lesion.
13101	Repair of wound or lesion.
13120	Repair of wound or lesion.
13121	Repair of wound or lesion.
13131	Repair of wound or lesion.
13132	Repair of wound or lesion.
13150	Repair of wound or lesion.
13151	Repair of wound or lesion.
13152	Repair of wound or lesion.
14000	Skin tissue rearrangement.
14020	Skin tissue rearrangement.
14040	Skin tissue rearrangement.
14041	Skin tissue rearrangement.
14060	Skin tissue rearrangement.
14061	Skin tissue rearrangement.
15740	Island pedicle flap graft.
19100	Biopsy of breast.
20670	Removal of support implant.
21025	Excision of bone, lower jaw.
21026	Excision of facial bone(s).
21040	Removal of jaw bone lesion.
21041	Removal of jaw bone lesion.
21208	Augmentation of facial bones.
21210	Face bone graft.
21215	Lower jaw bone graft.
21248	Reconstruction of jaw.
21249	Reconstruction of jaw.
21440	Repair dental ridge fracture.
21485	Reset dislocated jaw.
21550	Biopsy of neck/chest.
21920	Biopsy soft tissue of back.
23066	Biopsy shoulder tissues.
23330	Remove shoulder foreign body.
23620	Treat humerus fracture.
23931	Drainage of arm bursa.
24065	Biopsy arm/elbow soft tissue.
24362	Reconstruct elbow joint.
25065	Biopsy forearm soft tissues.
25624	Treat wrist bone fracture.
25635	Treat wrist bone fracture.
26070	Explore/treat hand joint.
26432	Repair finger tendon.
26605	Treat metacarpal fracture.
26645	Treat thumb fracture.
27086	Remove hip foreign body.
27323	Biopsy thigh soft tissues.
27520	Treat kneecap fracture.
27604	Drain lower leg bursa.
27613	Biopsy lower leg soft tissue.
27760	Treatment of ankle fracture.
27780	Treatment of fibula fracture.
27786	Treatment of ankle fracture.
27788	Treatment of ankle fracture.
28003	Treatment of foot infection.
28030	Removal of foot nerve.
28043	Excision of foot lesion.
28092	Removal of toe lesions.
28222	Release of foot tendons.
28261	Revision of foot tendon.
28313	Repair deformity of toe.
28400	Treatment of heel fracture.
28635	Treat toe dislocation.
28665	Treat toe dislocation.
29850	Knee arthroscopy/surgery.
30124	Removal of nose lesion.
30560	Release of nasal adhesions.
30580	Repair upper jaw fistula.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST—Continued

HCPCS	Description
30801	Cauterization inner nose.
31233	Nasal/sinus endoscopy, dx.
31235	Nasal/sinus endoscopy, dx.
31237	Nasal/sinus endoscopy, surg.
31238	Nasal/sinus endoscopy, surg.
31525	Diagnostic laryngoscopy.
31570	Laryngoscopy with injection.
33011	Repeat drainage of heart sac.
38300	Drainage lymph node lesion.
38505	Needle biopsy, lymph node(s).
40510	Partial excision of lip.
40801	Drainage of mouth lesion.
40814	Excise/repair mouth lesion.
40816	Excision of mouth lesion.
40819	Excise lip or cheek fold.
40820	Treatment of mouth lesion.
41000	Drainage of mouth lesion.
41008	Drainage of mouth lesion.
41105	Biopsy of tongue.
41110	Excision of tongue lesion.
41112	Excision of tongue lesion.
41113	Excision of tongue lesion.
41800	Drainage of gum lesion.
41805	Removal foreign body, gum.
41806	Removal foreign body, jaw-bone.
41827	Excision of gum lesion.
42000	Drainage mouth roof lesion.
42104	Excision lesion, mouth roof.
42106	Excision lesion, mouth roof.
42107	Excision lesion, mouth roof.
42160	Treatment mouth roof lesion.
42300	Drainage of salivary gland.
42310	Drainage of salivary gland.
42335	Removal of salivary stone.
42340	Removal of salivary stone.
42405	Biopsy of salivary gland.
42408	Excision of salivary cyst.
42700	Drainage of tonsil abscess.
45305	Proctosigmoidoscopy; biopsy.
45308	Proctosigmoidoscopy.
45309	Proctosigmoidoscopy.
46050	Incision of anal abscess.
46220	Removal of anal tab.
46610	Anoscopy; remove lesion.
46611	Anoscopy.
51710	Change of bladder tube.
51725	Simple cystometrogram.
51726	Complex cystometrogram.
51772	Urethra pressure profile.
51785	Anal/urinary muscle study.
52000	Cystoscopy.
52010	Cystoscopy & duct catheter.
52281	Cystoscopy and treatment.
52285	Cystoscopy and treatment.
53420	Reconstruct urethra, stage 1.
54065	Destruction, penis lesion(s).
55700	Biopsy of prostate.
56405	I & D of vulva/perineum.
56605	Biopsy of vulva/perineum.
57180	Treat vaginal bleeding.
57800	Dilation of cervical canal.
60000	Drain thyroid/tongue cyst.
61070	Brain canal shunt procedure.
63600	Remove spinal cord lesion.
64420	Injection for nerve block.
65270	Repair of eye wound.
65805	Drainage of eye.
66030	Injection treatment of eye.
66762	Revision of iris.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST—Continued

HCPCS	Description
67031	Laser surgery, eye strands.
67101	Repair, detached retina.
67105	Repair, detached retina.
67141	Treatment of retina.
67208	Treatment of retinal lesion.
67921	Repair eyelid defect.
69424	Remove ventilating tube.

E. Services of Teaching Physicians

1. General Background

The focus of this proposal is Medicare payment for those services furnished under graduate medical education (GME) programs that are not payable through the mechanisms established for direct GME costs by section 1886(h) of the Act. Section 1886(h) addresses Medicare payments to hospitals and hospital-based providers for the costs of approved GME programs in medicine, osteopathy, dentistry, and podiatry. These costs include residents' salaries and fringe benefits, physician compensation costs for GME program activities that are not payable on a fee schedule basis, and other GME program costs.

Medicare intermediary expenditures under section 1886(h) of the Act for fiscal year (FY) 1996 are estimated to be approximately $1.9 billion. In addition, under section 1886(d)(5)(B) of the Act, Medicare makes additional payments to teaching hospitals under the prospective payment system (PPS) for the higher indirect operating costs hospitals incur by having GME programs. (These are costs other than direct GME costs.) Medicare indirect GME payments for FY 1996 are estimated to be approximately $4.9 billion. Medicare also supports GME programs in teaching hospitals through billings for the services of attending physicians who involve residents in the care of their patients. The amount of Medicare expenditures for these services is not known since attending physicians are not required to distinguish between services they personally furnish and those they furnish as attending physicians in claims submitted to the part B carriers.

This proposal addresses services of teaching physicians that are payable on a fee schedule basis, services of residents in settings that are not payable under section 1886(h), and services of moonlighting residents. In addition, the proposed rule addresses, but does not substantially change, existing rules on related issues on Medicare payments for the services of residents in approved

GME programs furnished in certain freestanding skilled nursing facilities (SNFs) and home health agencies (HHAs), and services of residents who are not in approved GME programs. We refer to the section 1886(h) mechanisms to distinguish between that payment methodology and other payment mechanisms.

Title XVIII of the Act provides separate coverage and payment bases for provider services and physician services. Under Medicare, provider services, such as inpatient hospital services and SNF services, are covered under Hospital Insurance (Part A) and are paid from the Part A Trust Fund. Outpatient hospital services are covered under Supplementary Medical Insurance (Part B) and are paid from the Part B Trust Fund. Provider services are paid on a prospective payment, reasonable cost, or other payment mechanism through Medicare contractors called ''fiscal intermediaries.'' Physician services and other ''medical and other health services,'' as defined in section 1861(s) of the Act are generally paid under Part B through Medicare contractors called ''carriers.'' To administer the Medicare program, we must distinguish clearly between provider services and physician services to determine the appropriate payment methodology and the appropriate Trust Fund that is liable for payment.

In part 405 (''Federal Health Insurance for the Aged and Disabled''), subpart D (''Principles of Reimbursement for Services by Hospital-Based Physicians''), regulations beginning with § 405.480 set forth the basic principles regarding payment for services of physicians who practice in providers. Additional principles applicable to payment for physician services in teaching hospitals appear in subpart E (''Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians'') in §§ 405.520 and 405.521. Principles applicable to services of interns and residents appear in §§ 405.522 through 405.525. Sections 405.465 and 405.466 address the payment methodology for teaching hospitals that elect reasonable cost payments for physician services. (See sections 1832(a)(2)(B)(i)(II) and 1861(b)(7) of the Act.) Since the publication of these regulations, the Congress has enacted a series of legislative changes that affect payments for these services, and we propose to revise the regulations to conform to these statutory changes and to clarify current policy.

Section 948 of the Omnibus Reconciliation Act of 1980 (ORA '80) (Pub. L. 96–499), enacted on December 5, 1980, as amended by section 2307 of the Deficit Reduction Act of 1984 (DEFRA '84) (Pub. L. 98–369), enacted on July 18, 1984, addressed payments for physician services in teaching settings. (See section 1842(b)(7) of the Act.) Another pertinent legislative change, section 108 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA '82) (Pub. L. 97–248), enacted on September 3, 1982, added a new section 1887 to the Act. That legislation dealt explicitly with distinguishing between the professional services physicians furnish to individual patients in a provider and services physicians furnish to the provider itself. While section 1887 of the Act does not specifically address teaching physicians or GME issues, it is consistent with Medicare policy on classifying the activities in which physicians in teaching hospitals are engaged.

We published a final rule with comment period in the **Federal Register** on March 2, 1983 (48 FR 8902), which implemented the provisions of section 1887 of the Act. That final rule revised the regulations that govern Medicare payment for services of physicians who practice in providers such as hospitals, SNFs, and comprehensive outpatient rehabilitation facilities. As a part of that final rule, we revised §§ 405.480 through 405.482, removed §§ 405.483 through 405.488, and added new §§ 405.550 through 405.557. Those regulations—

- Set forth basic criteria for distinguishing those physician services furnished in providers that are payable by Part B carriers as physician services to individual patients from those services that are payable by fiscal intermediaries as physician services to the provider itself;
- Set limits on the amounts payable on a reasonable cost basis to providers for physician services to the provider; and
- Established more specific criteria for determining the basis and amount of payment for physician services in the specialties of anesthesiology, radiology, and pathology.

In the preamble to the March 1983 final rule (48 FR 8906), we stated that because of problems related to applying portions of the revised regulations to teaching hospitals and to implement sections 1842(b)(6) and 1861(b)(7) of the Act for physician payment (as amended by section 948 of ORA '80), we planned to publish, in a separate document, proposed regulations that would establish special rules governing payment for services of physicians in teaching hospitals. These rules would have superseded §§ 405.520 and 405.521 if they became effective. Subsequently, however, the Congress passed DEFRA '84, which further amended section 1842(b)(6) of the Act and redesignated it as section 1842(b)(7).

Another statutory change that affected payments to teaching hospitals was section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) (Pub. L. 99–272), enacted on April 7, 1986, as amended by section 9314 of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (Pub. L. 99–509), enacted on October 21, 1986, which added a new section 1886(h) to the Act. Section 1886(h) of the Act revised the method of calculating Medicare payment for the direct costs of approved GME activities such as residents' salaries and fringe benefits, from reasonable cost payment to payments based on hospital-specific per-resident amounts multiplied by the number of full-time equivalent (FTE) residents working in the hospital during a hospital's cost reporting period.

A major change in the Medicare payment rules for physician services in general was enacted as part of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239), enacted on December 19, 1989, which added section 1848 to the Act. Section 1848 replaced the reasonable charge payment mechanism with a fee schedule for physician services. The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508), enacted on November 5, 1990, contained several modifications and clarifications to the OBRA '89 provisions that established the physician fee schedule.

2. Payment for Physician Services Furnished in Teaching Settings

a. Current Practices. Of the nearly 7,000 hospitals that participate in Medicare, approximately 1,200 have GME programs that are approved for residency training by the appropriate accrediting organization. (We are using the term ''residents'' in this preamble to include residents, interns, and fellows who are in formally organized and approved GME programs.)

For hospital cost reporting periods beginning on or after July 1, 1985, the costs of residents' compensation (representing payment for the residents' services), certain physician compensation costs related to GME programs, and other GME program costs are payable based on hospital-specific per-resident amounts as described in

§ 413.86, in accordance with section 1886(h) of the Act. Physician compensation costs for administrative and supervisory services unrelated to the GME program or other approved educational activities are payable as operating costs through diagnosis-related group payments under PPS for inpatient services and on a reasonable cost basis for inpatient services in hospitals excluded from PPS and for outpatient services.

In the case of those few teaching hospitals that elect reasonable cost payments for physician direct medical and surgical services under section 1861(b)(7) of the Act instead of billing for services to Medicare beneficiaries on a fee-for-service basis, the election and payment mechanisms described in current §§ 405.465 and 405.466 would be set forth in this proposed rule in new § 415.160 and in redesignated §§ 415.162 and 415.164.

Practices vary widely among and within teaching hospitals with respect to the degree of physician involvement in the care of patients. In some cases, teaching physicians personally direct residents in furnishing patient care services. In others, residents assume a greater degree of responsibility for the care patients receive, and the teaching physicians exercise only general control over the residents' activities.

b. Statutory and Other Developments Pertaining to Teaching Physician Services. (1) Original Medicare Law and Regulations. As originally enacted, title XVIII of the Act excluded the services of physicians, interns, and residents from the definition of ''inpatient hospital services,'' except for the services of interns and residents in approved training programs. The services of residents in an approved program of a hospital with which an SNF has a transfer agreement are included in the definition of ''extended care services'' and in the definition of ''home health services'' in the case of an HHA that is affiliated with or under common control of a hospital having the program. These provisions established the costs of approved GME programs for provider services payable by intermediaries on a reasonable cost basis. The Act did not include special rules for payment of physician services in teaching hospitals.

Under §§ 405.520 and 405.521 for teaching physician services, and §§ 405.522 through 405.525 for residents' services, a physician in a teaching setting is considered the attending physician for a Medicare patient, and thereby qualifies for Part B payment, only if he or she furnishes ''personal and identifiable direction'' to the interns and residents who provide the actual services to the patient. Before January 1, 1992, Part B physician services were paid under the reasonable charge payment system. As of January 1, 1992, these physician services are paid under the physician fee schedule set forth in part 414 (56 FR 59502).

Although § 405.521(b) lists examples that illustrate the types of responsibilities attending physicians typically carry out, the list is not exhaustive. In individual cases, it may be difficult to determine, by referring to § 405.521, whether a physician in a teaching setting is the ''attending physician'' for a Medicare patient. It may be necessary for the carrier to review hospital charts to see if the attending physician requirements were met; however, the involvement of the teaching physician in individual services is often unclear from a review of the charts.

It became apparent, shortly after §§ 405.520 and 405.521 were issued, that some Medicare carriers were paying charges for physician services in some teaching hospitals, even though interns and residents were primarily responsible for the care of the patients. The physicians who were billing for these services were often assuming only limited responsibility for the medical management of the patients' treatment. It also became clear that some physicians were submitting charges for services furnished to Medicare patients even though non-Medicare patients were not billed for similar services, and patients generally were not obligated to pay for these physician services.

In April 1969, these problems led to the issuance of Intermediary Letter (I.L.) 372, which sets forth specific conditions that physicians in teaching settings must meet to be considered attending physicians and, thus, qualify to charge the carrier for services in which they involve residents. It also specifies how carriers must determine the reasonable charges for these services. Although I.L. 372, which is still in effect, has provided guidance to Medicare carriers and intermediaries on payment for these services, it has not been applied uniformly by all Medicare carriers.

(2) 1972 Amendments. On October 30, 1972, the Congress amended the Act to provide rules on payment for physician services (as distinguished from the services of interns and residents) furnished in teaching hospitals. Section 227 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended section 1861(b) of the Act to require that Medicare treat these services as hospital services and pay for them on a reasonable cost basis, except under certain specific circumstances. Section 227 also made certain incentives available to hospitals that elected to be paid for physician services on a reasonable cost basis.

In subsequent legislation (section 15 of Pub. L. 93–233, enacted on December 31, 1973, and section 7 of the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292), enacted on June 13, 1978), the Congress deferred implementation of all provisions of section 227 of the 1972 amendments except for the incentives to elect reasonable cost payment for physician direct medical and surgical services. The cost reimbursement provisions were implemented through § 405.465, as published in a final rule on August 8, 1975 (40 FR 33440). The statutory provisions for which the Congress deferred implementation were eventually replaced by new provisions passed by the Congress in ORA '80. ORA '80 reaffirmed, but did not otherwise affect, the provisions of section 227 of the 1972 amendments authorizing cost reimbursement incentives.

(3) ORA '80. Section 948 of ORA '80 made several important changes in the sections of the Medicare statute that address payment for physician services in teaching hospitals. Specifically, section 948—

- Repealed the provisions of the 1972 Amendments that required Medicare to pay for these services (with certain exceptions) on a reasonable cost basis;
- Amended section 1861(b) of the Act to allow hospitals with approved teaching programs to elect to be paid on a reasonable cost basis for physician direct medical and surgical services furnished to their Medicare patients and for the supervision of interns and residents in the care of individual patients if all physicians in the hospital agree not to bill charges for their services furnished to Medicare patients; and
- Added section 1842(b)(6) of the Act (now section 1842(b)(7)) to specify the conditions that must be met to permit payment under Part B for physician services in teaching hospitals that do not elect cost reimbursement, and to provide special payment rules for determining the customary charges applicable in this situation.

In the Conference Report accompanying ORA '80 (H.R. Rep. No. 1479, 96th Cong., 2d Sess. 145 (1980)), the Conference Committee stated that its intention was to permit payment for physician services in a teaching hospital on a reasonable charge basis only if the physician is the patient's ''attending physician.'' The conferees also endorsed

the attending physician criteria in I.L. 372.

The Conference Report further states that ''[t]he conferees intend (without precluding reasonable changes in the future) that in determining the amount payable on a charge basis under Medicare Part B for services of physicians in teaching hospitals, the policies contained in I.L. 372 should be generally followed where these are not inconsistent with the provisions of the conference agreement.'' *Ibid. p. 146.*

(4) DEFRA '84. Subsequently, section 2307(a) of DEFRA '84 further amended section 1842(b)(7) of the Act concerning conditions for payment for physician services furnished in teaching hospitals that do not elect cost reimbursement. Section 2307(a) was later amended by sections 3(b) (5) and (6) of the DEFRA Technical Amendments (Pub. L. 98–617), enacted on November 8, 1984. As revised, section 1842(b)(7) of the Act (which was redesignated from section 1842(b)(6) of the Act by section 2306 of DEFRA '84) provides that—

- The customary charge of a physician qualifying as a teaching physician is set no lower than 85 percent of the prevailing charge paid for similar services in the same locality; and
- If all the teaching physicians in a teaching hospital agree to accept assignment for all the services they furnish to Medicare patients in that hospital, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality.

(5) 1989 Proposed Rule. On February 7, 1989, we published a proposed rule that would have implemented the teaching physician payment provisions of both ORA '80 and DEFRA '84 (54 FR 5946). In that document, we proposed the following changes relating to teaching physicians:

- Revise the regulations governing the conditions under which Medicare payment is made for the services of physicians in teaching settings and implement a special methodology for determining customary charges for the services of teaching physicians.
- Revise the regulations governing Medicare payment to providers for compensation paid to physicians who furnish services that are of general benefit to patients in the provider.

That proposed rule was never published in final because legislation enacted in 1989 and 1990 that mandated the implementation of the Medicare physician fee schedule had the effect of replacing the payment methodology of the proposed rule.

3. Payments for Supervising Physicians in Teaching Settings and for Residents in Certain Settings

We propose to revise the regulations because of the substantial changes that have taken place in the way Medicare payments for physician services are determined (that is, the replacement of the reasonable charge system with the physician fee schedule); the length of time since the publication of the February 1989 proposed rule; and our decision to propose to replace the attending physician criteria of that proposed rule.

We propose to change the attending physician criteria from those of I.L. 372 to make the criteria more flexible in terms of the individual teaching physician who may serve as the responsible physician for a particular service while ensuring that a physician is present during at least some portion of each service payable by the carrier. We also propose rules based on other Medicare policies that have been in effect for years but have never been explicitly addressed in the regulations.

a. Distinction Between Teaching Hospital and Teaching Setting. We propose to distinguish between ''teaching hospital'' and ''teaching setting,'' because the former is more directly related to intermediary payments, and the latter (although defined in terms of intermediary payments) is more directly related to carrier payments. We propose to define ''teaching hospital'' as a hospital engaged in an approved GME residency program in medicine, osteopathy, dentistry, or podiatry. We propose to define ''teaching setting'' as a provider or freestanding setting in which Medicare payment for the services of residents is made under the direct GME payment provisions of § 413.86 (hospitals, hospital-based providers, and settings, including nonprovider settings, meeting the requirements for residents in § 413.86(f)(1)(iii)), or on a reasonable cost basis under the provisions of § 409.26 or § 409.40(f) for residents' services furnished in freestanding SNFs or HHAs, respectively.

b. Statutory Requirements for Payment in Teaching Hospitals Not Electing Reasonable Costs for Physician Services to Individual Patients. Section 1842(b)(7) of the Act is generally premised on the use of customary charges, that is, the reasonable charge system, as the basis for Medicare payments for the services of physicians in teaching hospitals. Section 1848 of the Act, however, established the physician fee schedule as the payment methodology for physician services furnished beginning January 1, 1992 without any exception for physician services furnished in teaching settings. Therefore, we based the policies in this proposed rule on principles established in legislation on payment for physician services generally under the physician fee schedule, on payment for physician services furnished in providers, and on payment to hospitals for GME programs. With regard to payment to hospitals for GME programs, this proposal addresses activities associated with GME programs that are not payable through fiscal intermediary payment mechanisms.

c. Intermediary Letter (I.L.) 372 Attending Physician Criteria. The I.L. 372 attending physician criteria and related policy were developed by Medicare in 1969 as a means of documenting the involvement of teaching physicians in patient care services furnished in teaching hospitals and have been controversial ever since. It was recognized then and now that residents must furnish patient care services to develop their skills as physicians or other types of practitioners. The ''attending physician'' policy was developed as a mechanism to make Part B fee schedule payments for services in which residents were involved. The main requirement of the policy was that there would be a single attending physician who personally examined the beneficiary within a reasonable time after admission, confirmed the diagnosis and course of treatment, and was continuously involved in the care of the beneficiary throughout the stay. The attending physician policy as set forth in I.L. 372 and related issuances specifically stated that the attending physician had to be present when a major surgical procedure or a complex or dangerous medical procedure was performed, but was vague, perhaps necessarily, on the matter of the presence of the physician during other occasions of inpatient service. There was less ambiguity with regard to hospital outpatients. Part A I.L. No. 70–7/Part B I.L. No. 70–2 (issued in January 1970), a question-and-answer I.L. on I.L. 372, indicated that the supervising physician must either personally perform the service or function as the attending physician and be present while a service is being furnished (question 14).

Medicare carriers were directed to periodically review the hospital charts for verification of the establishment of attending physician relationships and their involvement in individual services. If the chart did not substantiate a sufficient level of involvement in the care furnished, the teaching physician role was seen as supervisory in nature,

rather than as an attending physician, even though the teaching physician may have had legal responsibility for the care furnished to the patient. Consequently, the fiscal intermediary for the hospital would pay Medicare's share of the salary costs of the teaching physician attributable to the supervision of residents, but the Medicare carrier would not make payment for the physician services on the basis of reasonable charges.

We believe, after years of working experience with the I.L. 372 attending physician policy, that we should replace it. The amount of postpayment review necessary to verify the establishment and continuity of the attending physician relationship from patient charts has become impractical given reductions in contractor budgets and is inconsistent with more recent congressional action. While the Congress endorsed the attending physician policy in the Conference Report accompanying ORA '80, the I.L. 372 policy may be viewed as not entirely consistent with the payment mechanism enacted in OBRA '86 under section 1886(h) of the Act for payment of direct GME costs in teaching hospitals. For example, I.L. 372 indicates that, if a physician is not an attending physician but supervises a resident who furnishes a service, the costs of the physician services are payable by the intermediary. Under section 1886(h) of the Act, if a service is determined not to be an attending physician service billable under Part B, the service cannot become a provider service for purposes of additional payments made under Part A since the GME payments are prospectively determined amounts that cannot be adjusted based on the individual circumstances of the delivery of individual services. Further, allocation agreements between physicians and hospitals identifying the various activities in which the physicians are involved for purposes of determining the appropriate payment amounts have no effect on GME payments in an individual hospital cost reporting period. The costs that were allocated during the GME base period are carried forward regardless of changes in the physician activities.

Moreover, the I.L. 372 policy left it to individual carriers to determine coverage of the services based on customary practices in the area or on the competence of individual residents. For example, a sentence in I.L. 372.A. reads as follows:

> If the supervising physician was present at surgery, and the surgery was performed by a resident acting under his close supervision and instruction, he would not be the attending surgeon unless it were customary in the community for such services to be performed in a similar fashion to private patients who pay for services rendered by a private physician.

While this policy might have been appropriate 30 years ago in the early days of Medicare, we now believe it is inappropriate to base the determination of whether a carrier will pay several thousand dollars or zero dollars for a surgical procedure on this standard, which could result in a wide disparity of policy from area to area regarding when payment is made.

Another problem with the I.L. 372 policy is reliance on a single physician to be the attending physician for the beneficiary throughout the inpatient stay. The only exception permitting an attending physician relationship for only a portion of a stay was if the portion was a distinct segment of the patient's course of treatment, such as the postoperative period. Another example from I.L. 372 reads as follows:

> A group of physicians share the teaching and supervision of the house staff on a rotating basis. Each physician sees patients every third day as he makes rounds. No physician can be held to be one of these patients' attending physician for any portion of the hospital care although consultations and other services they personally perform for the patient might be covered.

We now believe that this emphasis on a single teaching physician serving as the attending physician through the stay is no longer necessary, and that we should provide teaching hospitals and GME programs with flexibility in the determination of the responsible teaching physician in an individual case. We no longer believe the I.L. 372 requirement that a single physician be recognized by the beneficiary as his or her personal physician through a period of hospitalization reflects current realities. Further, the existing attending physician regulation may operate at cross-purposes with managed care arrangements that often employ treatment teams.

The I.L. 372 requirements for continuity of care may be difficult for carriers to verify from reviews of medical records, may be interpreted in different ways by different carriers, and may be counterproductive and burdensome in the delivery of services to the patient. We believe the proposed policy would address potential sources of misunderstanding and abuse that have been longstanding Medicare program concerns. For example, I.L. 372 requires the attending physician to personally examine the patient, review the history and record of test results, etc. From discussions with carrier medical directors, it is our understanding that some carriers consider the requirements to be met if the responsible physician first sees the patient 1 or 2 days after admission. In these situations, the carrier might pay for an admission history and physical performed by a resident on Saturday while the responsible physician does not actually see and examine the patient until Monday. Other carriers would maintain that, to pay for the admission history and physical as an attending physician, the teaching physician would have to see the patient on the day the service was performed.

We now believe that the most important consideration should be the presence of the teaching physician during the key portion of the service or procedure being furnished by the resident, and that requiring both an attending physician relationship *and* the presence of that same physician during every billable service is not warranted. Thus, under our proposal, carriers would no longer pay for services such as admission evaluation and management services unless a teaching physician was present during the key portion of the service.

d. Carrier Payment for Services of Teaching Physicians—General. We propose to eliminate the I.L. 372 attending physician criteria from the determination of whether payment should be made for the services of physicians in teaching settings. We recognize that the term ''attending physician'' is used in academic medicine to denote the responsible physician, and we believe that hospitals and GME programs should be free to designate any physician to be the attending physician of the patients in the teaching setting. We propose to require the following conditions for services of teaching physicians (physicians who involve residents in the care of their patients) in both inpatient and outpatient settings to be payable under the physician fee schedule:

- A teaching physician (a physician other than a resident or fellow in an approved program) must be present for a key portion of the time during the performance of the service for which payment is sought.
- In the case of surgery or a dangerous or complex procedure, the teaching physician must be present during all critical portions of the procedure and must be immediately available to furnish services during the entire service or procedure. We would specify that the teaching physician presence requirement is not met when

the presence of a teaching physician is required in two places for concurrent major surgeries. The operative notes must indicate when the teaching physician presence in individual procedures began and ended. In the case of minor procedures, such as an endoscopy in which a body area, rather than a representation, is viewed, we would not make payment if the teaching physician was not present during the viewing. A discussion of the findings with a resident would not be sufficient. The situation is contrasted with a diagnostic procedure, such as an x-ray, in which the physician would not be expected to be present during the performance of a test and could bill for an interpretation by reviewing the film with the resident (or by performing an independent interpretation).

- In the case of services such as evaluation and management services (for example, visits and consultations), for which there are several levels of service available for reporting purposes, the appropriate payment level must reflect the extent and complexity of the service if the service had been fully furnished by the teaching physician. In other words, if the medical decisionmaking in an individual service is highly complex to an inexperienced resident, but straightforward to the teaching physician, payment is made at the lower payment level reflecting the involvement of the teaching physician in the service. We intend to promote flexibility and leave the decision to the teaching physician as to whether the teaching physician should perform hands-on care, in addition to the care furnished by the resident in the presence of the teaching physician. However, in the case of both hospital inpatient and outpatient evaluation and management services, the teaching physician must be present during the key portion of the visit.
- The presence of the physician during the service or procedure must be documented in the medical records.

The proposal eliminates the I.L. 372 requirement that the attending physician personally examine the patient and leaves the decision to the teaching physician as to whether he or she should perform an examination in addition to the resident's examination based on medical and risk management considerations rather than Medicare payment rules. For example, a beneficiary may be admitted to the hospital on a Saturday and be examined by a resident in the presence of a teaching physician on duty at the time. On Monday, another teaching physician might be designated to be the attending physician in the case. Under the proposal to eliminate the I.L. 372 attending physician criteria, the services of both teaching physicians in this example would be payable (as long as distinct services are furnished).

Under our proposal, we are clarifying that services of teaching physicians that involve the supervision of residents in the care of individual patients are payable under the physician fee schedule only if the teaching physician is present during the key portion of the service. If a teaching physician is engaged in such activities as discussions of the patient's treatment with a resident but is not present during any portion of the session with the patient, we believe that the supervisory service furnished is a teaching service as distinguished from a physician service to an individual patient.

We believe that this clarification is consistent with existing policy. Part A I.L. No. 70–7/Part B I.L. No. 70–2, issued in January 1970 and still in effect, contains a series of questions and answers about the attending physician policy set forth in I.L. No. 372. Question 14 of that issuance addresses services furnished in emergency rooms and outpatient departments and states the following:

> Q. Intermediary letter No. 372 states, ''An emergency room supervising physician may not customarily be considered to be the attending physician of patients cared for by the house staff, etc.'' Is this also true in the hospital's outpatient department?
>
> A. Yes, because an attending physician relationship is not normally established with anyone other than the treating physician in an outpatient department. If the Part B bills are submitted for services performed by a physician in either the emergency room or in any part of the outpatient department, the hospital records should clearly indicate either that: The supervising physician *personally* performed the service; or he functioned as the patient's attending physician and was present at the furnishing of the service for which payment is claimed.

At the same time we are concerned about the integrity of the Medicare payment process, we recognize that application of this policy to the reimbursement of teaching physicians in family practice residency programs raises special concerns about the viability of these programs. Family practice residency programs are different from other programs because training occurs primarily in an outpatient setting, known as a family practice center. In these centers, residents are assigned a panel of patients for whom they will provide care throughout their 3 years of training. While teaching physicians supervise this care and, indeed, are present during the actual furnishing of services in some circumstances (most notably with first year residents and for more complex patient cases) a general requirement that teaching physicians be physically present during all visits to the family practice center would undermine the development of this physician/patient relationship. This requirement also would be incompatible with the way family practice centers are organized and staffed and could require the hiring of additional teaching physicians when the faculty are already in short supply.

We are willing to develop a special rule for paying teaching family physicians that takes into account the unique nature of these training programs while clarifying the appropriate level of involvement of the teaching physician in patient care in family practice centers. We invite comments on the structure and content of such a rule, or a legislative proposal, along with any supportive data. We also invite comments on whether and how such a rule might be applied to other primary care training programs.

e. Special Treatment—Psychiatric Services. During the period in which we were developing the February 1989 proposed rule, we met with representatives of psychiatric GME programs who indicated that it was inappropriate for a physician other than the treating resident to be viewed by psychiatric patients as their physician. In psychiatric programs, the teaching physician may observe a resident's treatment of patients only through one-way mirrors or video equipment. We have accepted this position and propose that, with respect to psychiatric services (including evaluation and management services) furnished under an approved psychiatric GME program, the teaching physician would be considered to be ''present'' during each visit for which payment is sought as long as the teaching physician observes the visit through visual devices and meets with the patient after the visit.

f. Physician Services Furnished to Renal Dialysis Patients in Teaching Hospitals. Effective for services furnished on or after August 1, 1983, Medicare pays for physician services to end-stage renal disease (ESRD) patients on the basis of the physician monthly capitation payment method described in § 414.314. This payment method generally applies to renal-related physician services furnished to outpatient maintenance dialysis patients, regardless of where the services are furnished (that is, in an independent ESRD facility, a hospital-based ESRD facility, or in the patient's home). Physician services furnished to ESRD patients on or after August 7,

1990 may also be paid on the basis of the initial method as described in § 414.313. We would continue application of these physician payment methods to teaching hospitals with ESRD facilities. We would not impose any special medical record documentation requirements solely because the ESRD facility is based in a teaching hospital.

Physician fee schedule payments for covered physician services furnished to inpatients in a hospital by a physician who elects not to continue to receive payment on a monthly capitation basis through the period of the inpatient stay, or who is paid based on the initial method, would be determined according to the rules described in proposed § 415.170. Physicians would have to either personally furnish the services, or furnish the services as a teaching physician as described in proposed § 415.172.

g. Special Criteria for Anesthesia Services and Interpretation of Diagnostic Tests. Special criteria for anesthesia services involving residents appear in § 414.46(c)(2)(iii). In the case of diagnostic radiology and other diagnostic tests, we make payment for the interpretation if the physician either personally performs the interpretation or reviews the resident's interpretation.

h. Services of Residents. We propose to incorporate into the regulations longstanding Medicare coverage and payment policy regarding the circumstances under which the services of residents are payable as physician services. These policies are currently in operating instructions and other issuances.

Generally, the services of residents in approved GME programs furnished in hospitals and hospital-based providers are payable through the direct GME payment methodology in § 413.86. For hospital cost reporting periods beginning on or after July 1, 1985, a teaching hospital is entitled to include residents working in the hospital and hospital-based providers in the FTE count used to compute direct GME payments. These payments are based on per-resident amounts reflecting GME costs incurred during a base period and updated by the Consumer Price Index. Further, effective July 1, 1987, under the conditions set forth in § 413.86(f)(1)(iii), a teaching hospital may elect to enter into a written agreement with another entity for the purpose of including the time spent by residents in furnishing patient care services in a setting outside the hospital in the hospital's FTE count of residents for GME purposes. The agreement must specify that the hospital compensate the resident for the services in the nonhospital setting. When an agreement is in effect, the teaching setting guidelines of proposed §§ 415.170 through 415.184 would apply to services in which physicians involve residents in the nonhospital setting. The services of residents in these settings are payable as hospital services rather than physician services. Proposed § 415.200 would replace the current § 405.522.

The current § 405.523 addresses payment for the services of residents who are not in approved programs. The section is applicable to the services of a physician employed by a hospital who is authorized to practice only in a hospital setting and to residents in an unapproved program. We propose to replace this rule with proposed § 415.202. The proposed rule incorporates the policy currently in section 404.1.B of the Provider Reimbursement Manual (HCFA Pub. 15–1) which provides that only the costs of the residents' services are allowable as Part B costs, and that other costs, such as teaching costs, of an unapproved program are not allowable.

The current § 405.524 (''Interns' and residents' services outside the hospital'') provides for reasonable cost payments for the services of residents in freestanding SNFs and HHAs. We propose to rename this section to clarify that its scope is limited to these types of providers and to include it with only minor changes into a new § 415.204.

We propose to establish a new § 415.206 to address payment issues relating to the services of residents in nonprovider settings, such as freestanding clinics that are not part of a hospital. Paragraph (a) addresses situations when a teaching hospital and another entity have entered into a written agreement under which the time the residents spend in patient care activities in these nonhospital settings is included in the hospital's FTE count used to compute direct GME payments. If an agreement is in force, the carrier would make payments for teaching physician and other physician services under the rules in §§ 415.170 through 415.190.

If a nonprovider entity, such as a freestanding family practice or multispecialty clinic, does not enter into this type of agreement for residency training with a teaching hospital, the payment mechanism in proposed § 415.206(b) would apply in the case of services furnished by certain residents. We modified the policy on Part B billings for services furnished by licensed residents in the late 1970's in an action designed to enhance the ability of primary care residency programs to finance their training activities outside the teaching hospital setting. We revised the Medicare Carriers Manual (HCFA Pub. 14–3) to cover residents' services furnished in a setting that is not part of a hospital as physician services if the resident was fully licensed to practice by the State in which the service was performed. This policy applies whether or not the residents are functioning within the scope of their approved GME program. Under these circumstances, the resident is functioning in the capacity of a physician, and the teaching physician guidelines do not apply.

Additionally, the services of residents practicing in freestanding Federally qualified health centers (FQHCs) and rural health clinics (RHCs) who meet the requirements of proposed § 415.206(b) would be eligible for payment under the FQHC payment methodology. (We would make payments for residents' services in a hospital-based entity under the provisions of § 413.86 for direct GME payments.) We propose to allow freestanding FQHCs and RHCs to include the costs of a service performed by a resident meeting those requirements as an allowable cost on the entity's cost report. We propose to amend § 405.2468(b)(1), which sets forth allowable costs for FQHC and RHC services, to recognize these costs. Further, a resident is considered to be a physician as defined in revised § 405.2401(b) for the purpose of determining payments to the FQHC or RHC. Consistent with the FQHC and RHC payment method, payments for FQHC and RHC services furnished by residents in FQHCs and RHCs would be paid under § 405.2462 rather than under the physician fee schedule. In other words, services of the resident would be treated in exactly the same manner as services of other physicians who are not residents in the FQHC or RHC. We believe that recognizing the costs of these residents in FQHC and RHC settings would create more uniformity in the way these costs are treated by the Medicare program.

We propose to establish a new § 415.208 to address carrier payments for the services of ''moonlighting'' residents. Paragraph (a) defines these services as referring to services that licensed residents perform that are outside the scope of an approved GME program. Paragraph (b) reflects the policy set forth in section 2020.8.C. of the Medicare Carriers Manual under which carriers may pay under the physician fee schedule for the services of moonlighting residents in the outpatient department or emergency

department of a hospital in which they have their training program if there is a contract between the resident and the hospital indicating that the following criteria are met:

- The services are identifiable physician services and meet the criteria in § 415.100(b) (currently § 405.550(b)).
- The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry in the State in which the services are performed.
- The services can be separately identified from those services that are required as part of the approved GME program.

Paragraph (c) indicates that the moonlighting services of a resident furnished outside the scope of an approved GME program in a hospital or other setting that does not participate in the GME program are payable as physician services under the physician fee schedule.

i. Redesignation of Regulations on Teaching Hospitals, Teaching Physicians, and Physicians Who Practice in Providers. As a part of this rulemaking process, we would redesignate the regulations currently set forth in §§ 405.465 and 405.466, 405.480 through 405.482, 405.522 through 405.524, 405.550, 405.551, 405.554, 405.556, and 405.580 into a new part 415, along with the new regulations proposed in this rule. This redesignation is part of our continuing effort to improve the overall organization of title 42 of the CFR and, in this case, specifically, the organization of the regulations on teaching hospitals, teaching physicians, and physicians who practice in providers.

Except as indicated below, we are making only technical changes to conform cross-references, and no substantive changes are included. We would remove §§ 405.520 and 405.521 because the applicable rules for payment of services are obsolete. We would also remove the chart for payment to interns and residents in § 405.525 as obsolete. In addition, we would remove § 405.552 because the applicable payment rules for anesthesia services are set forth in § 414.46.

We intend this redesignation to make these regulations easier to use. Following is a distribution table that indicates where each section of the original material would be moved or why it would no longer be needed, and the new section numbers that would result from the redesignation:

DISTRIBUTION TABLE

Old section	New section
405.465	415.162.
405.466	415.164.
405.480	415.55.
405.481	415.60.
405.482	415.70.
405.520	Removed.
405.521	Removed.
405.522	415.200.
405.523	415.202.
405.524	415.204.
405.525	Removed.
405.550	415.100.
405.551	415.105.
405.552	Removed.
405.554	415.120.
405.556	415.130.
405.580	415.190.

Following is a derivation table that shows the origin of each section of the new material:

DERIVATION TABLE

New section	Old section
415.1	
415.50	
415.55	405.480
415.60	405.481
415.70	405.482
415.100	405.550
415.105	405.551
415.120	405.554
415.130	405.556
415.150	
415.152	
415.160	
415.162	405.465
415.164	405.466
415.170	
415.172	
415.176	
415.178	
415.180	
415.184	
415.190	405.580
415.200	405.522
415.202	405.523
415.204	405.524
415.206	
415.208	

F. Unspecified Physical and Occupational Therapy Services (HCPCS Codes M0005 Through M0008 and H5300)

We propose to eliminate HCPCS codes M0005 through M0008 and H5300 and redistribute the RVUs to the codes in the physical medicine section of the CPT (CPT codes 97010 through 97799). This proposal represents a single way of reporting and paying for a service for which there are now two ways to report and would be a payment policy change. We propose no change to what services may be covered, only to how covered services would be billed and paid.

We propose this change because HCPCS codes M0005 through M0008 and H5300 fail to accurately describe the services furnished. Therefore, we are unable to establish resource-based work RVUs for them as the statute requires. Moreover, because the codes do not accurately describe the services being furnished, they preclude effective review to determine that the services being paid are covered by Medicare.

We believe that the CPT codes and the remaining HCPCS codes provide a sufficient means for physicians, physical therapists in independent practice (PTIPs), and occupational therapists in independent practice (OTIPs) to bill and be paid for the covered services they furnish. In 1995, the AMA revised the codes in the Physical Medicine and Rehabilitation section of the CPT to better reflect the provision of physical and occupational therapy services. The American Physical Therapy Association and the American Occupational Therapy Association are members of the Health Care Professional Advisory Committee (HCPAC) of the AMA's Relative Value Update Committee (RUC) and participated in the creation of new codes for 1995 and in the RUC's recommendations to us for the assignment of work RVUs for these codes.

As a result of these coding changes, we established interim resource-based work RVUs for the services described by the new CPT codes. We will consider public comments received on the interim RVUs and establish final RVUs for these new codes for 1996. The CPT and RUC processes of the AMA provide for the opportunity to include all codes necessary to bill physical and occupational therapy services listed in the CPT, should further changes to the CPT be necessary.

In addition to the new CPT codes for physical medicine services, HCPCS codes Q0103, Q0104, Q0109, and Q0110 describe the evaluation and management work of PTIPs and OTIPs when they establish a plan of care and periodically review that plan. While physicians may bill the CPT evaluation and management codes, PTIPs and OTIPs may not bill these codes because, unlike physicians, the evaluation and management services PTIPs and OTIPs furnish do not include consideration of chemotherapeutic or surgical alternatives to physical or occupational therapy. We understand that the HCPAC will be considering creation of codes to describe the evaluation and management services furnished by

PTIPs and OTIPs for 1997, at which time we expect to eliminate the Q codes that currently serve this purpose.

We believe that each unit of service currently billed under the codes we propose to delete will be billed under a CPT or HCPCS code and that the total amount of Medicare payment for physical medicine services will not change significantly as a result of the elimination of these codes. This proposal reflects a policy change that is not explicitly addressed in our regulations.

G. Transportation in Connection With Furnishing Diagnostic Tests

We have received a number of inquiries about the conditions under which carriers should pay for the transportation of diagnostic equipment used to furnish procedures payable under the physician fee schedule. Medicare carriers have been told for years that, in the absence of specific instructions from us, it was within their discretion to determine when payment for the transportation of diagnostic equipment should be made. We are proposing to enunciate a national policy now. Under our proposal, Medicare carriers would apply the general physician fee schedule policy on additional payments for travel expenses to transportation services except as indicated below.

Section 1861(s)(3) of the Act establishes the coverage of diagnostic x-rays furnished in a place of residence used as the patient's home if the performance of the tests meets health and safety conditions established by the Secretary. This provision is the basis for payment of x-ray services furnished by approved portable suppliers to beneficiaries in their homes and in nursing facilities.

Although the Congress did not explicitly so state, we determined that, because there were increased costs in transporting the x-ray equipment to the beneficiary, the Congress intended that we pay an additional amount for the transportation expenses. Therefore, we established HCPCS codes R0070 and R0075 (for single-patient and multiple-patient trips, respectively) to pay approved portable x-ray suppliers a transportation ''component'' when they furnish the services listed in section 2070.4.C of the Medicare Carriers Manual.

We later added the taking of an EKG tracing to the list of services approved suppliers of portable x-ray services may furnish (section 2070.4.F. of the Medicare Carriers Manual) and established HCPCS code R0076 to pay for the transportation of EKG equipment. Many Medicare carriers have limited the use of HCPCS code R0076 to approved portable x-ray suppliers, but some Medicare carriers permit other types of entities, such as independent physiological laboratories (IPLs), to use the code.

Further, section 2070.1.G of the Medicare Carriers Manual provides for the coverage of an EKG tracing by an independent laboratory—

- In a home if the beneficiary is a ''homebound patient''; or
- In an institution used as a place of residence if the patient is confined to the facility and the facility does not have on-duty personnel qualified to perform the service.
- The Act does not make specific provision for furnishing diagnostic procedures payable under the physician fee schedule, other than portable x-rays, to beneficiaries in their residences. We have received inquiries from our regional offices regarding payment for the transportation of diagnostic equipment that have generally involved the equipment used to furnish ultrasound and cardiography procedures. We have also received complaints from suppliers of these types of services about variations in individual Medicare carrier policies on transportation payments. We have little information about the amounts of payments; however, in the case of portable x-ray services (which would not be affected by this proposal), the transportation payment is often several times higher than the payment for the procedure furnished.

As discussed in the preamble to our November 1991 final rule (56 FR 59605), the physician fee schedule policy includes travel in the PE of a medical practice; therefore, travel is compensated through the PE component of the RVUs for a service. The preamble of the November 1991 final rule further states that CPT code 99081 may be used to bill for unusual travel in unusual cases and that carriers would handle these billings on a ''by report'' basis. Section 15026 of the Medicare Carriers Manual adds the stipulation that CPT code 99082 is payable only when the travel is ''very unusual.''

The scope of this proposal is limited to transportation expenses associated with diagnostic tests that are payable under the physician fee schedule. It would apply both to payments made in connection with the transportation of diagnostic equipment to the beneficiary and to the transportation of equipment to a site, such as a physician's office, for use in furnishing tests to beneficiaries. We are not proposing to place this policy in regulations, but we would change the applicable sections of the Medicare Carriers Manual.

Under our proposal, Medicare carriers would continue to pay for the transportation of x-ray and EKG equipment in some cases. The following exceptions to the general rule on payment for travel are based on our interpretation of statutory requirements in the case of x-rays and specific longstanding policy in the case of EKGs.

- Medicare carriers would continue to make transportation payments under HCPCS codes R0070 and R0075 in connection with portable x-ray procedures if approved suppliers furnish the services described in section 2070.4.C. of the Medicare Carriers Manual:
  + Skeletal films involving arms and legs, pelvis, vertebral column, and skull.
  + Chest films that do not involve the use of contrast media (except routine screening procedures and tests in connection with routine physical examinations).
  + Abdominal films that do not involve the use of contrast media.
- Medicare carriers would make transportation payments under HCPCS code R0076 in connection with standard EKG procedures if the approved portable x-ray supplier furnishes the service described by CPT code 93005 (or CPT 93000, if the interpretation is billed with the tracing).
- Medicare carriers would make transportation payments under HCPCS R0076 in connection with standard EKG procedures (CPT code 93005) furnished by an IPL when—
  + The IPL meets applicable State and local licensure laws;
  + The EKG is ordered by a referring physician; and
  + The carrier determines the service to be reasonable and necessary. (See section 2070.5. of the Medicare Carriers Manual.)
- We would delete the reference to EKGs in the existing section 2070.1.G. of the Medicare Carriers Manual and place the policy in a revised section 2070.5 of the Medicare Carriers Manual. However, we would remove the requirement that the beneficiary be confined to his or her home or to an institution for the EKG tracing to be covered since this requirement does not apply to EKG tracings taken by portable x-ray suppliers.
- For all other types of diagnostic tests payable under the physician fee schedule, Medicare carriers would pay for the transportation of equipment only on a ''by report'' basis under CPT code 99082 if a physician submits documentation to justify the ''very unusual'' travel as set forth in section

15026 of the Medicare Carriers Manual. An example of such a circumstance could be when a beneficiary in a nursing facility is in immediate need of a diagnostic test and there is a problem, such as extreme obesity, with transporting the individual to a facility.

H. Maxillofacial Prosthetic Services

At present, payment amounts for the maxillofacial prosthetic services (CPT codes 21079 through 21087 and HCPCS codes G0020 and G0021) are determined by individual Medicare carriers. We propose to eliminate the carrier-priced status and establish RVUs for these codes effective for services performed on or after January 1, 1996. We propose to determine fee schedule payment amounts based on the RVUs shown in the table below.

PROPOSED RELATIVE VALUE UNITS FOR MAXILLOFACIAL PROSTHESIS SERVICES

CPT code	Description	Proposed work RVUs	Proposed PE RVUs	Proposed ME RVUs
21079	Impression and custom preparation; interim obturator prosthesis	20.88	27.93	2.25
21080	Impression and custom preparation; definitive obturator prosthesis	23.46	31.38	2.52
21081	Impression and custom preparation; mandibular resection prosthesis	21.38	28.59	2.30
21082	Impression and custom preparation; palatal augmentation prosthesis	19.50	26.08	2.10
21083	Impression and custom preparation; palatal lift prosthesis	18.04	24.13	1.94
21084	Impression and custom preparation; speech aid prosthesis	21.04	28.14	2.28
21085	Impression and custom preparation; oral surgical splint	8.41	11.25	0.90
21086	Impression and custom preparation; auricular prosthesis	23.29	31.15	2.51
21087	Impression and custom preparation; nasal prosthesis	23.29	31.15	2.51
G0020	Impression and custom preparation; surgical obturator prosthesis	12.54	16.77	1.35
G0021	Impression and custom preparation; orbital prosthesis	31.54	42.18	3.39

The work RVUs that we propose were developed by the American Academy of Maxillofacial Prosthetics. We believe they appropriately represent the work involved in these procedures. Because the CPT codes were new in 1991 and the Level 2 HCPCS codes are new in 1995, we have little or no charge data on which to base PE and ME RVUs in accordance with section 1848(c)(2)(C) of the Act. Therefore, we have imputed the PE and ME RVUs from the work RVUs based on the practice cost shares provided by the American Association of Oral and Maxillofacial Surgeons. Those shares are 54.7 percent for PE and 4.4 percent for ME.

We would establish a 90-day global period for these services with the exception of CPT code 21085 and HCPCS code G0020, which we believe require only a 10-day global period. (Under a global period, a single fee is billed and paid for all necessary services normally furnished by the surgeon before, during, and after the procedure within the time period assigned to the service.)

CPT codes 21079 through 21087 and HCPCS codes G0020 and G0021 should be used only if the physician actually designs and prepares the prosthesis. If the physician has designed and prepared the prosthesis and bills a CPT code in the range of 21079 through 21087 and HCPCS codes G0020 and G0021, we will not pay the physician separately for the prosthesis. We consider the cost of the materials used in preparing the prosthesis to be included in the PE portion of the codes.

HCPCS codes L8610 through L8618 identify prostheses that are prepared by an outside laboratory. Payment for HCPCS codes L8610 through L8618 is not made under the physician fee schedule. Payment is made on an individual consideration basis.

CPT codes 21079 through 21087 and HCPCS codes G0020 and G0021 are on the list of codes subject to the site-of-service payment differential since they are predominantly office-based services.

While we welcome any written public comments, we have found from past experience that the most useful comments have followed a particular pattern. They include the CPT code, a clinical description of the service, and a discussion of the work of that service.

Physician work has two components: time and intensity. The clinical analogy for many services can be strengthened by dividing the service into the following three time segments:

- Preservice work—Work performed before the actual procedure such as review of records, solicitation of informed consent, and preparation of equipment. Time spent by the physician dressing, scrubbing, and waiting for the patient should be identified. Preservice work also includes the time spent scrubbing, positioning, or otherwise preparing the patient. For surgical procedures with global periods, commenters should include estimates of the number, time, and type of visits from the day before surgery until the time the patient enters the operating room. The visit when the physician decides to operate and the visits preceding it should not be included in the estimate of preservice work since these services are not included in the Medicare definition of global period.
- Intraservice work—The actual performance of the procedure. For evaluation and management services, this would be described as ''face-to-face'' time in the office setting and ''unit/floor'' time in the inpatient setting. For surgical procedures, the customary term would be ''skin-to-skin'' time or its equivalent for those procedures not beginning with incisions.
- Postservice work—Analysis of data collected from the encounter, preparation of a report, and communication of the results. For procedures with global periods, commenters should identify the time spent by the physician with the patient after the procedure on the same day and whether the patient typically goes home, to an ordinary hospital bed, or goes to the intensive care unit. Commenters should describe the number, time, and type of physician visits from the day after the procedure until the end of the global period.

They should also distinguish inpatient from outpatient visits.

We encourage commenters, in making these estimations, to provide detailed clinical information such as data derived from operating logs, operative reports, and medical charts concerning the length of service, the amount of work performed before and after the service, and the length of stay in the hospital. The usefulness of these data is greatly increased if the data are presented with comparable data for reference services and evidence that justifies that the data presented are nationally representative of the average work involved in furnishing the service. We often receive data that are not helpful to us because the data are not representative of national practices. In

addition, some commenters have presented a lengthy and elaborate description of the work in the service, but omitted, or provided an incomplete description of, the comparability of the work in the service to the work in a reference procedure or procedures identified.

Intensity of the work in the service is best compared by breaking the intensity into the following elements:

- Mental effort and judgment—Commenters should compare the service in question with a reference service as to the amount of clinical data that needs to be considered, the depth of knowledge required, the range of possible decisions, the number of factors considered in making a decision, and the degree of complexity of the interaction of these factors.
- Technical skill and physical effort—One useful measure of skill is the point in training when a resident is expected to be able to perform the procedure. Physical effort can be compared by dividing services into tasks and making the direct comparison of tasks. In making the comparison, it is necessary to show that the differences in physician effort are not reflected accurately by differences in the time involved; if they are, considerations of physician effort amount to double counting of physician work in the service.
- Psychological stress—Two kinds of psychological stress are usually associated with physician work. The first is the pressure involved when the outcome is heavily dependent upon skill and judgment and a mistake has serious consequences. The second is related to unpleasant conditions connected with the work that are not affected by skill or judgment. These circumstances would include situations with high rates of mortality or morbidity regardless of the physician's skill or judgment, difficult patients or families, or physician physical discomfort. Of the two forms of stress, only the former is fully accepted as an aspect of work; many consider the latter to be a highly variable function of physician personality.

Intensity often varies significantly in the course of furnishing a service. Sometimes commenters ''anchor'' the value of the service to a point of maximum intensity during the service as the basis for comparing services. It is unlikely that the maximum intensity is an accurate reflection of the average intensity of a service; a lengthy procedure that is simple except for a few moments of extreme intensity is probably less work than one of equal length during which a fairly high level of intensity is maintained throughout.

This proposal reflects a policy change that is not explicitly addressed in our regulations.

I. Coverage of Mammography Services

In the December 31, 1990 interim final rule (55 FR 53510) and the September 30, 1994 final rule (59 FR 49808), we based our present definitions of ''diagnostic'' and ''screening'' mammography and related provisions on advice from the Food and Drug Administration (FDA), the National Cancer Institute (NCI), our own medical consultants, and other components of HHS.

These definitions are important because of the impact they can have on how frequently mammograms are covered under the Medicare program. The Medicare law and current regulations limit the frequency of coverage for ''screening'' mammography services according to the patient's age and for women over age 39 but under age 50 based on whether she is considered at high risk of developing breast cancer. On the other hand, coverage of ''diagnostic'' mammography is not restricted by specific statutory frequency limitations but depends on whether the examination has been (1) ordered by the patient's physician, and (2) is determined by the local Medicare contractor to be medically necessary for the patient.

In response to inquiries from beneficiaries, practicing physicians, and others in the medical community, we have reexamined our definitions of ''diagnostic'' and ''screening'' mammography in § 410.34 (Mammography services: Conditions for and limitations on coverage''). In addition, we have consulted further with FDA, NCI, and a Medicare Carrier Medical Director workgroup regarding the appropriateness of the definitions. We have also reexamined the current definitions in view of our previous Medicare policy on diagnostic mammograms as described in section 50–21 of the Coverage Issues Manual (HCFA Pub. 6) that permits coverage for diagnostic mammograms for patients with a personal history of breast cancer and certain other patients, even though they are not symptomatic (that is, they do not have any signs or symptoms of a medical problem with their breasts).

Based on our reexamination of this issue, we propose to revise the definitions of ''diagnostic'' and ''screening'' mammography in § 410.34 to make them consistent with previous Medicare coverage policy regarding ''diagnostic'' mammography, and with the way these terms are used in general clinical practice in the United States.

Some clinicians and mammography experts consider patients with a personal history of breast disease, such as breast cancer and chronic fibrocystic disease, to be candidates for diagnostic mammography for a period following treatment of the disease and then candidates for screening mammography thereafter. However, most clinicians and mammography experts in the United States consider patients with a personal history of breast disease to be candidates for diagnostic mammography for the rest of their lives, following the onset of their disease and its treatment.

In view of the above information, we propose to expand the definition of ''diagnostic'' mammography to include patients with a personal history of breast disease; however, we propose to leave the definition of ''screening'' mammography unchanged so that patients with a personal history of breast cancer can be considered candidates for the ''screening'' examination, if the patients and their physicians decide that this is appropriate.

We propose that the present definition of ''diagnostic'' mammography in paragraph (a)(1) of § 410.34 be expanded to include also, as a candidate for this service, a patient who does not have signs or symptoms of breast disease but who has a personal history of biopsy-proven breast disease.

The present regulations include as candidates for ''screening'' mammography all asymptomatic women regardless of whether they have had a personal history of biopsy-proven breast disease. We propose to leave unchanged the substance of the present definition of ''screening'' mammography in paragraph (a)(2) of § 410.34 but clarify it to read as follows: ''Screening mammography means a radiological procedure furnished to a woman without signs or symptoms of breast disease, for the purpose of early detection of breast cancer, and includes a physician's interpretation of the results of the procedure.'' This might include an asymptomatic woman (that is, a woman without signs or symptoms of breast disease) with a history of biopsy-proven breast disease who might otherwise qualify for a diagnostic mammography as defined in the current § 410.34(a)(1). The woman and her physician would determine which examination to request (that is, either a diagnostic or a screening mammography). Although a history of biopsy-proven breast disease would ordinarily require recurrent diagnostic examinations, in some cases, when the

breast disease is no longer present, screening mammography might be appropriate.

We also propose that certain minor and technical changes be made in the limitations on coverage of screening mammography services to make them consistent with the proposed revisions to the definitions in ''diagnostic'' and ''screening'' mammography in § 410.34(a)(1) and (a)(2), respectively, and to simplify the language in § 410.34(d)(1) regarding the postmastectomy patient.

J. Use of Category-Specific Volume and Intensity (VI) Growth Allowances in Calculating the Default Medicare Volume Performance Standard (MVPS)

Currently, the default formula uses an estimate of the average annual percentage growth in the VI of physician services that is the same for all categories of physician services. Although historically the data available to us allowed an accurate estimate of the overall growth in the VI of physician services, they did not allow us to estimate the VI growth for each individual category of service with the degree of accuracy required for the MVPS calculation. More recent data now allow us to do this. We propose to calculate the MVPS for FY 1996 and all future years based on estimates of the average VI growth specific to each category. This would be consistent with our use of category-specific estimates of the MVPS factors for the weighted-average increase in physician fees and the percentage change in expenditures resulting from changes in law or regulations. The effect this proposal would have on a future MVPS for a category depends on the difference between the VI growth for that category and for physician services overall. To illustrate, the following table compares the estimated FY 1996 VI allowance for each category based on the overall average and the category-specific average:

	Overall average VI (percent)	Category-specific VI (percent)
Surgical Services	4.4	2.3
Primary Care Services	4.4	5.3
Nonsurgical Services	4.4	5.1
All Physician Services	4.4	4.4

As can be seen from the table, the FY 1996 MVPS VI allowance for primary care is higher using the category-specific VI factor than using the single VI factor. This is because the average VI growth for primary care services has been higher than the average VI growth for all physician services. Although for FY 1996 this change in methodology would result in a higher primary care MVPS, this does not necessarily mean it would have a similar result in future years. The impact on any individual category is dependent on the future relationship between the average VI growth for that category and for physician services overall. If future growth in the VI of primary care services is lower than overall physician growth, this change would result in a lower MVPS for primary care services. Similar reasoning applies to the surgical and other nonsurgical categories. This proposal reflects a policy change that is not explicitly addressed in our regulations.

Although we are proposing this regulatory change now to address immediate problems in the fee schedule, it is our intention to move toward the development of a legislative proposal to implement a single MVPS and CF for all Medicare physician fee schedule services. Because of past differential updates, the surgical CF is currently 8 percent and 14 percent higher than the CFs for primary care and other nonsurgical services, respectively. We are concerned that this situation clearly undermines the original intent of the Medicare physician fee schedule.

III. Issue for Change in Calendar Year (CY) 1998—Two Anesthesia Providers Involved in One Procedure

The certified registered nurse anesthetist (CRNA) fee schedule regulations provide that if an anesthesiologist and a CRNA are both involved in a single procedure, we deem the service to be personally performed by the anesthesiologist and allow payment only for the physician service.

Approximately equal percentages of CRNAs are employed by physicians and hospitals. When the physician employs the CRNA, payment for both the CRNA's and the physician's service go into the same practice revenue pool that is used to pay both providers. Our policy described above does not create any problems for this type of arrangement, since the practice views itself as being paid for the service. However, if the hospital employs the CRNA and the physician is involved with this CRNA in a single procedure, then only the physician is paid. The hospital is not paid under the Medicare program for the CRNA service.

Although we have not received many complaints from hospitals about this policy, the CRNAs have stated that our policy causes hospitals to lower CRNA salaries. While the CRNAs have not been able to produce information on the extent of this practice, they believe that this type of arrangement is not unusual.

The CRNAs also have expressed concern that the CRNA is the person furnishing the service to the patient. The anesthesiologist is present in the room usually because the hospital has an operating policy that the CRNA service always be supervised or directed.

Currently our medical direction rules apply only to concurrent procedures (that is, two, three or four) directed by a physician. We have not applied these rules to a single procedure. The application of the medical direction payment policy to a single procedure would have resulted in increased program payment, approximately 30 percent greater than the current policy. Thus, part of our concern for not extending the medical direction payment policy to a single procedure has been the additional cost to the Medicare program.

Section 13516 of OBRA '93 established a new payment methodology for both the physician's medical direction service and the medically directed CRNA service. For 1994, the allowance for each of these services is equal to 60 percent of the allowance that would be recognized for the procedure personally performed by the physician alone. These percentages are reduced each year so that in 1998, the allowance for each service is equal to 50 percent of the allowance that would be recognized for the procedure personally performed by the physician alone. The objective is that in 1998, the allowance for anesthesia care in a given area will be the same whether the care is furnished by the physician alone, a nonmedically directed CRNA, or the anesthesia care team.

As a result of the revised payment methodology for the anesthesia care team, we propose to apply the medical direction payment policy to the single procedure involving both the physician and the CRNA. Thus, in § 414.46 we propose to revise paragraphs (c) and (d) to state that in this situation the allowance for the medical direction 50 service of the physician and the medically directed service of the CRNA or the anesthesiologist assistant is based on the specified percentage of the allowance in § 416.40(d)(2). In addition, we propose that in 1998 and later years, this allowance is equal to 50 percent of the allowance for personally performed procedures.

We propose to implement this policy on January 1, 1998. At that time, the change in policy will be done in a budget-neutral manner. If we were to

implement this policy earlier, the policy would cause program payments to increase relative to the current policy.

IV. Issues for Discussion

A. Resource-Based Practice Expense (PE) Relative Value Units (RVUs)

With the exception of anesthesia services, physician services and other diagnostic services paid under the physician fee schedule have PE and ME RVUs. Payments for PE RVUs account for approximately 42 percent of physician fee schedule payments.

The PE RVUs are derived from historical allowed charge data. The common criticism is that the PE RVUs are not truly resource-based because they are not based on resource costs.

Section 121 of the Social Security Act Amendments of 1994 (Pub. L. 103–432), enacted on October 31, 1994, requires the Secretary to develop a methodology for a resource-based system for determining PE RVUs for each physician service. In developing the methodology, the Secretary must consider the staff, equipment, and supplies used in the provision of medical and surgical services in various settings. The Secretary must report to the Congress on the methodology by June 30, 1996. The new payment methodology is effective for services furnished in 1998. There is no transition provision for these services.

To implement this statutory provision, we published a Request for Proposal (RFP) in the Commerce Daily in November 1994. Offerors were required to respond by January 17, 1995.

The objective of the RFP is to develop a uniform database that can be used to support a number of analytical methods (for example, microcosting or economic cost functions) to estimate PE per service. The contractor will provide us with both direct and indirect PE estimates for all services paid under the physician fee schedule. Further, we expect that these estimates will vary based on the site where the service is furnished. For example, the PE for a physician service furnished in the hospital outpatient department will differ from the PE for the same service furnished in the physician's office. The physician does not ordinarily incur the costs of clinical labor, medical supplies, or equipment associated with services in the hospital outpatient department.

The contractor will be responsible for identifying candidates for a technical expert group (TEG) who will assist with the development of data collection instruments to obtain PEs (both direct and indirect) and resource profiles. Resource profiles will be used to measure the quantities of inputs, such as clinical labor, equipment, and supplies used in producing specific services. The group of experts can be researchers and others who have published articles in this area or are members of the medical community, including clinical personnel, nonclinical personnel, and practice managers.

The TEG can have as many as 20 participants. We will make the final selection of participants in the TEG. The TEG will assume an active role in the process. It will be responsible for monitoring the entire project up to the point of delivery of data for analysis.

The contractor, with our assistance, will select clinical practice expert panels (CPEPs). The contractor will address the following issues in selecting the CPEPs:

- The choice and grouping of participating specialties.
- The mix of physicians, other clinicians, and practice managers.
- The number of panels.
- The grouping of codes and specialties in panels.
- The overlap of panels.
- Techniques for resolving disagreements across panels.

The actual number of panels and the size of the panels will be determined by the contractor and us. We expect that there will be fewer than 15 panels and the size of a panel will vary but will not exceed 12 persons.

The primary tasks of the CPEPs will be twofold. The first task will be to classify services and procedures into clinical and practice cost coherent groups. The common groups will be based on the direct cost of the procedure. The second task will be to select a reference procedure for each common grouping of codes. The CPEPs will complete a detailed resource profile for each reference procedure for the different practice sites. These profiles will consider only items that are direct-costed.

After the resource profiles are completed, the contractor will assign input prices to the resource inputs. This will produce a direct cost estimate for each reference procedure. In addition, the contractor will extrapolate the direct cost estimates for the reference procedure to other codes included in the same group, based on the relationship that the CPEP has established between the reference code and the other codes in the same group.

In addition to the procedure-specific profiles, the following kinds of data will be collected:

- Cost information from physician practices categorized by direct and indirect costs.
- Profiles of services from physician practices by place of service.
- Input price (including wage) information.

The first two kinds of information will be collected primarily by mail or by telephone survey from approximately 3,000 respondents. The contractor will gather the input price information from standard representative national data sources. Also, the contractor will be responsible for designing, organizing, and assembling the results into a documented database for access and use by multiple researchers.

The contractor will be responsible for generating PE estimates (both direct and indirect) for all CPT codes including radiology and anesthesia codes as well as the technical component and diagnostic testing codes that are paid under the physician fee schedule.

There are a number of methods by which the contractor could derive indirect cost estimates per code. Approaches include economic cost functions or accounting-based methods, whereby indirect costs are allocated based on factors, such as direct expense, physician work, or time. Regardless of which option is proposed, direct and indirect PE cost estimates will be presented for each code.

We awarded the contract to Abt Associates on March 31, 1995. The principal investigator is Monica Noether, Ph.D. In addition to Abt, the project team consists of the following:

- Consulting services furnished by Mark Pauly, Ph.D., and Gerald Wedig, Ph.D., economists at the University of Pennsylvania; and William Katz, D.B.A., a health care management consultant.
- The subcontractors are EnterMedica Resources, a management consulting firm that has conducted microcosting studies of physician practices in a variety of settings; and the Center for Research in Ambulatory Health Care Administration, the research arm of the Medical Group Management Association.
- The clinical consultants are Drs. Sankey Williams and Jose Escarce, practicing primary care physicians and health service researchers at the University of Pennsylvania.

The RFP includes the schedule for the completion of certain key activities. For example, the data collection and delivery must be completed by March 1996, and the report on analysis must be finished by September 1996. We expect to publish the proposed rule in the **Federal Register** in March 1997 and the final rule in November 1997. We will

implement the resource-based PE RVUs beginning January 1, 1998.

This discussion of our efforts to implement the requirement in the statute to develop a resource-based relative value scale for PEs is not a formal proposal. We are notifying the physician community and others about our progress to date and are providing other helpful information about the effort.

B. Primary Care Case Management and Other Managed Care Approaches

We are considering approaches to increasing managed care options under Medicare. One approach could be to apply primary care case management methods currently used by private payers and Medicaid programs to the Medicare fee-for-service system. There are many interpretations of primary care case management. The CPT defines case management as ''a process in which a physician is responsible for direct care of a patient, and for coordinating and controlling access to or initiating and/or supervising other health care services needed by the patient.'' The State of Maryland operates a primary care case management system known as Maryland Access to Care (MAC). Under the MAC program, Medicaid recipients are linked to a primary medical provider (PMP). Each PMP acts as a ''gatekeeper'' to the health care system, furnishing primary care and preventive services and making referrals to specialty care when necessary. Permutations of the gatekeeper approach are being used in many managed care arrangements. Under the physician fee schedule, we could construct fee arrangements with primary care physicians that would promote greater use of case management. We also are considering whether to undertake demonstrations of primary care case management that involve beneficiary enrollment or election and different approaches for a primary care option. We welcome comments on a possible framework for a Medicare primary care case management option either under current regulations or through a demonstration project.

We are already exploring case management options through several Medicare demonstration and developmental efforts that are underway. One demonstration is a voluntary program of Medicare case management for targeted high-cost illnesses such as congestive heart failure and cancer. The case management services consist of regular telephone calls to provide education and monitor treatment, assistance in arranging support services, caregiver support, and occasional in-person visits. These services are furnished by teams of nurses and social workers who coordinate their efforts with the beneficiary's physician. This demonstration tests whether the case management service will reduce the cost and aggravation incurred when patients with specific conditions are unnecessarily rehospitalized or must revisit a physician.

Other projects involve a new method for paying physicians that provides incentives for effective management of care to beneficiaries. Physician groups will be paid either on a capitated basis or incentive through payment for specified bundles of services associated with the treatment of chronic conditions and acute episodes of care.

The intent of these new payment arrangements is to transfer financial risk to the physician groups, thereby finding efficient ways to provide care and increasing incentives to the physician groups to contain costs. Five payment models will be evaluated that range from a model of full capitation that transfers the financial risk to the physician group furnishing all Medicare-covered services to models that reduce the amount of risk transferred to the group and limit the requirement for an enrolled population.

These approaches represent a sample of available options. We are not prepared to make a specific proposal now. Rather, our intent at this time is to solicit information, recommendations, and suggestions from the public on how we might apply primary care case management to the Medicare fee-for-service system. We are particularly interested in the following:

- Which physicians, providers, or other health care professionals should be designated as case managers?
- Which types of patients would benefit from case management?
- What evidence is there that case management is valuable to patients other than those with chronic illness or acute episodes?
- Should Medicare pay for case management services and how should they be paid?

V. Collection of Information Requirements

Sections 415.60(f)(1) (concerning determination and payment of allowable physician compensation costs), 415.60(g) (concerning recordkeeping requirements for allocation of physician compensation costs), and 415.70(e) (concerning limits on compensation for services of physicians in providers) of this document contain information collection requirements. The information collection requirements in § 415.60(f)(1) concern the amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not paid under either Part A or Part B of Medicare; and assurance that the compensation is reasonable in terms of the time devoted to these services. The information collection requirements in § 415.60(g) concern time records used to allocate physician compensation, information on which the physician compensation allocation is based, and retention of this information for a 4-year period after the end of each cost reporting period to which the allocation applies. The information collection requirements in § 415.70(e) concern an exception to the limits on compensation for services of physicians in providers if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within these limits. Respondents who will provide the information include providers, intermediaries, and physicians.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Regulatory Impact Analysis

A. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are considered to be small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, we are preparing a regulatory flexibility analysis because the provisions of this rule are expected

to have varying effects on the distribution of Medicare physician payments and services. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by one or more provisions of this rule. In addition, physicians who are paid by private insurers for non-Medicare services would be affected to the extent that they are paid by private insurers that choose to use the proposed RVUs. However, with few exceptions, we expect that the impact would be limited.

If these proposals result in increases in Medicare payment amounts, beneficiary liability would also increase because the coinsurance amounts would increase. In addition, if nonparticipating physicians do not accept assignment, the amount that they may bill above the fee schedule amount would also increase because the limiting charge for the service would increase. If a proposal results in a decrease in Medicare payment amounts or the bundling of payment for one service into payment for another, beneficiary liability would decrease.

Section 1848(c)(2)(B) of the Act requires that adjustments in a year may not cause the amount of expenditures for the year to differ by more than $20 million from the amount of expenditures that would have been made if these adjustments had not been made. If this threshold is exceeded, we usually make adjustments to the RVUs in order to preserve budget neutrality. The proposals discussed in sections B through K below would have no impact on total Medicare expenditures because the effects of these changes would be neutralized in the establishment of RVUs for 1996.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

B. Budget-Neutrality Adjustments for Relative Value Units

Under this proposal, budget neutrality adjustments would be applied to the fee schedule CFs instead of procedure RVUs. This alternative approach would be administratively simpler for Medicare and other payers that base their payments on the Medicare RVUs, including many Medicaid programs and would facilitate policy and data analyses of RVUs. Any changes to procedure payment amounts or total payment would be due to rounding and would be minimal.

We do not expect any objection to this proposal because we are responding to requests by the AMA, private payers, and Medicaid programs that base payment on Medicare RVUs.

C. Bundled Services

1. Hydration Therapy and Chemotherapy

Presently, we allow separate payment for hydration therapy IV infusion (CPT codes 90780 and 90781) when it is performed on the same day as chemotherapy IV infusion (CPT codes 96410, 96412, and 96414). The Medicare charge data show that in 1994, CPT codes 90780 and 90781 (hydration therapy IV infusion) were billed in addition to chemotherapy IV infusion only 9.3 percent and 4 percent of the time, respectively, and accounted for $8.5 million in Medicare expenditures.

We believe that paying for hydration therapy IV infusion and chemotherapy IV infusion administered on the same day represents duplicate payment. Therefore we propose not paying separately for CPT codes 90780 and 90781 when billed on the same day as CPT codes 96410, 96412, and 96414. We propose implementing this proposal in a budget neutral manner by redistributing the payment for hydration therapy IV infusion performed on the same day as chemotherapy IV infusion across all RVUs.

2. Evaluation of Psychiatric Records and Reports and Family Counseling Services

We propose to bundle payment for CPT codes 90825 and 90887 into the payment for other psychiatric codes. Thus, separate payment would no longer be made for either CPT code 90825 or CPT code 90887. The annual expenditures for CPT code 90825 under our current policy are approximately $2.3 million. The current policy allowing separate payment for CPT code 90887 results in annual expenditures of approximately $2.5 million. We would implement this change in policy by redistributing the payment for CPT codes 90825 and 90887 equally into the following psychiatric procedure codes: 90801, 90820, 90835, 90842 through 90847, and 90853 through 90857. We estimate that this change would increase the RVUs for the latter codes by approximately 0.7 percent.

3. Fitting of Spectacles

We propose to cease making separate payment under the physician fee schedule for fitting of spectacles and low vision systems, CPT codes 92352 through 92358 and 92371, beginning January 1, 1996. We would redistribute the payment currently made for these codes across all physician services, which is what would have occurred had we not included these fees when the fee schedule was created. Payment for these services is already included in the payment for the prosthetic device.

Because the total payment for spectacle fitting services is relatively low (approximately $3 million in CY 1993) compared to the total payment for all physician services, we believe the impact on RVUs for all physician services would be negligible.

Virtually all of the providers who have been billing for the fitting as a professional service have been optometrists. Under this proposal, they would no longer be able to bill separately for this service. The effect on individual optometrists would depend upon the amount of their income derived from billing for fitting services.

D. X-Rays and Electrocardiograms (EKGs) Taken in the Emergency Room

Under current policy, issued in 1981, the interpretation of an x-ray or EKG furnished to an emergency room patient by a radiologist or cardiologist, respectively, ''almost always'' constitutes a covered Part B service payable by the carrier, regardless of whether the test results have been previously used in the diagnosis and treatment of the patient by a physician in the emergency room and regardless of when the specialist furnishes the interpretation. A study completed by the OIG of DHHS, dated July 1993, recommended that we change this policy to indicate that the second interpretation is generally a quality control service to be taken into account by intermediaries in determining hospital reasonable costs. Further, we understand that some carriers are currently paying both the emergency room physician and the radiologist or cardiologist for the interpretation of the same x-ray or EKG.

We propose to pay for only one interpretation of an x-ray or EKG furnished to an ER patient except under unusual circumstances. In situations in which both the ER physician and the radiologist or cardiologist bill for the interpretation, the carriers would be instructed to pay for the interpretation used in the diagnosis and treatment of the patient. The second interpretation would be considered a quality control service. Under this proposal, the incidence of carriers' paying twice for an interpretation would be reduced, but we have no estimate of the number of duplicate payments that would be eliminated. We believe the specialists would be affected primarily. If hospitals want to ensure that their specialists are paid for these interpretations, they could make arrangements to preclude

the ER physician from billing for the same service.

E. Extension of Site-of-Service Payment Differential to Services in Ambulatory Surgical Centers (ASCs)

We propose to extend the site-of-service payment differential to office-based services if those services are furnished in an ASC, effective for services furnished beginning January 1, 1996. We propose adding 152 codes to the list. Were it not for budget-neutrality adjustments, we estimate that these additions would result in a $25.7 million reduction in Medicare payments.

F. Services of Teaching Physicians

This proposed change would remove the single attending physician criteria for hospital patients and allow and promote supervision of the care by physician group practices. We believe allowing for more than one teaching physician per beneficiary inpatient stay would result in negligible additional cost, but the lack of any data prevents us from quantifying the effects of this change. In addition, this proposed rule would incorporate long-standing Medicare coverage and payment policy regarding the circumstances under which the services of residents are payable as physician services.

We propose to require the physical presence of a teaching physician during the key portion of the service. Details regarding the physical presence of a teaching physician during different types of services and procedures are discussed in section II. F. of this preamble. Although we lack specific data, we believe that the provisions of this part of the proposed rule would have little budgetary effect.

G. Unspecified Physical and Occupational Therapy Services (HCPCS Codes M0005 through M0008 and H5300)

We propose to eliminate HCPCS codes M0005 through M0008 and H5300 and redistribute the RVUs to codes in the physical medicine and rehabilitation section of the CPT (codes 97010 through 97039). The codes we propose to delete are general codes that do not describe adequately the service being provided. Their use precludes effective review necessary to ensure that the services being paid are covered by Medicare. In 1995, the AMA revised the CPT codes in the Physical Medicine and Rehabilitation section of the CPT to better reflect the provision of physical and occupational therapy services.

We believe that each unit of service currently billed under the codes we propose to delete would be billed under a CPT or HCPCS code and that the total amount of Medicare payment for physical medicine services would not change significantly as a result of the elimination of these codes. Therefore, we are assuming that there would not be any additional costs or savings as a result of this proposed change in billing. Since the original codes were not descriptive, we would have no way of comparing payments. However, we believe we would eliminate any manipulation of payment and improve the data we collect by requiring these practitioners to use the more specific codes when billing for services.

H. Transportation in Connection With Furnishing Diagnostic Tests

Except for portable x-ray and EKG equipment, this proposed rule would no longer authorize payments for the transportation of diagnostic equipment to the patient or to a site, such as a physician office, for use in furnishing tests to Medicare beneficiaries. The transportation expense is ''bundled'' into the payment for the procedure. Individual carrier policies on making transportation payments vary. This proposed rule would establish a national Medicare policy on payments for the transportation of diagnostic test equipment. The little data we have indicate that the transportation payment is often several times higher than the payment we make for the specific procedure furnished.

I. Maxillofacial Prosthetic Services

We propose to establish national RVUs for these services and to discontinue pricing by individual carriers. We estimate that total estimated expenditures for CPT codes 21079 through 21087 and codes G0020 and G0021 based on the proposed RVUs will be approximately $2.4 million in CY 1996. The 1994 Medicare expenditures for the codes under the carrier pricing methodology were approximately $1.5 million which, if updated for 1995 would be approximately $1.6 million. Thus, we estimate an increase of approximately $800,000 for these codes. However, total expenditures for physician services would not increase as a result of this proposal because we would implement this change in a budget neutral manner in accordance with section 1848(c)(2)(B)(II) of the Act.

These services are furnished most frequently by oral surgeons (dentists only) and by maxillofacial surgeons. Because the total expenditures for these services are estimated to increase slightly, we expect that in general the physicians who perform and bill for these procedures will realize an increase in payment. However, in some areas, the payment amounts based on national RVUs may be lower than those calculated by the local carrier.

J. Coverage of Mammography Services

We propose to expand the definition of ''diagnostic'' mammography to include as candidates for this service asymptomatic men or women who have had a personal history of biopsy-proven breast disease. At present, the definition includes as candidates for mammography services only persons showing signs or symptoms of breast disease. We do not believe this change will result in a significant increase in the total number of mammography services because information from carriers indicates that most asymptomatic patients with a personal history of breast disease are already receiving diagnostic mammography services.

K. Use of Category-Specific Volume and Intensity (VI) Growth Allowances in Calculating the Default Medicare Volume Performance Standard (MVPS)

The use of category-specific VI in the MVPS default formula would be budget neutral overall, although it would have redistributional effects on the surgical, primary care, and nonsurgical categories.

L. Two Anesthesia Providers Involved in One Procedure

We propose to apply the medical direction payment policy to the single procedure involving both the physician and the CRNA. We do not propose to implement this policy until January 1, 1998 at which time the proposal will be budget neutral. In 1998, the allowance for the medically-directed CRNA service and the medical-direction service of the anesthesiologist will be equivalent to 50 percent of the allowance recognized for the service personally performed by the anesthesiologist alone. Thus, payment for both services will be no different than what would be allowed for the anesthesia service personally performed by the anesthesiologist.

Although this proposal is budget neutral, total payments to anesthesiologists will decrease slightly and payments to the CRNAs' employers will increase slightly. We cannot quantify the amount of the losses to the anesthesiologists or the gains to the CRNAs' employers. However, anesthesiologists can lessen their losses by actually personally performing as many of these cases as possible and receiving the same allowance they

would have in the absence of this proposal.

M. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would have little direct effect on payments to rural hospitals since this rule would change only payments made to physicians and certain other practitioners under Part B of the Medicare program and would make no change in payments to hospitals under Part A. We do not believe the changes would have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

A. Part 400 is amended as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. In § 400.202, the introductory text is republished and the definition of GME is added in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

As used in connection with the Medicare program, unless the context indicates otherwise—

* * * * *

GME stands for graduate medical education.

* * * * *

B. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—[Removed and Reserved]

1. Subpart D, consisting of §§ 405.465 through 405.482, is removed and reserved.

2. Subpart E is amended as set forth below:

a. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(a) (b), and (c), 1842(b), (h), and (i), 1848, 1861(b), (s), (v), (aa), and (jj), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(a), (b), and (c), 1395u(b), (h), and (i), 1395w–4, 1395x(b), (s), (v), (aa), and (jj), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

b. The heading for subpart E is revised to read as follows:

Subpart E—Criteria for Determining Reasonable Charges

c. Subpart E is amended by removing §§ 405.520 through 405.525.

Subpart F—[Removed and Reserved]

3. Subpart F, consisting of §§ 405.550 through 405.580, is removed and reserved.

4. Subpart X is amended as set forth below:

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

a. The authority citation for subpart X continues to read as follows:

Authority: Secs. 1102, 1833, 1861(aa), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l, 1395x(aa), and 1395hh).

b. In § 405.2401, paragraph (b), the introductory text is republished, and the definition for *physician* is revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) *Definitions.* As used in this subpart, unless the context indicates otherwise:

* * * * *

Physician means the following:

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed.

(2) Within limitations as to the specific services furnished, a doctor of dentistry or dental or oral surgery, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor. (See section 1861(r) of the Act for specific limitations.)

(3) A resident (including residents as defined in § 415.152 of this chapter who meet the requirements in § 415.206(b) of this chapter for payment under the physician fee schedule).

* * * * *

C. Part 410 is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise indicated.

2. Section 410.34 is amended by republishing the introductory text to paragraph (a) and revising paragraphs (a)(1), (a)(2), and (d) to read as follows:

§ 410.34 Mammography services: Conditions for and limitations on coverage.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Diagnostic mammography* means a radiologic procedure furnished to a man or woman with signs or symptoms of breast disease, or a personal history of biopsy-proven breast disease, and includes a physician's interpretation of the results of the procedure.

(2) *Screening mammography* means a radiologic procedure furnished to a woman without signs or symptoms of breast disease, for the purpose of early detection of breast cancer, and includes a physician's interpretation of the results of the procedure.

* * * * *

(d) *Limitations on coverage of screening mammography services.* The following limitations apply to coverage of screening mammography services as described in paragraph (a)(2) of this section:

(1) The service must be, at a minimum a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of each breast.

(2) Payment may not be made for screening mammography performed on a woman under age 35.

(3) Payment may be made for only 1 screening mammography performed on a woman over age 34, but under age 40.

(4) For a woman over age 39, but under age 50, the following limitations apply:

(i) Payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed if the woman has—

(A) A personal history of breast cancer;

(B) A personal history of biopsy-proven benign breast disease;

(C) A mother, sister, or daughter who has had breast cancer; or

(D) Not given birth before age 30.

(ii) If the woman does not meet the conditions described in paragraph (d)(4)(i) of this section, payment may be made for a screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed.

(5) For a woman over age 49, but under age 65, payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed.

(6) For a woman over age 64, payment may be made for a screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed.

D. Part 414 is amended as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 414.28, the introductory text is republished, and paragraph (b) is revised to read as follows:

§ 414.28 Conversion factors.

HCFA establishes CFs in accordance with section 1848(d) of the Act.

* * * * *

(b) *Subsequent CFs.* Beginning January 1, 1993, the CF for each year is equal to the CF for the previous year, adjusted in accordance with § 414.30. Beginning January 1, 1996, the CF for each CY may be further adjusted so that adjustments to the fee schedule in accordance with section 1848(c)(2)(B)(ii) of the Act do not cause total expenditures under the fee schedule to differ by more than $20 million from the amount that would have been spent if these adjustments had not been made.

§ 414.32 [Amended]

3. In § 414.32, paragraph (d)(2) is removed, and paragraph (d)(3) is redesignated as paragraph (d)(2).

§ 414.46 [Amended]

4. In § 414.46, the following changes are made:

a. The word ''procedure'' in paragraphs (c)(2) introductory text, (c)(2)(i), (d)(1) introductory text, and (g) is removed, and the word ''service'' is added in its place. The word ''procedures'' in paragraphs (a)(1), (c)(1), (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(iv), (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), (d)(2)(v), the heading of paragraph (e), and paragraphs (e) and (g) is removed, and the word ''services'' is added in its place.

b. Paragraphs (c)(2)(ii) and (c)(2)(iii) are redesignated as paragraphs (c)(2)(iii) and (c)(2)(ii), respectively.

c. Newly redesignated paragraph (c)(2)(ii) and paragraph (c)(3) are revised, a new paragraph (c)(4) is added, and the introductory text to paragraph (d) and paragraph (d)(2) are revised to read as follows:

§ 414.46 Additional rules for payment of anesthesia services.

* * * * *

(c) *Physician personally performs the anesthesia service.*

* * * * *

(2) * * *

(ii) For services furnished before January 1, 1998, the physician is continuously involved in a single case involving a certified registered nurse anesthetist (CRNA), anesthesiologist assistant (AA), or student nurse anesthetist.

* * * * *

(3) For services furnished before January 1, 1998, no payment is made under the CRNA fee schedule for the services of a CRNA or AA involved in a service described in paragraph (c)(2) of this section unless HCFA determines that it was medically necessary for both the physician and the CRNA or AA to be involved in the same case.

(4) For services furnished on or after January 1, 1998, if a physician is continuously involved in a single service involving a CRNA or AA, the payment allowance for the service of the CRNA or the AA is determined on the basis of the payment methodology in paragraph (d)(2) of this section.

(d) *Physician medically directs concurrent anesthesia services.* HCFA uses one of the following payment methodologies to determine the fee schedule amount for concurrent medically directed anesthesia services furnished by a physician during a specified CY.

* * * * *

(2) *Beginning CY 1994.* Payment is based on a specified percentage of the payment allowance recognized for the anesthesia service personally performed by a physician alone. For services furnished on or after January 1, 1998, if a physician is continuously involved in a single service involving a CRNA, AA, or a student nurse anesthetist, the payment rules for medical direction in this paragraph apply. The following percentages apply for the years specified:

* * * * *

5. In § 414.60, paragraph (b) is revised, and paragraph (c) is added to read as follows:

§ 414.60 Payment for the services of certified registered nurse anesthetists.

* * * * *

(b) *Beginning CY 1994.* The allowance for an anesthesia service furnished by a

medically directed CRNA beginning CY 1994 is based on a fixed percentage, as specified in § 414.46(d)(2), of the allowance recognized for the anesthesia service personally performed by the physician alone. The CF for an anesthesia service furnished by a nonmedically directed CRNA beginning CY 1994 cannot exceed the CF for a service personally performed by an anesthesiologist.

(c) *Individuals or entities that can receive payment.* The allowance for an anesthesia service furnished by a CRNA or an AA can be made to the CRNA furnishing the service, or to a hospital, rural primary care hospital, physician, group practice, or ambulatory surgical center with which the CRNA furnishing the service has an employment or contractual relationship that provides for payment to be made for the service to the entity. Payment for the service of a CRNA may be made only on an assignment-related basis, and any assignment agreed to by a CRNA is binding on any other person presenting a claim or request for payment for the service.

§§ 414.450–414.453 [Removed]

6. Subpart H, consisting of §§ 414.450 through 414.453, is removed.

E. A new part 415 is added to read as follows:

PART 415—SERVICES OF PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

Subpart A—General Provisions

Sec.
415.1 Basis and scope.

Subpart B—Fiscal Intermediary Payments to Providers for Physician Services

Sec.
415.50 Scope.
415.55 General payment rules.
415.60 Allocation of physician compensation costs.
415.70 Limits on compensation for physician services in providers.

Subpart C—Part B Carrier Payments for Physician Services to Beneficiaries in Providers

Sec.
415.100 Conditions for fee schedule payment for physician services to beneficiaries in providers: General provisions.
415.105 Payment for physician services to beneficiaries in providers.
415.120 Conditions for payment: Radiology services.
415.130 Conditions for payment: Physician pathology services.

Subpart D—Physician Services in Teaching Settings

Sec.
415.150 Scope.
415.152 Definitions.
415.160 Election of reasonable cost payment for direct medical and surgical services of physicians in teaching hospitals: General provisions.
415.162 Determining payment for physician services furnished to beneficiaries in teaching hospitals.
415.164 Payment to a fund.
415.170 Conditions for payment on a fee schedule basis for physician services in a teaching setting.
415.172 Physician fee schedule payment for services of teaching physicians.
415.176 Renal dialysis services.
415.178 Anesthesia services.
415.180 Teaching setting requirements for the interpretation of diagnostic radiology and other diagnostic tests.
415.184 Psychiatric services.
415.190 Conditions of payment: Assistants at surgery in teaching hospitals.

Subpart E—Services of Residents

Sec.
415.200 Services of residents in approved GME programs.
415.202 Services of residents not in approved GME programs.
415.204 Services of residents in SNFs and HHAs.
415.206 Services of residents in nonprovider settings.
415.208 Services of moonlighting residents.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

§ 415.1 Basis and scope.

(a) *Basis.* This part is based on the provisions of the following sections of the Act: Section 1848 establishes a fee schedule for payment for physician services. Section 1861(q) specifies what is included in the term ''physician services'' covered under Medicare. Section 1862(a)(14) sets forth the exclusion of nonphysician services furnished to hospital patients under Part B of Medicare. Section 1886(d)(5)(B) provides for a payment adjustment under the prospective payment system for the operating costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983, to account for the indirect costs of medical education. Section 1886(h) establishes the methodology for Medicare payment of the cost of direct GME activities.

(b) *Scope.* This part sets forth rules for fiscal intermediary payments to providers for physician services, Part B carrier payments for physician services to beneficiaries in providers, physician services in teaching settings, and services of residents.

Subpart B—Fiscal Intermediary Payments to Providers for Physician Services

§ 415.50 Scope.

This subpart sets forth rules for payment by fiscal intermediaries to providers for services furnished by physicians. Payment for covered services is made either under the prospective payment system (PPS) to PPS-participating providers in accordance with part 412 of this chapter or under the reasonable cost method to non-PPS participating providers in accordance with part 413 of this chapter.

§ 415.55 General payment rules.

(a) *Allowable costs.* Except as specified otherwise in §§ 413.102 of this chapter (concerning compensation of owners), 415.60 (concerning allocation of physician compensation costs), and 415.162 (concerning payment for physician services furnished to beneficiaries in teaching hospitals), costs a provider incurs for services of physicians are allowable only if the following conditions are met:

(1) The services do not meet the conditions in § 415.100(b) regarding fee schedule payment for services of physicians to a beneficiary in a provider.

(2) The services include a surgeon's supervision of services of a qualified anesthetist, but do not include physician availability services, except for reasonable availability services furnished for emergency rooms and the services of standby surgical team physicians.

(3) The provider has incurred a cost for salary or other compensation it furnished the physician for the services.

(4) The costs incurred by the provider for the services meet the requirements in § 413.9 of this chapter regarding costs related to patient care.

(5) The costs do not include supervision of interns and residents unless the provider elects reasonable cost payment as specified in § 415.160, or any other costs incurred in connection with an approved GME program that are payable under § 413.86 of this chapter.

(b) *Allocation of allowable costs.* The provider must follow the rules in § 415.60 regarding allocation of physician compensation costs to determine its costs of services.

(c) *Limits on allowable costs.* The intermediary must apply the limits on compensation set forth in § 415.70 to determine its payments to a provider for the costs of services.

§ 415.60 Allocation of physician compensation costs.

(a) *Definition.* For purposes of this subpart, *physician compensation costs* means monetary payments, fringe benefits, deferred compensation, and any other items of value (excluding office space or billing and collection services) that a provider or other organization furnishes a physician in return for the physician services. Other organizations are entities related to the provider within the meaning of § 413.17 of this chapter or entities that furnish services for the provider under arrangements within the meaning of the Act.

(b) *General rule.* Except as provided in paragraph (d) of this section, each provider that incurs physician compensation costs must allocate those costs, in proportion to the percentage of total time that is spent in furnishing each category of services, among—

(1) Physician services to the provider (as described in § 415.50);

(2) Physician services to beneficiaries (as described in § 415.100); and

(3) Activities of the physician, such as funded research, that are not paid under either Part A or Part B of Medicare.

(c) *Allowable physician compensation costs.* Only costs allocated to paid physician services to the provider (as described in § 415.50) are allowable costs to the provider under this subpart.

(d) *Allocation of all compensation to services to the provider.* The total physician compensation received by a physician is allocated among all services furnished by the physician to the provider, unless—

(1) The provider certifies that the compensation is attributable solely to the physician services furnished to the provider; and

(2) The physician bills all patients for the physician services he or she furnishes to those patients and personally receives the payment from the billings. If returned directly or indirectly to the provider or an organization related to the provider within the meaning of § 413.17 of this chapter, these payments are not compensation for physician services furnished to the provider.

(e) *Assumed allocation of all compensation to beneficiary services.* If the provider and physician agree to accept the assumed allocation of all the physician services to direct services to beneficiaries as described under § 415.100(b), HCFA does not require a written allocation agreement between the physician and the provider.

(f) *Determination and payment of allowable physician compensation costs.* (1) Except as provided under paragraph (e) of this section, the intermediary pays the provider for these costs only if—

(i) The provider submits to the intermediary a written allocation agreement between the provider and the physician that specifies the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to beneficiaries, and services that are not paid under either Part A or Part B of Medicare; and

(ii) The compensation is reasonable in terms of the time devoted to these services.

(2) In the absence of a written allocation agreement, the intermediary assumes, for purposes of determining reasonable costs of the provider, that 100 percent of the physician compensation cost is allocated to services to beneficiaries as specified in paragraph (b)(2) of this section.

(g) *Recordkeeping requirements.* Except for services furnished in accordance with the assumed allocation under paragraph (e) of this section, each provider that claims payment for services of physicians under this subpart must meet all of the following requirements:

(1) Maintain the time records or other information it used to allocate physician compensation in a form that permits the information to be validated by the intermediary or the carrier.

(2) Report the information on which the physician compensation allocation is based to the intermediary or the carrier on an annual basis and promptly notify the intermediary or carrier of any revisions to the compensation allocation.

(3) Retain each physician compensation allocation, and the information on which it is based, for at least 4 years after the end of each cost reporting period to which the allocation applies.

§ 415.70 Limits on compensation for physician services in providers.

(a) *Principle and scope.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, HCFA establishes reasonable compensation equivalency (RCE) limits on the amount of compensation paid to physicians by providers. These limits are applied to a provider's costs incurred in compensating physicians for services to the provider, as described in § 415.50(a).

(2) Limits established under this section do not apply to costs of physician compensation attributable to furnishing inpatient hospital services that are paid for under the prospective payment system implemented under part 412 of this chapter or to costs of physician compensation attributable to approved GME programs that are payable under § 413.86 of this chapter.

(3) Compensation that a physician receives for activities that may not be paid for under either Part A or Part B of Medicare is not considered in applying these limits.

(b) *Methodology for establishing limits.* HCFA establishes a methodology for determining annual RCE limits and considers average physician incomes by specialty and type of location to the extent possible using the best available data.

(c) *Application of limits.* If the level of compensation exceeds the limits established under paragraph (b) of this section, Medicare payment is based on the level established by the limits.

(d) *Adjustment of the limits.* The intermediary may adjust limits established under paragraph (b) of this section to account for costs incurred by the physician or the provider related to malpractice insurance, professional memberships, and continuing medical education.

(1) For the costs of membership in professional societies and continuing medical education, the intermediary may adjust the limit by the lesser of—

(i) The actual cost incurred by the provider or the physician for these activities; or

(ii) Five percent of the appropriate limit.

(2) For the cost of malpractice expenses incurred by either the provider or the physician, the intermediary may adjust the RCE limit by the cost of the malpractice insurance expense related to the physician service furnished to beneficiaries in providers.

(e) *Exception to limits.* An intermediary may grant a provider an exception to the limits established under paragraph (b) of this section only if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within these limits.

(f) *Notification of changes in methodologies and payment limits.* (1) Before the start of a cost reporting period to which limits established under this section will be applied, HCFA publishes a notice in the **Federal Register** that sets forth the amount of the limits and explains how it calculated the limits.

(2) If HCFA proposes to revise the methodology for establishing payment limits under this section, HCFA publishes a notice, with opportunity for public comment, in the **Federal Register**. The notice explains the

proposed basis and methodology for setting limits, specifies the limits that would result, and states the date of implementation of the limits.

(3) If HCFA updates limits by applying the most recent economic index data without revising the limit methodology, HCFA publishes the revised limits in a notice in the **Federal Register** without prior publication of a proposal or public comment period.

Subpart C—Part B Carrier Payments for Physician Services to Beneficiaries in Providers

§ 415.100 Conditions for fee schedule payment for physician services to beneficiaries in providers: General provisions.

(a) *Scope.* This section implements section 1887(a)(1) of the Act by providing general conditions that must be met in order for services furnished by physicians to beneficiaries in providers to be paid for on the basis of the physician fee schedule under part 414 of this chapter. Section 415.105 sets forth general requirements for determining the amounts of payment for services that meet the conditions of this section. Sections 415.120 through 415.130 set forth additional conditions for payment for physician services in the specialties of radiology and pathology (laboratory services).

(b) *Conditions for payment for physician services to beneficiaries in providers.* The carrier pays for services of physicians furnished to beneficiaries in providers on a fee schedule basis if the following requirements are met:

(1) The services are personally furnished for an individual beneficiary by a physician.

(2) The services contribute directly to the diagnosis or treatment of an individual beneficiary.

(3) The services ordinarily require performance by a physician.

(4) In the case of radiology or laboratory services, the additional requirements in § 415.120 or § 415.130, respectively, are met.

(c) *Services of physicians to providers.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (b) of this section, but are related to beneficiary care by the provider, the intermediary pays for those services, if otherwise covered, under the rules for payment of physician services to providers in §§ 415.50 and 415.60 on the basis of reasonable cost or PPS, as appropriate.

(d) *Effect of billing charges for physician services to a provider.* (1) For services furnished by a physician that may be paid under the reasonable cost rules in § 415.50 or § 415.60, or would be paid under those rules except for the PPS rules in part 412 of this chapter, and under the payment rules for GME established by § 413.86 of this chapter, neither the provider nor the physician may seek payment from the carrier, beneficiary, or another insurer.

(2) The carrier does not pay on a fee schedule basis for services furnished by a physician to an individual beneficiary that do not meet the applicable conditions in §§ 415.120 (concerning conditions for payment for radiology services) and 415.130 (concerning conditions for payment for physician pathology services).

(3) If the physician, the provider, or another entity bills the carrier or the beneficiary or another insurer for physician services furnished to the provider, as described in § 415.50(a), HCFA considers the provider to whom the services are furnished to have violated its provider participation agreement, and may terminate that agreement. See part 489 of this chapter for rules governing provider agreements.

(e) *Effect of physician assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, and the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services, the following rules apply:

(1) If the conditions set forth in paragraph (b) of this section are met, the carrier pays for the physician services under the physician fee schedule in part 414 of this chapter.

(2) To the extent the provider incurs a cost payable on a reasonable cost basis under part 413 of this chapter, the intermediary pays the provider on a reasonable cost basis for the costs associated with producing these services, including overhead, supplies, equipment costs, and services furnished by nonphysician personnel.

(3) The physician (or other entity) is treated as being related to the provider within the meaning of § 413.17 of this chapter (concerning cost to related organizations).

(4) The physician (or other entity) must make its books and records available to the provider and the intermediary as necessary to verify the nature and extent of the costs of the services furnished by the physician (or other entity).

§ 415.105 Payment for physician services to beneficiaries in providers.

(a) *General rule.* The carrier determines amounts of payment for physician services to beneficiaries in providers in accordance with the general rules governing the physician fee schedule payment in part 414 of this chapter, except as provided in paragraph (b) of this section.

(b) *Application in certain settings*—(1) *Teaching hospitals.* In determining whether fee schedule payment should be made for physician services to individual beneficiaries in a teaching hospital, the carrier applies the rules in subpart D of this part (concerning physician services in teaching settings), in addition to those in this section.

(2) *Hospital-based ESRD facilities.* The carrier applies §§ 414.310 through 414.314 of this chapter, which set forth determination of reasonable charges under the ESRD program, to determine the amount of payment for physician services furnished to individual beneficiaries in a hospital-based ESRD facility approved under part 405 subpart U.

§ 415.120 Conditions for payment: Radiology services.

(a) *Services to beneficiaries.* The carrier pays for radiology services furnished by a physician to a beneficiary on a fee schedule basis only if the services meet the conditions for fee schedule payment in § 415.100(b) and are identifiable, direct, and discrete diagnostic or therapeutic services furnished to an individual beneficiary, such as interpretation of x-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures. The carrier pays for interpretations only if there is a written report prepared for inclusion in the patient's medical record maintained by the hospital.

(b) *Services to providers.* The carrier does not pay on a fee schedule basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the x-ray films or other items that are interpreted by the radiologist. However, the intermediary pays the provider for these services in accordance with § 415.50 for provider costs; § 415.100(e)(2) for costs incurred by a physician, such as under a lease or concession agreement; or part 412 of this chapter for payment under PPS.

§ 415.130 Conditions for payment: Physician pathology services.

(a) *Physician pathology services.* The carrier pays for pathology services furnished by a physician to an individual beneficiary on a fee schedule basis only if the services meet the conditions for payment in § 415.100(b) and are one of the following services:

(1) Surgical pathology services.

(2) Specific cytopathology, hematology, and blood banking services that have been identified to require performance by a physician and are listed in program operating instructions.

(3) Clinical consultation services that meet the requirements in paragraph (b) of this section.

(4) Clinical laboratory interpretative services that meet the requirements of paragraphs (b)(1), (b)(3), and (b)(4) of this section and that are specifically listed in program operating instructions.

(b) *Clinical consultation services.* For purposes of this section, clinical consultation services must meet the following requirements:

(1) Be requested by the beneficiary's attending physician.

(2) Relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the beneficiary.

(3) Result in a written narrative report included in the beneficiary's medical record.

(4) Require the exercise of medical judgment by the consultant physician.

(c) *Physician pathology services furnished by an independent laboratory.* Laboratory services, including the technical component of a service, furnished to a hospital inpatient or outpatient by an independent laboratory are paid on a fee schedule basis under this subpart only if they are physician pathology services as described in paragraph (a) of this section.

Subpart D—Physician Services in Teaching Settings

§ 415.150 Scope.

This subpart sets forth the rules governing payment for the services of physicians in teaching settings and the criteria for determining whether the payments are made as one of the following:

(a) Services to the hospital under the reasonable cost election in §§ 415.160 through 415.164.

(b) Provider services through the direct GME payment mechanism in § 413.86 of this chapter.

(c) Physician services to beneficiaries under the physician fee schedule as set forth in part 414 of this chapter.

§ 415.152 Definitions.

As used in this subpart—

Approved graduate medical education (GME) program means a residency program approved by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatric Medicine Education of the American Podiatric Medical Association.

Direct medical and surgical services means services to individual beneficiaries that are either personally furnished by a physician or furnished by a resident under the supervision of a physician in a teaching hospital making the cost election described in §§ 415.160 through 415.162.

Nonprovider setting means a setting other than a hospital, SNF, HHA, or CORF in which residents furnish services. These include, but are not limited to, family practice or multispecialty clinics and physician offices.

Resident means one of the following:

(1) An individual who participates in an approved GME program, including programs in osteopathy, dentistry, and podiatry.

(2) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, for example, individuals with temporary or restricted licenses, or unlicensed graduates of foreign medical schools. For purposes of this subpart, the term *resident* is synonymous with the terms *intern* and *fellow*.

Teaching hospital means a hospital engaged in an approved GME residency program in medicine, osteopathy, dentistry, or podiatry.

Teaching physician means a physician (other than another resident) who involves residents in the care of his or her patients.

Teaching setting means any provider, hospital-based provider, or nonprovider settings in which Medicare payment for the services of residents is made under the direct GME payment provisions of § 413.86, or on a reasonable-cost basis under the provisions of § 409.26 or § 409.40(f) for resident services furnished in SNFs or HHAs, respectively.

§ 415.160 Election of reasonable cost payment for direct medical and surgical services of physicians in teaching hospitals: General provisions.

(a) *Scope.* A teaching hospital may elect to receive payment on a reasonable cost basis for the direct medical and surgical services of its physicians in lieu of fee schedule payments that might otherwise be made for these services.

(b) *Conditions.* A teaching hospital may elect to receive these payments only if—

(1) The hospital notifies its intermediary in writing of the election and meets the conditions of either paragraph (b)(2) or paragraph (b)(3) of this section;

(2) All physicians who furnish services to Medicare beneficiaries in the hospital agree not to bill charges for these services; or

(3) All physicians who furnish services to Medicare beneficiaries in the hospital are employees of the hospital and, as a condition of employment, are precluded from billing for these services.

(c) *Effect of election.* If a teaching hospital elects to receive reasonable cost payment for physician direct medical and surgical services furnished to beneficiaries—

(1) Those services and the supervision of interns and residents in the care of individual beneficiaries are covered as hospital services, and

(2) The intermediary pays the hospital for those services on a reasonable cost basis under the rules in § 415.162. (Payment for other physician compensation costs related to approved GME programs is made as described in § 413.86 of this chapter.)

(d) *Election declined.* If the teaching hospital does not make this election, payment is made—

(1) For physician services furnished to beneficiaries on a fee schedule basis as described in part 414 subject to the rules in this subpart, and

(2) For the supervision of interns and residents as described in § 413.86.

§ 415.162 Determining payment for physician services furnished to beneficiaries in teaching hospitals.

(a) *General.* Payments for direct medical and surgical services of physicians furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries is made by Medicare on the basis of reasonable cost if the hospital exercises the election as provided for in § 415.160. If this election is made, the following occurs:

(1) Physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries are paid on a reasonable-cost basis, as provided for in paragraph (b) of this section.

(2) Payment for certain medical school costs may be made as provided for in paragraph (c) of this section.

(3) Payments for services donated by volunteer physicians to beneficiaries are made to a fund designated by the organized medical staff of the teaching hospital or medical school as provided for in paragraph (d) of this section.

(b) *Reasonable cost of physician services furnished to beneficiaries and supervision of interns and residents in*

the care of beneficiaries in a teaching hospital. Physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries in a teaching hospital are payable as provider services on a reasonable-cost basis. For purposes of this paragraph, *reasonable cost* is defined as the direct salary paid to these physicians, plus applicable fringe benefits. The costs must be allocated to the services as provided by paragraph (j) of this section and apportioned to program beneficiaries as provided by paragraph (g) of this section. Other allowable costs incurred by the provider related to the services described in this paragraph are payable subject to the requirements applicable to all other provider services.

(c) *Reasonable costs incurred by a teaching hospital for the services furnished by a medical school or related organization in a hospital.* An amount is payable to the hospital by HCFA under the Medicare program provided that the costs would be payable if incurred directly by the hospital rather than under the arrangement. The amount must not be in excess of the reasonable costs (as defined in paragraphs (c)(1) and (c)(2) of this section) incurred by a teaching hospital for services furnished by a medical school or organization as described in § 413.17 of this chapter for certain costs to the medical school (or a related organization) in furnishing services in the hospital.

(1) *Reasonable costs of physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries in a teaching hospital by physicians on the faculty of a medical school or organization related to the medical school.* (i) If the medical school (or organization related to the medical school) and the hospital are related by common ownership or control as described in § 413.17 of this chapter, the cost of these services are allowable costs to the hospital under the provisions of § 413.17 of this chapter and the reimbursable costs to the hospital are determined under the provisions of this section in the same manner as the costs incurred for physicians on the hospital staff and without regard to payments made to the medical school by the hospital.

(ii) If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school for the costs of those services furnished to all patients, payment is made by Medicare to the hospital for the reasonable cost incurred by the hospital for its payments to the medical school for services furnished to beneficiaries. Costs incurred under an arrangement must be allocated to the full range of services furnished to the hospital by the medical school physicians on the same basis as provided for under paragraph (j) of this section, and costs allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided for under paragraph (g) of this section. If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school only for the costs of those services furnished to beneficiaries, costs of the medical school not to exceed 105 percent of the sum of physician direct salaries, applicable fringe benefits, employer's portion of FICA taxes, Federal and State unemployment taxes, and workmen's compensation paid by the medical school or an organization related to the medical school may be recognized as allowable costs of the medical school. These allowable medical school costs must be allocated to the full range of services furnished by the physicians of the medical school or organization related as provided by paragraph (j) of this section. Costs allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided by paragraph (g) of this section.

(2) *Reasonable costs of other than physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries in a teaching hospital by medical school faculty (or organization related to the medical school).* These costs are determined in accordance with paragraph (c)(1) of this section except that—

(i) If the hospital makes payment to the medical school for other than physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries, these payments are subject to the required cost-finding and apportionment methods applicable to the cost of other hospital services (except for direct medical and surgical services furnished to beneficiaries); or

(ii) If the hospital makes payment to the medical school only for these services furnished to beneficiaries, the cost of these services is not subject to cost-finding and apportionment as otherwise provided by this subpart, and the reasonable cost paid by Medicare must be determined on the basis of the health insurance ratio(s) used in the apportionment of all other provider costs (excluding physician direct medical and surgical services furnished to beneficiaries) applied to the allowable medical school costs incurred by the medical school for the services furnished to all patients of the hospital.

(d) *''Salary equivalent'' payments for physician direct medical and surgical services furnished to beneficiaries in a teaching hospital by physicians on the voluntary staff of the hospital (or medical school or organization under arrangement with the hospital).* (1) HCFA makes payments under the Medicare program to a fund as defined in § 415.164 for direct medical and surgical services furnished on a regularly scheduled basis by physicians on the unpaid voluntary medical staff of the hospital (or medical school under arrangement with the hospital) to beneficiaries.

These payments represent compensation for contributed medical staff time which, if not contributed, would have to be obtained through employed staff on a payable basis. Payments for volunteer services are determined by applying to the regularly scheduled contributed time an hourly rate not to exceed the equivalent of the average direct salary (exclusive of fringe benefits) paid to all full-time, salaried physicians (other than interns and residents) on the hospital staff or, if the number of full-time salaried physicians is minimal in absolute terms or in relation to the number of physicians on the voluntary staff, to physicians at like institutions in the area. This ''salary equivalent'' is a single hourly rate covering all physicians regardless of specialty and is applied to the actual regularly scheduled time contributed by the physicians in furnishing direct medical and surgical services to beneficiaries including supervision of interns and residents in that care. A physician who receives any compensation from the hospital or a medical school related to the hospital by common ownership or control (within the meaning of § 413.17 of this chapter) for direct medical and surgical services furnished to any patient in the hospital is not considered an unpaid voluntary physician for purposes of this paragraph. If, however, a physician receives compensation from the hospital or related medical school or organization only for services that are other than direct medical and surgical services, a salary equivalent payment for his or her regularly scheduled direct medical and surgical services to beneficiaries in the hospital may be imputed. However, the sum of the imputed value for volunteer services and his or her actual compensation from the hospital and the related medical school (or organization) may not exceed

the amount that would have been imputed if all of the physician's hospital and medical school services (compensated and volunteer) had been volunteer services, or paid at the rate of $30,000 per year, whichever is less.

(2) The following examples illustrate how the allowable imputed value for volunteer services is determined. In each example, it has been assumed that the average salary equivalent hourly rate is equal to the hourly rate for the individual physician's compensated services.

Example No. 1. Dr. Jones received $3,000 a year from Hospital X for services other than direct medical services to all patients, for example, utilization review and administrative services. Dr. Jones also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000 for the cost reporting period. The full imputed value of Dr. Jones' volunteer direct medical services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($3,000) does not exceed $30,000.

Example No. 2. Dr. Smith received $25,000 from Hospital X for services as a department head in a teaching hospital. Dr. Smith also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000. Only $5,000 of the imputed value of volunteer services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($25,000) exceeds the $30,000 maximum amount allowable for all of Dr. Smith's services. Computation:

Maximum amount allowable for all services performed by Dr. Smith for purposes of this computation	$30,000
Less compensation received from Hospital X for other than direct medical services to individual patients	$25,000
Allowable amount of imputed value for the volunteer services furnished by Dr. Smith	$5,000

Example No. 3. Dr. Brown is not compensated by Hospital X for any services furnished in the hospital. Dr. Brown voluntarily furnished direct surgical services to beneficiaries for a period of 6 months, and the imputed value of these services amounted to $20,000. The allowable amount of the imputed value for volunteer services furnished by Dr. Brown would be limited to $15,000 ($30,000×6/12).

(3) The amount of the imputed value for volunteer services applicable to beneficiaries and payable to a fund is determined in accordance with the aggregate per diem method described in paragraph (g) of this section.

(4) Medicare payments to a fund must be used by the fund solely for improvement of care of hospital patients or for educational or charitable purposes (which may include but are not limited to medical and other scientific research). No personal financial gain, either direct or indirect, from benefits of the fund may inure to any of the hospital staff physicians, medical school faculty, or physicians for whom Medicare imputes costs for purposes of payment into the fund. Expenses met from contributions made to the hospital from a fund are not included as a reimbursable cost when expended by the hospital, and depreciation expense is not allowed with respect to equipment or facilities donated to the hospital by a fund or purchased by the hospital from monies in a fund.

(e) *Requirements for payment for physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries furnished in a teaching hospital*—(1) *Physicians on the hospital staff.* The requirements under which the costs of physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries are the same as those applicable to the cost of all other covered provider services except that the costs of these services are separately determined as provided by this section and are not subject to cost-finding as described in § 413.24 of this chapter.

(2) *Physicians on the medical school faculty.* Payment is made to a hospital for the costs of services of physicians on the medical school faculty, provided that if the medical school is not related to the hospital (within the meaning of § 413.17 of this chapter, concerning cost to related organizations), the hospital does not make payment to the medical school for services furnished to all patients and the following requirements are met: If the hospital makes payment to the medical school for services furnished to all patients, these requirements do not apply. (See paragraph (c)(1)(ii) of this section.)

(i) There is a written agreement between the hospital and the medical school or organization, specifying the types and extent of services to be furnished by the medical school and specifying that the hospital must pay to the medical school an amount at least equal to the reasonable cost (as defined in paragraph (c) of this section) of furnishing the services to beneficiaries.

(ii) The costs are paid to the medical school by the hospital no later than the date on which the cost report covering the period in which the services were furnished is due to HCFA.

(iii) Payment for the services furnished under an arrangement would have been made to the hospital had the services been furnished directly by the hospital.

(3) *Physicians on the voluntary staff of the hospital (or medical school under arrangement with the hospital).* If the conditions for payment to a fund outlined in § 415.164 are met, payments are made on a ''salary equivalent'' basis (as defined in paragraph (d) of this section) to a fund.

(f) *Requirements for payment for medical school faculty services other than physician direct medical and surgical services furnished in a teaching hospital.* If the requirements for payment for physician direct medical and surgical services furnished to beneficiaries in a teaching hospital described in paragraph (e) of this section are met, payment is made to a hospital for the costs of medical school faculty services other than physician direct medical and surgical services furnished in a teaching hospital.

(g) *Aggregate per diem methods of apportionment for physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries furnished in a teaching hospital*—(1) *Aggregate per diem method of apportionment for the costs of physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries.* The cost of physician direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined on the basis of an average cost per diem as defined in paragraph (h)(1) of this section for physician direct medical and surgical services to all patients (see §§ 415.172 through 415.184) for each of the following categories of physicians:

(i) Physicians on the hospital staff.

(ii) Physicians on the medical school faculty.

(2) *Aggregate per diem method of apportionment for the imputed value of physician volunteer direct medical and surgical services.* The imputed value of physician direct medical and surgical services furnished beneficiaries in a teaching hospital is determined on the basis of an average per diem, as defined in paragraph (h)(1) of this section, for physician direct medical and surgical services to all patients except that the average per diem is derived from the imputed value of the physician volunteer direct medical and surgical services furnished to all patients.

(h) *Definitions.* (1) *Average cost per diem for physician direct medical and surgical services (including supervision of interns and residents) furnished in a teaching hospital to patients in each category of physician services described in paragraph (g)(1) of this section* means

the amount computed by dividing total reasonable costs of these services in each category by the sum of—

(i) Inpatient days (as defined in paragraph (h)(2) of this section); and

(ii) Outpatient visit days (as defined in paragraph (h)(3) of this section).

(2) *Inpatient days* are determined by counting the day of admission as 3.5 days and each day after a patient's day of admission, except the day of discharge, as 1 day.

(3) *Outpatient visit days* are determined by counting only one visit day for each calendar day that a patient visits the outpatient department.

(i) *Application.* (1) The following illustrates how apportionment based on the aggregate per diem method for costs of physician direct medical and surgical services furnished in a teaching hospital to patients is determined.

Teaching Hospital Y

Statistical and financial data:

Total inpatient days as defined in paragraph (h)(2) of this section and outpatient visit days as defined in paragraph (h)(3) of this section 75,000
Total inpatient Part A days.....20,000
Total inpatient Part B days where Part A coverage is not available.....1,000
Total inpatient Part B visit days.....5,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the hospital staff as determined in accordance with paragraph (i) of this section.....$1,500,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the medical school faculty as determined in accordance with paragraph (i) of this section $1,650,000

Computation of cost applicable to program for physicians on the hospital staff:

Average cost per diem for direct medical and surgical services to patients by physicians on the hospital staff: $1,500,000 ÷ 75,000 = $20 per diem.

Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $20 per diem × 20,000.....$400,000
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $20 per diem × 1,000.....$20,000
Cost of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $20 per diem × 5,000.....$100,000

Computation of cost applicable to program for physicians on the medical school faculty:

Average cost per diem for direct medical and surgical services to patients by physicians on the medical school faculty: $1,650,000 ÷ 75,000 =.....$22 per diem.
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $22 per diem × 20,000.....$440,000
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $20 per diem × 1,000.....$22,000
Cost of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $22 per diem × 5,000.....$110,000

(2) The following illustrates how the imputed value of physician volunteer direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined.

Example: The physicians on the medical staff of Teaching Hospital Y donated a total of 5,000 hours in furnishing direct medical and surgical services to patients of the hospital during a cost reporting period and did not receive any compensation from either the hospital or the medical school. Also, the imputed value for any physician volunteer services did not exceed the rate of $30,000 per year per physician.

Statistical and financial data:

Total salaries paid to the full-time salaried physicians by the hospital (excluding interns and residents).....$800,000
Total physicians who were paid for an average of 40 hours per week or 2,080 (52 weeks × 40 hours per week) hours per year 20
Average hourly rate equivalent: $800,000 ÷ 41,600 (2,080 × 20) $19.23

Computation of total imputed value of physician volunteer services applicable to all patients:

(Total donated hours × average hourly rate equivalent): 5,000 × $19.23 ....$96,150
Total inpatient days (as defined in paragraph (h)(2) of this section) and outpatient visit days (as defined in paragraph (h)(3) of this section).....75,000
Total inpatient Part A days.....20,000
Total inpatient Part B days if Part A coverage is not available 1,000
Total outpatient Part B visit days.....5,000

Computation of imputed value of physician volunteer direct medical and surgical services furnished to Medicare beneficiaries:

Average per diem for physician direct medical and surgical services to all patients: $96,150 ÷ 75,000 = $1.28 per diem.

Imputed value of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $1.28 per diem × 20,000 25,600
Imputed value of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $1.28 per diem × 1,000 1,280
Imputed value of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $1.28 per diem × 5,000 .....$6,400
Total $33,280

(j) *Allocation of compensation paid to physicians in a teaching hospital.* In determining reasonable cost under this section, the compensation paid by a teaching hospital, or a medical school or related organization under arrangement with the hospital, to physicians in a teaching hospital must be allocated to the full range of services implicit in the physician compensation arrangements. (However, see paragraph (d) of this section for the computation of the ''salary equivalent'' payments for volunteer services furnished to patients.) This allocation must be made and must be capable of substantiation on the basis of the proportion of each physician's time spent in furnishing each type of service to the hospital or medical school.

§ 415.164 Payment to a fund.

(a) *General rules.* Payment for certain voluntary services by physicians in teaching hospitals (as these services are described in § 415.160) is made on a salary equivalent basis (as described in § 415.162(d)) subject to the conditions and limitations contained in parts 405 and 413 of this chapter and this part 415, to a single fund (as defined in paragraph (b) of this section) designated by the organized medical staff of the hospital (or, if the services are furnished in the hospital by the faculty of a medical school, to a fund as may be designated by the faculty), if the following conditions are met:

(1) The hospital (or medical school furnishing the services under arrangement with the hospital) incurs no actual cost in furnishing the services.

(2) The hospital has an agreement with HCFA under part 489 of this chapter.

(3) The intermediary, or HCFA as appropriate, has received written assurances that—

(i) The payment is used solely for the improvement of care of hospital patients or for educational or charitable purposes; and

(ii) Neither the individuals who are furnished the services nor any other persons are charged for the services (and if charged, provision is made for the return of any monies incorrectly collected).

(b) *Definition of a fund.* For purposes of paragraph (a) of this section, a *fund* is an organization that meets either of the following requirements:

(1) The organization has and retains exemption, as a governmental entity or under section 501(c)(3) of the Internal Revenue Code (nonprofit educational, charitable, and similar organizations), from Federal taxation.

(2) The organization is an organization of physicians who, under the terms of their employment by an entity that meets the requirements of paragraph (b)(1) of this section, are required to turn over to that entity all income that the physician organization derives from the physician services.

(c) *Status of a fund.* A fund approved for payment under paragraph (a) of this section has all the rights and responsibilities of a provider under Medicare except that it does not enter into an agreement with HCFA under part 489 of this chapter.

§ 415.170 Conditions for payment on a fee schedule basis for physician services in a teaching setting.

Services meeting the conditions for payment in § 415.100(b) furnished in teaching settings are payable under the physician fee schedule if—

(a) The services are personally furnished by a physician who is not a resident; or

(b) The services are furnished by a resident in the presence of a teaching physician except as provided in § 415.172 (concerning physician fee schedule payment for services of teaching physicians), § 415.176 (concerning renal dialysis services), or § 415.184 (concerning psychiatric services), as applicable.

§ 415.172 Physician fee schedule payment for services of teaching physicians.

(a) *General rule.* When residents participate in a service furnished in a teaching setting, physician fee schedule payment is made only when a teaching physician is present during the key portion of any service or procedure for which payment is sought. In the case of surgery or a dangerous or complex procedure, the teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure. In the case of evaluation and management services (that is, visits and consultations), the teaching physician must be present during the portion of the service that determines the level of service billed, that is, type of decisionmaking, type of history, and examination, etc.

(b) *Documentation.* In the case of every service billed, the hospital chart must document the presence of the teaching physician at the time of the service. The presence of the teaching physician may be demonstrated by the notes made by a physician, resident, or nurse.

(c) *Payment level.* In the case of services such as evaluation and management for which there are several levels of service codes available for reporting purposes, the appropriate payment level must reflect the extent and complexity of the service when fully furnished by the teaching physician.

§ 415.176 Renal dialysis services.

In the case of renal dialysis services, physicians who are not paid under the physician monthly capitation payment method (as described in § 414.314 of this chapter) must meet the requirements of §§ 415.170 and 415.172 (concerning physician fee schedule payment for services of teaching physicians).

§ 415.178 Anesthesia services.

(a) *General rule.* An unreduced physician fee schedule payment may be made if an anesthesiologist is not involved in directing concurrent services with more than one resident or with a resident and a nonphysician anesthetist (see § 414.46(c)(1)(iii) for additional rules for payment of anesthesia services).

(b) *Documentation.* Documentation must indicate the physician's presence or participation in the administration of the anesthesia and a preoperative and postoperative visit by the physician.

§ 415.180 Teaching setting requirements for the interpretation of diagnostic radiology and other diagnostic tests.

(a) *General rule.* Physician fee schedule payment is made for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed or reviewed by a physician other than a resident.

(b) *Documentation.* Documentation must indicate that the physician personally performed the interpretation or reviewed the resident's interpretation with the resident.

§ 415.184 Psychiatric services.

To qualify for physician fee schedule payment for psychiatric services furnished under an approved GME program, the physician must meet the requirements of §§ 415.170 and 415.172, including documentation, except that the requirement for the presence of the teaching physician during the service in which a resident is involved may be met by observation of the service through a one-way mirror, video tape, or similar device.

§ 415.190 Conditions of payment: Assistants at surgery in teaching hospitals.

(a) *Basis, purpose, and scope.* This section describes the conditions under which Medicare pays on a fee schedule basis for the services of an assistant at surgery in a teaching hospital. This section is based on section 1842(b)(7)(D)(i) of the Act and applies only to hospitals with an approved GME residency program. Except as specified in paragraph (c) of this section, fee schedule payment is not available for assistants at surgery in hospitals with—

(1) A training program relating to the medical specialty required for the surgical procedure; and

(2) A resident in a training program relating to the specialty required for the surgery available to serve as an assistant at surgery.

(b) *Definition. Assistant at surgery* means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(c) *Conditions for payment for assistants at surgery.*

Payment on a fee schedule basis is made for the services of an assistant at surgery in a teaching hospital only if the services meet one of the following conditions:

(1) Are required as a result of exceptional medical circumstances.

(2) Are complex medical procedures performed by a team of physicians, each performing a discrete, unique function integral to the performance of a complex medical procedure that requires the special skills of more than one physician.

(3) Constitute concurrent medical care relating to a medical condition that requires the presence of, and active care by, a physician of another specialty during surgery.

(4) Are medically required and are furnished by a physician who is primarily engaged in the field of surgery, and the primary surgeon does not use interns and residents in the surgical procedures that the surgeon performs (including preoperative and postoperative care).

(5) Are not related to a surgical procedure for which HCFA determines that assistants are used less than 5 percent of the time.

Subpart E—Services of Residents

§ 415.200 Services of residents in approved GME programs.

(a) *General rules.* Services of residents in approved GME programs furnished in hospitals are specifically excluded from

being paid as ''physician services'' defined in § 414.2 of this chapter and are payable as hospital services. This exclusion applies whether or not the resident is licensed to practice under the laws of the State in which he or she performs the services. The payment methodology for services of residents in hospitals and hospital-based providers is set forth in § 413.86 of this chapter.

(b) *Definitions.* See § 415.152 for definitions of terms used in this subpart E.

§ 415.202 Services of residents not in approved GME programs.

(a) *General rules.* Payment is made to a hospital for the services of a resident who is not in an approved GME program on a Part B reasonable cost basis regardless of whether the services are furnished to hospital inpatients or outpatients. For purposes of this section, these services are deemed to include services of a physician employed by a hospital who is authorized to practice only in a hospital setting.

(b) *Payment.* Payment is made under Part B for a resident's services by reducing the reasonable costs of furnishing the services by the beneficiary deductible and paying 80 percent of the remaining amount. No payment is made for other costs of unapproved programs, such as administrative costs related to teaching activities of physicians.

§ 415.204 Services of residents in SNFs and HHAs.

(a) *Medicare Part A payment.* Payment is made under Medicare Part A for interns' and residents' services furnished in the following settings that meet the specified requirements:

(1) *SNF.* Payment to a participating SNF may include the cost of services of an intern or resident who is in an approved GME program in a hospital with which the SNF has a transfer agreement that provides, in part, for the transfer of patients and the interchange of medical records.

(2) *HHA.* A participating HHA may receive payment for the cost of the services of an intern or resident who is under an approved GME program of a hospital with which the HHA is affiliated or under common control if these services are furnished as part of the posthospital home health visits for a Medicare beneficiary. (Nevertheless, see § 413.86 of this chapter for the costs of approved GME programs in hospital-based providers.)

(b) *Medicare Part B payment.* Medical services of a resident of a hospital that are furnished by a SNF or HHA are paid under Medicare Part B if payment is not provided under Medicare Part A. Payment is made under Part B for a resident's services by reducing the reasonable costs of furnishing the services by the beneficiary deductible and paying 80 percent of the remaining amount.

§ 415.206 Services of residents in nonprovider settings.

Patient care activities of residents in approved GME programs that are furnished in nonprovider settings are payable in one of the following two ways:

(a) *Direct GME payments.* If the conditions in § 413.86(f)(1)(iii) regarding patient care activities and training of residents are met, the time residents spend in nonprovider settings such as clinics, nursing facilities, and physician offices in connection with approved GME programs is included in determining the number of full-time equivalency residents in the calculation of a teaching hospital's resident count. The teaching physician rules on carrier payments in §§ 415.170 through 415.184 apply in these teaching settings.

(b) *Physician fee schedule.* (1) Services furnished by a resident in a nonprovider setting are covered as physician services and payable under the physician fee schedule if the following requirements are met:

(i) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry in the State in which the service is performed.

(ii) The time spent in patient care activities in the nonprovider setting is not included in a teaching hospital's full-time equivalency resident count for the purpose of direct GME payments.

(2) Payment may be made regardless of whether a resident is functioning within the scope of his or her GME program in the nonprovider setting.

(3) If fee schedule payment is made for the resident's services in a nonprovider setting, payment must not be made for the services of a teaching physician.

(4) The carrier must apply the physician fee schedule payment rules set forth in subpart A of part 414 of this chapter to payments for services furnished by a resident in a nonprovider setting.

§ 415.208 Services of moonlighting residents.

(a) *Definition.* For purposes of this section, the term *services of moonlighting residents* refers to services that licensed residents perform that are outside the scope of an approved GME program.

(b) *Services in GME program hospitals.* (1) The services of residents to inpatients of hospitals in which the residents have their approved GME program are not covered as physician services and are payable under § 413.86 regarding direct GME payments.

(2) Services of residents that are not related to their approved GME programs and are performed in an outpatient department or emergency department of a hospital in which they have their training program are covered as physician services and payable under the physician fee schedule if all of the following criteria are met:

(i) The services are identifiable physician services and meet the conditions for payment of physician services to beneficiaries in providers in § 415.100(b).

(ii) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the State in which the services are performed.

(iii) The services performed can be separately identified from those services that are required as part of the approved GME program.

(3) If the criteria specified in paragraph (b)(2) of this section are met, the services of the moonlighting resident are considered to have been furnished by the individual in his or her capacity as a physician, rather than in the capacity of a resident. The carrier must review the contracts and agreements for these services to ensure compliance with the criteria specified in paragraph (b)(2) of this section.

(4) No payment is made for services of a ''teaching physician'' associated with moonlighting services, and the time spent furnishing these services is not included in the teaching hospital's full-time equivalency count for the indirect GME payment (§ 412.105 of this chapter) and for the direct GME payment (§ 413.86 of this chapter).

(c) *Other settings.* Moonlighting services of a licensed resident in an approved GME program furnished outside the scope of that program in a hospital or other setting that does not participate in the approved GME program are payable under the physician fee schedule as set forth in § 415.206(b)(1).

F. Technical Amendments

§ 400.310 [Amended]

1. In § 400.310, the following changes are made:

a. The entries for §§ 405.481 and 405.552 are removed.

b. In § 400.310, the table is amended by adding the following entries:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control numbers
* * * * *	
415.60	0938–0301
415.70	0938–0301
* * * * *	

§ 405.501 [Amended]

2. In § 405.501, the following changes are made:

a. Paragraphs (c) and (d) are removed, and paragraphs (e) and (f) are redesignated as paragraphs (c) and (d), respectively.

b. In newly redesignated paragraph (c), the phrase ''§§ 405.480 through 405.482 and §§ 405.550 through 405.557'' is removed, and the phrase ''§§ 415.55 through 415.70 and §§ 415.100 through 415.130 of this chapter'' is added in its place.

§ 405.502 [Amended]

3. In § 405.502(a)(10), the phrase ''§ 405.580(c) (2) or (3)'' is removed, and the phrase ''§ 415.190 (c)(2) or (c)(3) of this chapter'' is added in its place.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

4. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1385x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

§ 411.15 [Amended]

5. In § 411.15(m)(2)(i), the phrase ''§ 405.550(b) of this chapter'' is removed, and the phrase ''§ 415.100(b) of this chapter'' is added in its place.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

6. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i–4, 1395hh, and 1395ww).

§ 412.50 [Amended]

7. In § 412.50, the following changes are made:

a. In paragraph (a), the phrase ''§ 405.550(b) of this chapter'' is removed, and the phrase ''§ 415.100(b) of this chapter'' is added in its place.

b. In paragraph (b), the phrase ''§ 405.550(b) of this chapter'' is removed, and the phrase ''§ 415.100(b) of this chapter'' is added in its place.

§ 412.71 [Amended]

8. In § 412.71(c)(1)(i), the phrase ''§ 405.550(b) of this chapter'' is removed, and the phrase ''§ 415.100(b) of this chapter'' is added in its place.

§ 412.105 [Amended]

9. In § 412.105(g)(1)(i)(A), the phrase ''§ 405.522(a) of this chapter'' is removed, and the phrase ''§ 415.200(a) of this chapter'' is added in its place.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

10. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.5 [Amended]

11. In § 413.5(c)(9), the phrase ''(as described in § 405.465 of this chapter) where elected as provided for in § 405.521 of this chapter'' is removed, and the phrase ''(as described in § 415.162 of this chapter if elected as provided for in § 415.160 of this chapter)'' is added in its place.

§ 413.13 [Amended]

12. In § 413.13(g)(1)(i), the phrase ''§§ 405.480 through 405.482 of this chapter'' is removed, and the phrase ''§§ 415.55 through 415.70 of this chapter'' is added in its place.

§ 413.80 [Amended]

13. In § 413.80(h), the phrase '', as described in § 414.450 of this chapter,'' is removed.

§ 413.86 [Amended]

14. In § 413.86, the following changes are made:

a. In paragraph (b), in the definition of ''Approved medical residency program'' in paragraph (1), the phrase ''§ 405.522(a) of this chapter'' is removed, and the phrase ''§ 415.200(a) of this chapter'' is added in its place.

b. In paragraph (g)(1)(ii), the phrase ''§ 405.522(a) of this chapter'' is removed, and the phrase ''§ 415.200(a) of this chapter'' is added in its place.

§ 413.174 [Amended]

15. In § 413.174(b)(4)(iv), the phrase ''§ 405.465 through 405.482 of this chapter'' is removed, and the phrase ''§§ 415.55 through 415.70, § 415.162, and § 415.164 of this chapter'' is added in its place.

§ 414.2 [Amended]

16. In § 414.2, in the definition for ''Physicians' services,'' in paragraph (2), the phrase ''physicians' services'' is removed, and the phrase ''physician services'' is added in its place.

§ 414.58 [Amended]

17. In § 414.58, the following changes are made:

a. In paragraph (a), the phrase ''§§ 405.550 through 405.580 of this chapter'' is removed, and the phrase ''§§ 415.100 through 415.130, and § 415.190 of this chapter'' is added in its place.

b. In paragraph (b), the phrase ''§ 405.465 of this chapter if the hospital exercises the election described in § 405.521(c)(2) of this chapter'' is removed, and the phrase ''§ 415.162 of this chapter if the hospital exercises the election described in § 415.160 of this chapter'' is added in its place.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

18. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

§ 417.554 [Amended]

19. In § 417.554, the phrase ''§ 405.480, part 412 of this chapter, and §§ 413.55 and 413.24 of this chapter'' is removed, and the phrase ''part 412, §§ 413.24 and 413.55, and § 415.55 of this chapter'' is added in its place.

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

20. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

§ 489.20 [Amended]

21. In § 489.20(d)(1), the phrase ''§ 405.550(b) of this chapter'' is removed, and the phrase § 415.100(b) of this chapter'' is added in its place.

§ 489.21 [Amended]

22. In § 489.21(f), the phrase ''§ 405.550(b) of this chapter'' is removed, and the phrase ''§ 415.100(b) of this chapter'' is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 5, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 6, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–18144 Filed 7–20–95; 9:37 am]

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Wednesday
July 26, 1995

Part III

Office of Management and Budget

Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure; Notice

OFFICE OF MANAGEMENT AND BUDGET

Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Proposed NAICS industry classification structure for Petroleum and Coal Products Manufacturing, Chemicals Manufacturing, and Rubber and Plastics Products Manufacturing; Broadcasting and Telecommunications; and Foodservices and Drinking Places and Accommodations.

SUMMARY: Under Title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is seeking public comment on a series of notices documenting the development of the new North American Industry Classification System (NAICS), the industry classification system being proposed to replace the current Standard Industrial Classification (SIC) system.

This notice, the third related to preparation of NAICS and the first in a series seeking comment on proposed industry revisions, presents the proposed NAICS structures for petroleum and coal products manufacturing, chemical manufacturing, and rubber and plastics manufacturing; broadcasting and telecommunications; and foodservices and drinking places and accommodations.

OMB is seeking comments on the usefulness and advisability of the proposed new NAICS subsectors submitted by the Economic Classification Policy Committee (ECPC), an interagency committee established by OMB.

Subsequent **Federal Register** notices will seek comment on other industry sector and subsector proposals. OMB is publishing the proposed new industry structure as soon as the drafting is completed, to provide as much information as quickly as possible and to ensure extensive public participation in the process. A final **Federal Register** notice, to be published in the fall of 1995, will include the entire NAICS structure for public comment.

NAICS is being developed in cooperation with Statistics Canada and Mexico's Instituto Nacional de Estadistica, Geografia e Informatica (INEGI). The new NAICS system provides common industry definitions for Canada, Mexico, and the United States to facilitate economic analyses that cover the economies of the three North American countries. The three country collaboration on an industry classification system for North America was announced for public comment in the **Federal Register**, July 26, 1994, pp. 38092–38096.

The July 26, 1994, **Federal Register** notice includes the concepts for the new system, as developed by Statistics Canada, Mexico's INEGI, and the ECPC. It also includes a copy of the joint statement of the three countries' statistical agencies regarding the development of NAICS. That agreement includes the following principles:

(1) NAICS will be erected on a production-oriented, or supply-based, conceptual framework. This means that producing units that use identical or similar production processes will be grouped together in NAICS.

(2) The system will give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity will be maintained to the extent possible. However, changes in the economy and proposals from data users must be considered. In addition, adjustments will be required for sectors where the United States, Canada, and Mexico presently have incompatible industry classification definitions in order to produce a common industry system for all three North American countries.

(4) The system will strive for compatibility with the 2-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC, Rev. 3) of the United Nations.

ECPC Report No. 3—Summary of Public Responses to the Proposed New North American Industry Classification Industry System provides a summary of public comments received in response to the July 26, 1994, **Federal Register** notice.

DATES: To ensure consideration and response to all comments on the proposals set forth in this notice, comments must be in writing and should be submitted as soon as possible, but no later than September 18, 1995. The proposed industry system would become effective in the U.S. on January 1, 1997.

ADDRESSES: Correspondence about the industry proposals of the NAICS structure announced in this **Federal Register** notice should be sent to: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

Copies of all ECPC issues papers and ECPC reports are available by contacting Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE–42), U.S. Department of Commerce, Washington, DC 20230, telephone number: (202) 606–9615, FAX number: (202) 606–5311.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet from the Census Bureau via WWW browser, ftp, and email.

To obtain this document via WWW browser, connect to ''http://www.census.gov'' then select ''Economy,'' then select ''Economy-Wide Programs,'' then select ''NAICS Documents.''

To obtain this document via ftp, login to ftp.census.gov as anonymous, and retrieve the file ''prop01.txt'' from the ''/pub/epcd/naics'' directory. (That directory also contains previous NAICS **Federal Register** Notices and related documents.)

To obtain this document via Internet email, send a message to majordomo@census.gov with the body text as follows: ''get gatekeeper prop01.txt''. The document will be delivered as a message attachment.

Comments may be sent via Internet email to the Census Bureau at naics@census.gov (do not include any capital letters in the address). Comments received at this address by the date specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

SUPPLEMENTARY INFORMATION:

Structure of Notice:

There are three parts to this notice. PART 1 includes the proposals for petroleum and coal products manufacturing, chemicals manufacturing, and rubber and plastics products manufacturing; PART 2 includes broadcasting and telecommunications; and PART 3, includes foodservices and drinking places and accommodations.

Each of the three parts of the notice is organized into two sections. The first section includes a copy of the proposed agreement signed by the ECPC, Statistics Canada, and INEGI; the structure of NAICS; and an explanation of the structure. For a number of reasons, NAICS industries do not always provide as much industry detail as has been present in the U.S. SIC. This will allow each country to add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. The second section of the notice includes the U.S. detailed industries within NAICS and two comparison tables showing the differences between the 1987 SIC and the 1997 NAICS with United States detail.

NAICS is organized in a hierarchical structure much like the existing SIC. The first digit of a NAICS code designates the sector. The code also designates 2-digit subsectors, 3-digit industry groups, and 4-digit industries. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. The proposed United States NAICS system, for example, would include 5-digit industries. These represent important industries in the U.S. that cannot be recognized in the statistical systems of either Canada or Mexico because of size restrictions, confidentiality, or other reasons.

The NAICS numbering system is still under development; therefore the hierarchical structure is displayed in this document with X's representing the following:

X	Industry Sector (not highlighted in structure).
XX	Industry Subsector.
XXX	Industry Group.
XXXX	Industry.
XXXXX	U.S. National Industry.

The terms ''Industry Sector'' and ''Industry Subsector'' are changes from the terms ''Division'' and ''Major Group'' used in the 1987 SIC manual.

Time Series Summary

The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, the full impact of the revision can be assessed. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the new and old series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. This link between the 1987 U.S. SIC and NAICS (with U.S. national detail) will be developed by the statistical agencies in the U.S.

Outreach Activities

OMB and the Economic Classification Policy Committee (ECPC) are seeking comments on the proposed NAICS structure for the industries described in this notice.

In carrying out its mandate to ensure maximum public participation in the process of constructing NAICS, the ECPC has already discussed many of these industry proposals with industry and user groups and will continue to do so. In addition, the ECPC is replying on a flow basis as soon as the work is completed for industry subsectors to organizations that responded to previous **Federal Register** notices. Thus, this **Federal Register** notice supplements other ECPC public outreach activities in the development of NAICS.

Part I—Proposed New Industry Structure for Petroleum and Coal Products Manufacturing, Chemicals Manufacturing, and Rubber and Plastics Products Manufacturing

Section A—NAICS Structure

North American Industry Classification System

(NAICS)

Agreement Number 1

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Petroleum and Coal Products Manufacturing
Chemicals Manufacturing
Rubber and Plastics Products Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and discussions held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on May 18 and 19 in Ottawa, Canada.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten.	5/19/95
Mexico	/S/ Enrique Ordaz.	5/19/95
United States ...	/S/ Jack E. Triplett.	5/19/95

ATTACHMENT 1.—NAICS STRUCTURE

XX	Petroleum and Coal Products Manufacturing
XXX	Petroleum and Coal Products Manufacturing.
XXXX	Petroleum Refineries.
XXXX	Asphalt Paving and Roofing and Saturated Materials Manufacturing.
XXXX	Other Petroleum and Coal Products Manufacturing.
XX	Chemicals Manufacturing
XXX	Basic Chemicals Manufacturing.
XXXX	Petrochemicals Manufacturing.
XXXX	Industrial Gases Manufacturing.
XXXX	Dyes and Pigments Manufacturing.
XXXX	Other Inorganic Chemicals Manufacturing.
XXXX	Other Organic Chemicals Manufacturing.
XXX	Resins, Synthetic Rubber, Artificial and Synthetic Fibers and Filament Manufacturing.
XXXX	Resins and Synthetic Rubber Manufacturing.
XXXX	Artificial and Synthetic Fibers and Filament Manufacturing.
XXX	Pesticides, Fertilizers, and Other Agricultural Chemicals Manufacturing.
XXXX	Fertilizers Manufacturing.
XXXX	Pesticides and Other Agricultural Chemicals Manufacturing.
XXX	Pharmaceuticals and Medicine Manufacturing.
XXX	Pharmaceuticals and Medicine Manufacturing.
XXX	Paints, Coatings, Adhesives, and Sealants Manufacturing.
XXXX	Paints and Coatings Manufacturing.
XXXX	Adhesives and Sealants Manufacturing.

ATTACHMENT 1.—NAICS STRUCTURE—Continued

XXX	Soaps, Cleaning Compounds, and Toilet Preparations Manufacturing.
XXXX	Soaps and Cleaning Compounds Manufacturing.
XXXX	Toilet Preparations Manufacturing.
XXX	Miscellaneous Chemical Products Manufacturing.
XXXX	Printing Ink Manufacturing.
XXXX	Explosives Manufacturing.
XXXX	Other Miscellaneous Chemical Products Manufacturing.
XX	Rubber and Plastics Products Manufacturing.
XXX	Rubber Products Manufacturing.
XXXX	Tires and Tubes Manufacturing.
XXXX	Rubber and Plastics Hose and Belting Manufacturing.
XXXX	Other Rubber Products Manufacturing.
XXX	Plastics Products Manufacturing.
XXXX	Unsupported Plastics Films, Sheets and Bags Manufacturing.
XXXX	Unsupported Profile Shapes, Plastics Pipes, and Fittings Manufacturing.
XXXX	Laminated Plastics Plates, Sheets, and Shapes Manufacturing.
XXXX	Polystyrene Foam Products Manufacturing.
XXXX	Urethane Foam Products Manufacturing.
XXXX	Plastics Bottles Manufacturing.
XXXX	Other Plastics Products Manufacturing.

Attachment 2—North American Industry Classification System

Draft Classification for:
Petroleum and Coal Products Manufacturing
Chemicals Manufacturing
Rubber and Plastics Products Manufacturing

Representatives of the statistical agencies of Canada, Mexico and the United States have agreed to a draft industry classification for these industries.

The draft classification provides for three industry subsectors, Petroleum and Coal Products Manufacturing; Chemicals Manufacturing; and Rubber and Plastics Products Manufacturing. These are further subdivided into ten industry groups and thirty industries. These industry subsectors will be part of the Manufacturing sector(s) of the NAICS classification.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry level of the structure. All countries agree on the detailed definitions of the industries.

The classification improves comparability with other countries. With the exception of the ''miscellaneous'' industries, all industries are compatible with the 2-digit level of the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. This means that each NAICS industry is the same as, or part of, a single ISIC 2-digit Division. Therefore, data tabulated using NAICS can be readily re-tabulated according to ISIC. This comparability extends to higher levels of the NAICS. For example, there is little difference between the NAICS Chemical Industries, and ISIC 24, Manufacture of Chemicals and Chemical Products.

Objectives of the NAICS project other than comparability are not so relevant in the classification of these subsectors as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. These manufacturing industry subsectors are relatively mature, generally produce goods, and have always employed relatively advanced technology. Therefore the emphasis in developing this area has been on the production concept and comparability.

The industries have high specialization ratios, and they are economically significant. The detail and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, disruptions to time series at the NAICS industry level have been kept to a minimum. Most of the changes at the detail to existing classifications are marginal. The major changes are well-identified and can be taken into account in linking time series.

Limitations of the Classification

On the other hand, there are some analytical requirements that cannot be met by the proposed industry classification. In particular, there is a demand for data on the production of all articles of plastic. This cannot be accommodated by the proposed industry classification due to the ubiquity of plastics in manufactured products. Many industrial activities that incorporate plastics in combination with other materials are classified elsewhere in manufacturing.

Similarly, a breakdown of plastics industries that follows market lines cannot be produced. This arises from the fact that, in general, plastics fabricators can and do switch production from one type of product to another as market conditions change. In some cases a market or demand category does correspond to a distinct production process, in which case an industry can be defined that supports the needs of both supply-oriented and demand-oriented analyses. An example of this is the NAICS Plastics Bottles Manufacturing industry. However, in general, this is not possible because of the way businesses have organized their production facilities.

Users requiring data for demand analysis can instead make use of statistics based on commodity classifications. Each country publishes such data. Efforts are underway to harmonize the commodity classifications to allow comparability of these statistics.

Constraints on the NAICS Classification

A few factors constrained the structure and detail of the classification in the area under consideration.

An issue related to the coding structure is the ability to publish and the economic significance of the items defined in the classification. In the chemicals industry, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. Further, data for some significant activities cannot be published for a particular country for reasons of confidentiality, such as the matches manufacturing industry in Canada. Finally, the way activities are combined in establishments differs to some extent in the different countries. A structure could have been developed that specified such activities in NAICS, but the resulting statistical tables for any given country would have numerous insignificant or suppressed entries. It was preferable to adopt an operating rule that the NAICS industries for this

area must be economically significant and publishable. It is anticipated that each country will publish additional categories that comprise sub-divisions of NAICS industries, to present data for activities that are significant nationally.

Other constraints did involve the nature of the industries to be classified. In the case of chemicals, it was essential for NAICS to include Petrochemicals Manufacturing as an industry, due to the significance of this activity in Mexico. This is a major change for the United States and Canada. It involves some extra work for these countries in implementing the classification, since the direct assignment of industry codes from commodity output information (a common technique for most manufacturing industries) cannot be used without modification. Nevertheless, the importance of the activity, and the fact that it is based on a well-defined production process, resulted in its inclusion in NAICS.

A General Outline

The Petroleum and Coal Products Manufacturing subsector is based on the transformation of crude petroleum and coal into usable products. The dominant process is petroleum refining, which involves the separation of crude petroleum into component products through such techniques as cracking and distillation.

The Chemicals Manufacturing subsector is based on the transformation of organic and inorganic raw materials by a chemical process, and the formulation of products. This subsector distinguishes the production of basic chemicals, which comprises the first industry group, from the production of intermediate and end products produced by further processing of basic chemicals, which make up the remaining industry groups.

Concerning Basic Chemicals Manufacturing industries, data users will note that a general distinction has not been made between organic and inorganic basic chemicals. The production of organic and inorganic industrial gases is a single activity. In Mexico, the production of organic and inorganic dyes and pigments commonly takes place in the same establishments.

The industry subsector Rubber and Plastics Products Manufacturing includes establishments that make goods by processing raw rubber and plastics materials. To the extent possible, this subsector is restricted to industrial activities whose core technology is the production of products made of just one material, rubber or plastic. Many manufacturing activities use rubber or plastic as one of several inputs, to the extent that the core technology relates to the type of product produced. An example of this is the manufacture of footwear. Typically, more than one material is used to produce shoes, so technologies that allow disparate materials to be formed and combined are of central importance in describing the footwear manufacturing activity. Such activities, for example footwear and furniture manufacture, are generally classified elsewhere than in the industry subsectors organized around the core technologies of rubber and plastic.

The main exception to this principle is Tires and Tubes Manufacturing. The production of tires is included in Rubber Products Manufacturing to minimize the disruption of time series and for comparability with ISIC, rather than because it particularly fits the general production process of the major group subsector. Tires are normally made from several materials.

A distinction is made between rubber and plastics products at the industry group level. It is not a rigid distinction, as can be seen from the definition of Rubber and Plastics Hose and Belting Manufacturing. As materials technology improves, plastics are increasingly being used as a substitute for rubber. Eventually, the distinction may disappear as a basis for defining establishments, and be limited to the commodity classification.

The Plastics Products Manufacturing industry subsector consists generally of activities involving the processing of plastics materials in forms such as pellets into intermediate or final products, using such processes as extrusion and injection moulding. Within most of these industries, the production process is such that a wide variety of products can be produced.

Some Changes to the National Classifications

This section highlights some of the significant changes to existing national classifications.

In Petroleum and Coal Products Manufacturing, the main change to an existing classification is the inclusion of activities currently in CSIC [1] 2721, Asphalt Roofing Industry, in NAICS Asphalt Paving and Roofing and Saturated Materials Manufacturing. It is included here because the defining feature of the production process (the saturation of paper with asphalt) is the manipulation of asphalt.

The production of alumina from bauxite is currently classified in USIC 2819, Industrial Inorganic Chemicals, NEC. The production of alumina does involve the use of a chemical process, but it is analogous to the chemical activities involved in the processing of other ores in smelting and refining industries. It will therefore be treated as an activity in the primary metals, rather than in NAICS Other Inorganic Chemicals Manufacturing.

The production of artificial and synthetic fibers is treated as a textile activity in CSIC. While the outputs are a basic raw material for textile production, the fiber production itself is an activity with chemical characteristics. It is basically a polymerization process, similar to the production of synthetic resins. It is therefore included in the NAICS Chemicals Manufacturing subsector (Artificial and Synthetic Fibers and Filament Manufacturing).

The manufacture of photographic chemicals and sensitized paper is classified in CSIC 3912, Other Instruments and Related Products Industry and in USIC 3861, Photographic Equipment and Supplies. NAICS classifies the production of these goods in Miscellaneous Chemical Products Manufacturing, since their production process is a chemical products process, not an equipment manufacturing process.

The new classification eliminates the 2-digit distinction between rubber products and plastics products that was found in CSIC (groups 15 and 16). NAICS combines CSIC group 15, rubber products, and group 16, plastics products, into one subsector, Rubber and Plastics Products Manufacturing.

NAICS Tires and Tubes Manufacturing includes an activity—the retreading and recapping of tires—which in CSIC and USIC is classified as non-manufacturing. The tire retreading and recapping activity is included in manufacturing because it involves more than just a repair. This activity is an example of ''re-building'', which occurs when a manufactured article is returned to usability using processes similar to those used in the original manufacturing operation. Re-building activities will be included in manufacturing in NAICS.

NAICS Rubber and Plastics Products Manufacturing excludes the manufacture of footwear, furniture and toys of rubber and plastic. This is a significant change to CMAP, which includes these activities in CMAP 3550, Rubber Industry and 3560, Manufacture of Plastics Products.

[1] CSIC refers to the Standard Industrial Classification of Canada, 1980 Revision. USIC refers to the Standard Industrial Classification of the United States, 1987 Revision. CMAP refers to the Classification of Activities and Products of Mexico.

NAICS Unsupported Plastics Films, Sheet and Bags Manufacturing includes the manufacture of plastic laminates for packaging and plastic bags, which are classified respectively in USIC 2671, Packaging Paper and Plastics Film, Coated and Laminated and 2673, Plastics, Foil and Coated Paper Bags.

NAICS Other Plastics Products Manufacturing includes the manufacture of most of the plastics motor vehicle parts, such as interior and exterior trim of plastics, which are classified in CSIC 3256, Plastics Parts and Accessories for Motor Vehicles.

Section B—Annex: United States National Industry Detail

As explained in the *Structure* presentation of this notice, for a number of reasons 4-digit industries in the three NAICS industry subsectors presented in *Part 1, Section A—Attachment 1*, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the three NAICS industry subsectors covered in Part I of this notice. In the following tables, proposed 5-digit detail is indicated in italics. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means ''part of''. The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XX	Petroleum and Coal Products Manufacturing			
XXX	Petroleum and Coal Products Manufacturing			
XXXX	Petroleum Refineries	E	2911	Petroleum Refining.
XXXX	Asphalt Paving and Roofing and Saturated Materials Manufacturing			
XXXXX	Asphalt Paving Mixtures and Blocks Manufacturing	E	2951	Asphalt Paving Mixtures and Blocks.
XXXXX	Asphalt Felts and Coatings Manufacturing	E	2952	Asphalt Felts and Coatings.
XXXX	Other Petroleum and Coal Products Manufacturing			
XXXXX	Lubricating Oils and Greases Manufacturing	E	2992	Lubricating Oils and Greases.
XXXXX	All Other Petroleum and Coal Products Manufacturing	R	2999	Petroleum and Coal Products, NEC.
			*3312	Blast Furnaces and Steel Mills (Coke Ovens).
XX	Chemicals Manufacturing			
XXX	Basic Chemicals Manufacturing			
XXXX	Petrochemicals Manufacturing	N	*2865	Cyclic Crudes and Intermediates (Aromatics).
			*2869	Industrial Organic Chemicals, NEC (Aliphatics).
XXXX	Industrial Gases Manufacturing	R	2813	Industrial Gases.
			*2869	Industrial Organic Chemicals, NEC (Fluorocarbon Gases).
XXXX	Dyes and Pigments Manufacturing			
XXXXX	Inorganic Dyes and Pigments Manufacturing	N	*2816	Inorganic Pigments (Except Bone and Lamp Black).
			*2819	Industrial Inorganic Chemicals, NEC (Inorganic Dyes).
XXXXX	Organic Dyes and Pigments Manufacturing	N	*2865	Cyclic Crudes and Intermediates (Organic Dyes and Pigments).
XXXX	Other Inorganic Chemicals Manufacturing			
XXXXX	Alkalies and Chlorine Manufacturing	E	2812	Alkalies and Chlorine.
XXXXX	Carbon Black Manufacturing	R	*2816	Inorganic pigments (Bone and Lamp Black).
			2895	Carbon Black.
XXXXX	All Other Inorganic Chemicals Manufacturing	R	*2819	Industrial Inorganic Chemicals, NEC (Except Activated Carbon and Charcoal, Alumina, and Inorganic Industrial Dyes).
			*2869	Industrial Organic Chemicals, NEC (Carbon Bisulfide).
XXXX	Other Organic Chemicals Manufacturing			
XXXXX	Gum and Wood Chemicals Manufacturing	E	2861	Gum and Wood Chemicals.
XXXXX	Cyclic Crudes and Intermediates Manufacturing	R	*2865	Cyclic Crudes and Intermediates (Except Aromatics, Organic Dyes, and Pigments).

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means ''part of''. The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XXXXX	All Other Organic Chemicals Manufacturing	R	*2869	Industrial Organic Chemicals, NEC (Except Aliphatics, Carbon Bisulfide, Ethyl Alcohol, Fatty Acid Esters, and Fluorocarbon Gases).
XXX	Resins, Synthetic Rubber, Artificial and Synthetic Fibers and Filament Manufacturing			
XXXX	Resins and Synthetic Rubber Manufacturing			
XXXXX	Plastics Materials and Resins Manufacturing	E	2821	Plastics Materials and Resins.
XXXXX	Synthetic Rubber Manufacturing	E	2822	Synthetic Rubber.
XXXX	Artificial and Synthetic Fibers and Filament Manufacturing			
XXXXX	Cellulosic Manmade Fibers Manufacturing	E	2823	Cellulosic Manmade fibers.
XXXXX	Noncellulosic Organic Fibers Manufacturing	E	2824	Noncellulosic Organic Fibers.
XXX	Pesticides, Fertilizers and Other Agricultural Chemicals Manufacturing			
XXXX	Fertilizers Manufacturing			
XXXXX	Nitrogenous Fertilizers Manufacturing	E	2873	Nitrogenous Fertilizers.
XXXXX	Phosphatic Fertilizers Manufacturing	E	2874	Phosphatic Fertilizers.
XXXXX	Fertilizers, Mixing Only Manufacturing	E	2875	Fertilizers, Mixing Only.
XXXX	Pesticides and Other Agricultural Chemicals Manufacturing	E	2879	Agricultural Chemicals, NEC.
XXX	Pharmaceuticals and Medicine Manufacturing			
XXXX	Pharmaceuticals and Medicine Manufacturing			
XXXXX	Medicinals and Botanicals Manufacturing	E	2833	Medicinals and Botanicals.
XXXXX	Pharmaceutical Preparations Manufacturing	R	2834	Pharmaceutical Preparations.
			*2835	Diagnostic Substances (Except in-Vitro Diagnostic).
XXXXX	In-Vitro Diagnostic Substances Manufacturing	N	*2835	Diagnostic Substances (In-Vitro Diagnostic Substances).
XXXXX	Biological Products, Except Diagnostic Manufacturing	E	2836	Biological Products.
XXX	Paint, Coatings, Adhesives, and Sealants Manufacturing			
XXXX	Paints and Coatings Manufacturing	R	2851	Paints and Coatings.
			*2899	Chemical Preparations, NEC (Frit).
XXXX	Adhesives and Sealants Manufacturing	E	2891	Adhesives and Sealants.
XXX	Soaps, Cleaning Compounds and Toilet Preparations Manufacturing			
XXXX	Soaps and Cleaning Compounds Manufacturing			
XXXXX	Soaps and Other Detergents Manufacturing	R	2841	Soaps and Other Detergents.
			*2844	Toilet Preparations (Toothpaste).
XXXXX	Polishes and Other Sanitation Goods Manufacturing	E	2842	Polishes and Other Sanitation Goods.
XXXXX	Surface Active Agents Manufacturing	E	2843	Surface Active Agents.
XXXX	Toilet Preparations Manufacturing	R	*2844	Toilet Preparations (Except Toothpaste).
XXX	Miscellaneous Chemical Products Manufacturing			
XXXX	Printing Ink Manufacturing	R	2893	Printing Inks.
			*2899	Chemical Preparations, NEC (Writing and Stamping Inks).
			*3952	Lead Pencils and Art Goods (Drawing Inks and India Ink).
XXXX	Explosives Manufacturing	E	2892	Explosives.
XXXX	Other Miscellaneous Chemical Products Manufacturing			
XXXXX	Custom Compounding Purchased Resins Manufacturing	E	3087	Custom Compounding Purchased Resins.
XXXXX	Photographic Films, Papers, Plates and Chemicals Manufacturing.	N	*3861	Photographic Equipment and Supplies (Photographic Films, Paper and Chemicals).
XXXXX	All Other Miscellaneous Chemical Products Manufacturing	R	*2819	Chemical Preparations, NEC (Activated Carbon and Charcoal).
			*2869	Industrial Organic Chemicals, NEC (Fatty Acid Esters).
			*2899	Chemical Preparations, NEC (Except Frit and Writing and Stamp Ink).
			*3999	Manufacturing Industries, NEC (Matches).
XX	Rubber and Plastics Products Manufacturing			
XXX	Rubber Products Manufacturing			
XXXX	Tires and Tubes Manufacturing			

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means ''part of''. The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XXXXX	Tires and Inner Tubes Manufacturing	E	3011	Tires and Inner Tubes.
XXXXX	Tire Rebuilding and Repair	E	7534	Tire Rebuilding and Repair.
XXXX	Rubber and Plastics Hose and Belting Manufacturing	E	3052	Rubber and Plastics Hose and Belting.
XXXX	Other Rubber Products Manufacturing			
XXXXX	Mechanical Rubber Products Manufacturing	E	3061	Mechanical Rubber Products.
XXXXX	All Other Rubber Products Manufacturing	R	*3053	Gaskets, Packings and Sealing Devices (Rubber Gaskets, Packings and Sealing Devices.
			*3069	Fabricated Rubber Products, NEC (Except Rubberized Fabric and Rubber Resilient Floor Covering).
XXX	Plastics Products Manufacturing			
XXXX	Unsupported Plastics Films, Sheets and Bags Manufacturing			
XXXXX	Unsupported Plastics Bags Manufacturing	N	*2673	Bags: Plastics, Laminated, and Coated (Plastics Bags).
XXXXX	Unsupported Plastics Packaging Films and Sheets Manufacturing.	N	*2671	Paper Coated and Laminated, NEC (Plastics Packaging Film and Sheet).
XXXXX	Unsupported Plastics Films and Sheets, Except Packaging Manufacturing.	E	3081	Unsupported Plastics Film and Sheets, Except Packaging.
			*3073	Laminated Plastics Plate, Sheet, and Profile Shapes (Acrylic Sheets).
XXXX	Unsupported Profile Shapes, Plastics Pipes, and Fittings Manufacturing			
XXXXX	Unsupported Plastics Profile Shapes Manufacturing	R	3082	Unsupported Plastics Profile Shapes.
			*3089	Plastics Product, NEC (Plastics Sausage Casings).
XXXXX	Plastics Pipes and Pipe Fittings Manufacturing	R	3084	Plastics Pipes.
			*3089	Plastics Products, NEC (Plastics Pipe Fittings).
XXXX	Laminated Plastics Plates, Sheets, and Shapes Manufacturing	E	*3083	Laminated Plastics Plate, Sheet and Shapes (Except Acrylic Sheets).
XXXX	Polystyrene Foam Products Manufacturing	N	*3086	Plastics Foam Products (Polystyrene Foam Products).
XXXX	Urethane Foam Products Manufacturing	N	*3086	Plastics Foam Products (Urethane Foam Products).
XXXX	Plastics Bottles Manufacturing	E	3085	Plastics Bottles.
XXXX	Other Plastics Products Manufacturing			
XXXXX	Plastics Plumbing Fixtures Manufacturing	E	3088	Plastics Plumbing Fixtures.
XXXXX	Resilient Floor Coverings Manufacturing	R	*3069	Fabricated Rubber Products, NEC (Rubber Resilient Floor Coverings).
			3996	Hard Surface Floor Coverings, NEC.
XXXXX	All Other Plastics Products Manufacturing	R	*3053	Gaskets, Packing and Sealing Devices (Plastics Gaskets, Packing Sealing Devices).
			*3089	Plastics Products, NEC (Except Plastics Pipe Fittings and Plastics Sausage Casings).

TABLE 2

The abbreviation ''pt'' means ''part of''. @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
2812	Alkalies and Chlorine	Alkalies and Chlorine Manufacturing.
2813	Industrial Gases	Industrial Gases Manufacturing (pt).
2816	Inorganic Pigments.	
	Inorganic Pigments, Except Bone and Lamp Black.	Inorganic Dyes and Pigments Manufacturing (pt).

TABLE 2—Continued

The abbreviation ''pt'' means ''part of''. @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
	Bone and Lamp Black	Carbon Black Manufacturing (pt).
2819@	Industrial Inorganic Chemicals, NEC	
	Activated Carbon and Charcoal	Other Miscellaneous Chemical Preparations Manufacturing (pt).
	Alumina	Primary Aluminum Manufacturing (pt).
	Inorganic Dyes	Inorganic Dyes and Pigments Manufacturing (pt).
	Other	Other Miscellaneous Inorganic Chemicals Manufacturing (pt).
2821	Plastics Materials and Resins	Plastics Materials and Resins Manufacturing.
2822	Synthetic Rubber	Synthetic Rubber Manufacturing.
2823	Cellulosic Manmade Fibers	Cellulosic Manmade Fibers Manufacturing.
2824	Noncellulosic Organic Fibers	Noncellulosic Organic Fibers Manufacturing.
2833	Medicinals and Botanical	Medicinals and Botanicals Manufacturing.
2834	Pharmaceutical Preparations	Pharmaceutical Preparations Manufacturing (pt).
2835@	Diagnostic Substances	
	Diagnostic Substances, Except In-Vitro Diagnostic.	Pharmaceutical Preparations Manufacturing (pt).
	In-Vitro Diagnostic Substances	In-Vitro Diagnostic Substances Manufacturing.
2836	Biological Products, Except Diagnostic.	Biological Products, Except Diagnostic Manufacturing.
2841	Soaps and Other Detergents	Soaps and Other Detergents Manufacturing (pt).
2842	Polishes and Other Sanitation Goods.	Polishes and Other Sanitation Goods Manufacturing.
2843	Surface Active Agents	Surface Active Agents Manufacturing.
2844	Toilet Preparations	
	Toilet Preparations, Except Toothpaste.	Toilet Preparations Manufacturing.
	Toothpaste	Soap and Other Detergents Manufacturing (pt).
2851	Paints and Allied Products	Paints and Coatings Manufacturing (pt).
2861	Gum and Wood Chemicals	Gum and Wood Chemicals Manufacturing.
2865@	Cyclic Crudes and Intermediates	
	Aromatics	Petrochemicals Manufacturing (pt).
	Organic Dyes and Pigments	Organic Dyes and Pigments Manufacturing (pt).
	Other	Cyclic Crudes and Intermediates Manufacturing.
2869@	Industrial Organic Chemicals, NEC	
	Aliphatics	Petrochemicals Manufacturing (pt).
	Carbon Bisulfide	All Other Inorganic Chemicals Manufacturing (pt).
	Ethyl Alcohol	Distilled and Blended Liquors Manufacturing (pt).
	Fatty Acid Esters	Other Miscellaneous Chemicals Preparations Manufacturing (pt).
	Fluorocarbon Gases	Industrial Gases Manufacturing (pt).
	Other	Other Miscellaneous Organic Chemicals Manufacturing.
2873	Nitrogenous Fertilizers	Nitrogenous Fertilizers Manufacturing.
2874	Phosphatic Fertilizers	Phosphatic Fertilizers Manufacturing.
2875	Fertilizers, Mixing Only	Fertilizers, Mixing Only Manufacturing.
2879	Agricultural Chemicals, NEC	Pesticides and Other Agricultural Chemicals Manufacturing.
2891	Adhesives and Sealants	Adhesives and Sealants Manufacturing.
2892	Explosives	Explosives Manufacturing.
2893	Printing Inks	Printing Ink Manufacturing (pt).
2895	Carbon Black	Carbon Black Manufacturing (pt).
2899	Chemical Preparations, NEC	
	Frit	Paints and Coatings Manufacturing (pt).
	Writing and Drawing Inks	Printing Ink Manufacturing (pt).
	Other	Other Miscellaneous Chemical Preparations Manufacturing (pt).
2911	Petroleum Refining	Petroleum Refineries.
2951	Asphalt Paving Mixtures and Blocks	Asphalt Paving Mixtures and Blocks Manufacturing.
2952	Asphalt Felts and Coatings	Asphalt Felts and Coatings Manufacturing.
2992	Lubricating Oils and Greases	Lubricating Oils and Greases Manufacturing.
2999	Petroleum and Coal Products, NEC	All Other Petroleum and Coal Products Manufacturing (pt).
3011	Tires and Inner Tubes	Tires and Inner Tubes Manufacturing.
3021	Rubber and Plastics Footwear	Rubber and Plastics Footwear Manufacturing.
3052	Rubber and Plastics Hose and Belting.	Rubber and Plastics Hose and Belting Manufacturing.
3053@	Gaskets, Packings, and Sealing Devices	
	Cork Gaskets, Packing, and Sealing Devices.	Other Miscellaneous Wood Products Manufacturing (pt).
	Metal Gaskets, Packing, and Sealing Devices.	Other Miscellaneous Fabricated Metal Products Manufacturing (pt).
	Plastics Gaskets, Packing, and Sealing Devices.	All Other Plastics Products Manufacturing (pt).
	Rubber Gaskets, Packing, and Sealing Devices.	All Other Rubber Products Manufacturing (pt).

TABLE 2—Continued

The abbreviation ''pt'' means ''part of''. @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
3061	Mechanical Rubber Products	Mechanical Rubber Products Manufacturing.
3069	Fabricated Rubber Products, NEC	
	Rubberized Fabric	Coated Fabrics Including Rubberized Mills (pt).
	Rubber Resilient Floor Covering	Resilient Floor Covering Manufacturing (pt).
	Other	All Other Rubber Products Manufacturing (pt).
3081	Unsupported Plastics Film and Sheets, Except Packaging.	Unsupported Plastics Films and Sheets, Except Packaging Manufacturing (pt).
3082	Unsupported Plastics Profile Shapes	Unsupported Plastics Profile Shapes Manufacturing (pt).
3083	Laminated Plastics Plate, Sheet	
	Acrylic Sheets	Unsupported Plastics Films and Sheets, Except Packaging Manufacturing (pt).
	Other	Laminated Plastics Plates, Sheets, and Shapes Manufacturing.
3084@	Plastics Pipes	Plastics Pipes and Pipe Fittings Manufacturing (pt).
3085	Plastics Bottles	Plastics Bottles Manufacturing.
3086	Plastics Foam Products	
	Urethane Foam Products	Urethane Foam Products Manufacturing.
	Polystyrene Foam Products	Polystyrene Foam Products Manufacturing.
3087	Custom Compounding of Purchased Resins.	Custom Compounding of Purchased Resins Manufacturing.
3088	Plastics Plumbing Fixtures	Plastics Plumbing Fixtures Manufacturing.
3089	Plastics Products, NEC	
	Pipe Fittings	Plastics Pipes and Pipe Fittings Manufacturing (pt).
	Plastics Sausage Casings	Unsupported Plastics Profile Shapes Manufacturing (pt).
	Other	All Other Plastics Products Manufacturing (pt).

Description of Changes to the U.S. System

1. Petroleum and Coal Products Manufacturing—There was one change from the 1987 industry structure for this sector.

Coke ovens, not operated with a blast furnace transferred from 1987 Industry Code 3312, Blast Furnaces and Steel Mills to the 1997 Other Petroleum and Coal Products, NEC.

The number of 1997 petroleum and coal products industries remains unchanged at five from 1987. For time series linkage, all five 1987 industries are comparable within three percent of the 1997 industries.

2. Chemicals Manufacturing—There were five new industries added to the 1997 industry structure for this industry subsector. New industries were created for:

Petrochemicals Manufacturing from parts of 1987 Industry Code 2865, Cyclic Crudes and Intermediates and 1987 Industry Code 2869, Industrial Organic Chemicals, NEC.

Organic Dyes and Pigments Manufacturing from part of old Industry Code 2865, Cyclic Crudes and Intermediates.

In-Vitro Diagnostic Substances Manufacturing from part of old Industry Code 2835, Diagnostic Substances.

Photographic Films, Papers, Plates, and Chemicals Manufacturing from part of 1987 Industry Code 3861, Photographic Equipment and Supplies.

Custom Compounding Purchased Resins Manufacturing transferred from the 1987 Major Group Code 30, Rubber and Miscellaneous Plastics Products.

Two activities transferred out of 1987 Major Group 28, Chemicals and Allied Products.

Alumina transferred from 1987 Industry Code 2819, Industrial Inorganic Chemicals, NEC into Primary Aluminum Manufacturing.

Ethyl Alcohol transferred from 1987 Industry Code 2869, Industrial Organic Chemicals into Distilled and Blended Liquors Manufacturing.

Two activities transferred into the 1997 Chemicals Manufacturing.

Drawing ink and India ink transferred from old Industry Code 3952, Lead Pencils and Art Goods into Printing Ink Manufacturing.

Matches transferred from old Industry Code 3999, Manufacturing Industries, NEC into All Other Miscellaneous Chemical Preparations.

Also, there were several activities that transferred within the chemical industry. The number of chemical industries increased from 29 in 1987 to 34 in 1997. For time series linkage, 25 of the 29 1987 industries are comparable within three percent of the 1997 industries.

3. Rubber and Plastics Products Manufacturing—There were six new industries added to the 1997 industry structure for this industry subsector.

Tire Rebuilding and Repair transferred from the 1987 Services Major Group Code 75, Auto Repair, Services, and Parking.

Unsupported Plastics Packaging Films and Sheets Manufacturing from part of 1987 Industry Code 2671, Paper Coated and Laminated, NEC.

Unsupported Plastics Bags from part of 1987 Industry Code 2673, Bags: Plastics, Laminated, and Coated.

Polystyrene Foam Products from part of 1987 Industry Code 3086, Plastics Foam Products.

Urethane Foam Products from part of 1987 Industry Code 3086, Plastics Foam Products.

Resilient Floor Coverings from parts of 1987 Industry Code 3069, Fabricated Rubber Products, NEC and 1987 Industry Code 3996, Hard Surface Floor Coverings, NEC.

Three industries were removed from this industry group.

Rubber and Plastics Footwear transferred into the 1997 NAICS Industry Subsector, Leather and Allied Products Manufacturing.

Gaskets, Packings, and Sealing Devices were deleted and the products were split into various residual industries by material.

Custom Compounding Purchased Resins transferred into the 1997 NAICS Industry subsector, Chemicals Manufacturing.

One activity transferred out of the 1987 Major Group, Rubber and Plastics Products.

Rubberized Fabric transferred from the 1987 Industry Code 3069, Fabricated

Rubber Products, NEC to 1997 NAICS Industry, Coated Fabric Mills including Rubberized Fabric Mills.

Also, there were several activities that transferred within the rubber and plastics products industries. The number of rubber and plastics products industries increased from 15 in 1987 to 17 in 1997. For time series linkage, 13 of the 15 1987 industries are comparable within three percent of the 1997 industries.

Part II—Proposed New Industry Structure for Broadcasting and Telecommunications

Section A—NAICS Structure and Narrative

North American Industry Classificattion System

(NAICS)

Agreement Number 2

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Broadcasting and Telecommunications

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and discussions held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on May 18 and 19 in Ottawa, Canada.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten.	5/19/95
Mexico	/S/ Enrique Ordaz.	5/19/95
United States ...	/S/ Jack E. Triplett.	5/19/95

ATTACHMENT 1.—NAICS STRUCTURE

XX	Broadcasting and Telecommunications
XXX	Radio and Television Broadcasting.
XXXX	Radio Broadcasting.
XXXX	Television Broadcasting.
XXX	Cable Networks and Program Distribution.
XXXX	Cable Networks.
XXXX	Cable and Program Distribution.
XXX	Telecommunications.
XXXX	Wired Telecommunications Carriers.
XXXX	Wireless Telecommunications Carriers, Except Satellite.
XXXX	Telecommunications Resellers.
XXXX	Satellite Telecommunications.
XXXX	Other Telecommunications.

Attachment 2—North American Industry Classification System

Draft Classification for:
Broadcasting and
Telecommunications

Representatives of the statistical agencies of Canada, Mexico and the United States have agreed to a draft industry classification for the Broadcasting and Telecommunications subsector. The draft establishes three industry groups and nine industries. It has not yet been determined in which industry sector in NAICS the Broadcasting and Telecommunications industry subsector will be included.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the NAICS industry level of the NAICS structure with the exception of satellite telecommunications, which will be published only in the United States. All countries agree on the detailed definitions of the classes.

The classification improves comparability with other countries. With the exception of radio dispatch services and radio and television relay systems, all industries are compatible with the 2-digit level of the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. Radio dispatch services and radio and television relay systems activities are not significant.

Other objectives of the NAICS project have also been met. In an effort to identify high technology and new and emerging industries, new industries for cable networks, and satellite telecommunications have been identified. A relatively new economic development has been identified by creating an industry for telecommunications resellers.

In addition to the above objectives of the NAICS project, the classification meets the objectives of an industry classification. The classifications are homogeneous and account for most of the activities that define them. In addition, they are economically significant. Finally, disruptions to time series at the NAICS industry level have been kept to a minimum. The major changes in country detail are well-defined and can be taken into account in linking time series.

Limitations of the Classification

There are some limitations to the draft Broadcasting and Telecommunications hierarchy. First, the proposed structure attempts to describe the subsector as it currently exists. It is therefore rooted in today's technology and regulatory environment and it reflects the current profile of service providers. However, many are anticipating fundamental changes in this sector. For instance, the distinction between the Wired Telecommunication Carriers industry

and the Cable and Program Distribution industry may not be viable in the future if both industries are engaged in the carriage of voice (basic telephone service), data, and video (including television programs). Similarly, the systems that are now used to distribute television programs may well be used in the future to distribute other types of products such as games and software or be used for other purposes such as interactive home shopping or banking. In such an environment, the provision of menus, interactive controls, and billing services could become an integral part of the bundle of services provided by carriers.

Secondly, it may be argued that for some purposes a number of industries that are important users of telecommunications, as outlined in the proposal, should be included in this subsector. These include telephone answering services and other message services that may include the use of paging and voice mail, phone booth operations, and on-line information services. These industries have not been included in this subsector as they are users of telecommunications services, not providers of the telecommunications services as defined in the proposal. They will be classified elsewhere in NAICS.

These few examples illustrate the difficulty of building a classification for an evolving sector that will stand the test of time.

Constraints on the NAICS Classification

A number of industries that can appropriately be defined in terms of production distinctions could not be published in all countries because of considerations of size and confidentiality.

A General Outline

The Broadcasting and Telecommunications subsector has been defined to include establishments providing point-to-point communications and the services related to that activity. The industry groups (Radio and Television Broadcasting, Cable Networks and Program Distribution, and Telecommunications) are based on differences in the methods of communication and in the nature of services provided.

The Radio and Television Broadcasting industry group operates broadcasting studios and facilities for over the air or satellite delivery of radio and television programs of entertainment, news, talk, and the like. These establishments are often engaged in the production and purchase of programs and generate revenues from the sale of air time to advertisers, and from donations, subsidies, and/or the sale of programs. The distinction between radio and television broadcasting involves the use of equipment dealing in audio versus audio/video signal.

The Cable Networks and Program Distribution industry group includes two types of establishments. Cable networks operate studios and facilities for the broadcasting of programs that are typically narrowcast in nature (limited format such as news, sports, education, and youth-oriented programming). The services of these establishments are typically sold on a subscription or fee basis and the delivery of the programs to customers is handled by other establishments that operate cable systems, direct-to-home satellite systems, or other similar systems. These distribution systems establishments are classified to the Cable and Program Distribution industry.

The Telecommunications industry group is primarily engaged in operating, maintaining, and/or providing access to facilities for the transmission of voice, data, text, sound, and full motion picture video between network termination points. A transmission facility may be based on a single technology or a combination of technologies.

Wired Telecommunications Carriers operate and maintain switching and transmission facilities (usually land lines and microwave) to provide one-to-one communications via landlines (including microwave) or a combination of landline and satellite communications.

Wireless Telecommunications Carriers, Except Satellite operate and maintain switching and transmission facilities to provide one-to-one communications via airwaves. The United States classification further distinguishes wireless carriers on the basis of technology by separating paging services and other wireless services such as cellular and personal communications services.

Telecommunications Resellers provide services similar to those of telecommunications carriers but do not operate and maintain a network. They principally purchase the services of carriers for resale to customers.

The Satellite Telecommunications industry principally provides point-to-point communications services to other establishments in the telecommunications and broadcasting industries by forwarding communications signals via a system of satellites. The Other Telecommunications industry includes establishments that specialize in the provision of other types of services such as satellite tracking, radar station operations, and overseas telecommunications (except for satellite telecommunications).

Some Changes to the National Classifications

This section highlights some of the significant changes to the existing national industry classification systems.

The only change to USIC 4832 Radio Broadcasting Stations is to add detail to separate the radio networks from the radio stations. It was felt that the programming function of the network was a significant production difference. There is a significant change for Mexico in that the draft proposes the elimination of the designation of private versus public.

The change in the Television Broadcasting industry for the U.S. is restricted to a title change to clarify the proper classification for television networks. The issue of private versus public television is a change for Mexico.

Cable Networks is similar to Radio Broadcasting, in that the programming function is being used to identify these establishments as a separate industry. This would be a new classification for all three countries.

Cable and Program Distribution establishments are separated from the cable networks based on the absence of the programming function. This would be a new industry for all three countries.

The Wired Telecommunications Carriers industry group has been changed to include the activities of USIC 4822 Telegraph and Other Message Communications. Detail was also added for carriers and resellers. USIC 4822 has been a declining industry and has assumed more and more of the characteristics of the wired telecommunications industry. This change also improved comparability with both Mexico and Canada.

Recent changes in the telephone industry have paved the way for new businesses. The most prevalent are the telecommunications resellers. A reseller purchases communications services from the telecommunications carrier and resells the services to its customers. The reseller does not operate the communications network but instead may operate only the switching system to connect customers to the carriers' network. Telecommunication Carriers and Telecommunications Resellers are new industries for all three countries. It is a new economic development and, as such, is being identified as a new and emerging industry.

Changes in the Wireless Telecommunications Carriers, Except Satellite industry involve moving radio dispatch from USIC 4899 and adding detail to reflect different technologies and updating the terminology. The production function of radio dispatch is similar to that of wireless telecommunications. This change also increased comparability with Canada and Mexico. Paging was found to have a distinct production function. Canada could not support this activity as a NAICS industry so it was added as a 5-digit U.S. industry. Wireless Telecommunications Carriers, Except Satellite will be a new industry for all three countries.

Satellite Telecommunications is a new industry in all three countries. It is a new technology that is now being identified as a new and emerging industry.

Other Telecommunications is a new industry for all three countries.

Section B—Annex: United States National Industry Detail

As explained in the *Structure* presentation of this notice, the three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for this NAICS industry subsector. In the following tables, proposed 5-digit detail is indicated in italics. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means ''part of''. The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XX	Broadcasting and Telecommunications			
XXX	Radio and Television Broadcasting			
XXXX	Radio Broadcasting			
XXXXX	Radio Networks	N	*4832	Radio Broadcasting Stations.
XXXXX	Radio Stations	N	*4832	Radio Broadcasting Stations.
XXXX	Television Broadcasting	E	4833	Television Broadcasting Stations.
XXX	Cable Networks and Program Distribution			
XXXX	Cable Networks	N	*4841	Cable and Other Pay Television Services.
XXXX	Cable and Program Distribution	N	*4841	Cable and Other Pay Television Services.
XXX	Telecommunications			
XXXX	Wired Telecommunications Carriers	N	*4813	Telephone Communications, Except Radiotelephone (Carriers).
			4822	Telegraph and Other Message Communications.
XXXX	Wireless Telecommunications Carriers, Except Satellite	N		
XXXXX	Paging	N	*4812	Radiotelephone Communications (Paging Carriers).
XXXXX	Cellular and Other Wireless Telecommunications	N	*4812	Radiotelephone Communications (Cellular Carriers).
			*4899	Communication Services, NEC (Radio Dispatch).
XXXX	Telecommunications Resellers	N	*4812	Radiotelephone Communications (Paging and Cellular Resellers).
			*4813	Telephone Communications, Except Radiotelephone (Resellers).
XXXX	Satellite Telecommunications	N	*4899	Communication Services, NEC (Satellite).
XXXX	Other Telecommunications	N	*4899	Communication Services, NEC.

TABLE 2

The abbreviation ''pt'' means ''part of''. @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
4812@	Radiotelephone Communications	Wireless Telecommunications (pt). Telecommunications Resellers (pt).
4813@	Telephone Communications, Except Radiotelephone.	Wired Telecommunications Carriers (pt.). Telecommunications Resellers (pt.).
4822@	Telegraph and Other Message Communications.	Wired Telecommunications Carriers (pt.).
4832	Radio Broadcasting Stations	Radio Networks. Radio Stations.
4833	Television Broadcasting Stations	Television Broadcasting.
4841	Cable and Other Pay Television Services.	Cable Networks. Cable and Program Distribution.
4899	Communications Service, NEC	Wireless Telecommunications Carriers (pt). Satellite Telecommunications. Other Telecommunications.

Description of Changes to the U.S. System

The Broadcasting and Telecommunications subsector has been completely restructured for 1997 to reflect the changing technology of the subsector. New industries are the following:

Radio Networks from part of 1987 Industry Code 4832, Radio Broadcasting Stations.

Radio Stations from part of 1987 Industry Code 4832, Radio Broadcasting Stations.

Cable Networks from part of 1987 Industry Code 4841, Cable and Other Pay Television Services.

Cable and Program Distribution from part of 1987 Industry Code 4841, Cable and Other Pay Television Services.

Wired Telecommunications Carriers from part of 1987 Industry Code 4813, Telephone Communications, except Radiotelephone and Industry Code 4822, Telegraph and Other Message Communications.

Paging from part of 1987 Industry Code 4812, Radiotelephone Communications.

Cellular and Other Wireless Telecommunications from parts of 1987 Industry Codes 4812, Radiotelephone Communications and Industry Code 4899, Communications Services, Not Elsewhere Classified.

Telecommunications Resellers from part of 1987 Industry Code 4812, Radiotelephone Communications and part of Industry Code 4813, Telephone Communications, Except Radiotelephone.

Satellite Telecommunications from part of 1987 Industry Code 4899, Communications Services, Not Elsewhere Classified.

Other Telecommunications from part of 1987 Industry Code 4899, Communications Services, Not Elsewhere Classified.

The number of industries in this industry subsector increased from 7 in 1987 to 11 in 1997. For time series linkage, 4 of the 7 1987 industries are comparable within three percent of the 1997 industries. For the other 3 industries, changes involve splitting a part of 1987 SIC 4-digit industries to obtain more industry detail, in response to new economic and technological developments in this subsector; the new more detailed industries can readily be reaggregated for analytical purposes where time series comparability is important.

Part III—Proposed New Industry Structure for Food Services and Drinking Places and Accommodations

Section A—NAICS Structure and Narrative

North American Industry Classification System

(NAICS)

ATTACHMENT 1.—NAICS STRUCTURE

XX	Foodservices and Drinking Places.
XXX	Full-Service Restaurants.
XXXX	Full-Service Restaurants.
XXX	Limited-Service Eating Places.
XXXX	Limited-Service Restaurants and Cafeterias.
XXXX	Refreshment Places.
XXX	Special Foodservices.
XXXX	Foodservice Contractors.
XXXX	Caterers.
XXXX	Mobile Caterers.
XXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).
XXXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).
XX	Accommodations.
XXX	Traveler Accommodations.
XXXX	Hotels and Motels, except Casinos.
XXXX	Casino Hotels.
XXXX	Other Traveler Accommodations.
XXX	Recreational and Other Accommodations.
XXXX	Recreational Vehicle Parks and Camps.
XXXX	Rooming and Boarding Houses.

Attachment 2—North American Industry Classification System

Draft Classification for:

Foodservices and Drinking Places Accommodations

Representatives of the statistical agencies of Canada, Mexico and the United States have agreed to a draft industry classification for Foodservices and Drinking Places and Accommodations. These are further subdivided into six industry groups and ten industries.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It is comprised of Agreement Number 3

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Foodservices and Drinking Places Accommodations

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and discussions held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on May 18 and 19 in Ottawa, Canada.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten.	5/19/95
Mexico	/S/ Enrique Ordaz.	5/19/95
United States ...	/S/ Jack E. Triplett.	5/19/95

industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the NAICS 4-digit industry level of the NAICS structure with the exception of Casino Hotels, which will be published only in the United States. All countries agree on the detailed definitions of the industries.

The classification improves comparability with other countries. The grouping of the Accommodations Subsector with the Foodservices and Drinking Places Subsector achieves comparability with the International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations at the 2-digit level, with the exception of doughnut shops which are included in the Foodservices and Drinking Places Subsector in NAICS and in the Manufacturing Division in ISIC. This means that the NAICS classification is the same as, or part of, a single ISIC 2-digit Division.

Other objectives of the NAICS project have also been met. New industries for different types of restaurants have been designated. These classifications reflect changes in the industry that have occurred in the past but have never been identified in the classification system.

In addition to the above objectives of the NAICS project, the classification meets the objectives of an industry classification. The industries are homogeneous and they are economically significant. Finally, disruptions to time series at the NAICS industry level have been kept to a minimum. In the United States, the major changes to existing classifications at the country level establish additional detail in the industry group, which can readily be linked to construct time series.

Foodservices and Drinking Places

Limitations of the Classification

There are some limitations to the draft foodservices and drinking places hierarchy. A number of related industries that provide foodservices as a secondary activity are not included. These are such activities as dinner theaters, dinner cruises, and fraternal organizations that provide foodservices to their members. These activities are not included in this industry subsector but will be classified in other service related industry subsectors based on their primary activity.

Constraints on the NAICS Classification

A number of industries that can appropriately be defined in terms of production distinctions could not be published in all countries because of considerations of size and confidentiality. In addition, the way activities are combined in establishments differs to some extent in the different countries. It is anticipated that each country will publish additional categories that comprise sub-divisions of NAICS industries, to present data for activities that are nationally significant.

A General Outline

The foodservices and drinking places grouping of industries is defined to include establishments that are primarily engaged in preparing meals, snacks, and beverages to customer order for immediate consumption, primarily on the premises. Within the subsector Food Services and Drinking Places, the industry groups (Full-Service Restaurants; Limited-Service Eating Places; Special Foodservices; and Bars, Taverns, and Other Drinking Places) reflect the level of service provided. The NAICS industries are described below.

Full-Service Restaurants provide a complete menu of full meals and full waiter/waitress service.

Limited-Service Eating Places provide a limited menu, limited waiter/waitress service, or both. This group is separated into limited-service restaurants and cafeterias. Limited-Service includes fast food and take out, plus cafeterias which are distinguished based on the cafeteria-style serving equipment. Refreshment places include doughnut shops, pretzel shops, cookie shops, coffee shops, and other such locations that primarily prepare and provide a single-item menu of food and drink for immediate consumption. Establishments that primarily resell food and drink prepared elsewhere, and that do not provide an eating place, are classified in retail trade.

Special Foodservices provide foodservices under special conditions. The group distinguishes Foodservice Contractors, Caterers, and Mobile Caterers. Foodservice Contractors operate under a long term contract to provide foodservices primarily in institutional, office, or industrial locations. Caterers provide event-based foodservice for both households (weddings, etc.) and industrial accounts (trade shows, etc.). Mobile Caterers are distinguished based on the use of a specialized vehicle and mobile service. Food carts that prepare foods rather than merely selling food prepared elsewhere are classified in this industry.

Bars, Taverns, and Other Drinking Places (Alcoholic Beverages) are distinguished based on the use of special equipment, training and skills in the preparation and serving of alcoholic beverages.

Some Changes to National Classification

This section highlights some of the significant changes to existing national industry classifications. For foodservices, all countries have had separate industries based on food versus alcoholic beverages; however, this draft proposes new detail for the U.S. and a redefinition of many of the industries for both Canada and Mexico.

For Canada, this draft regroups the activities included in CSIC 9211, 9212, and 9213. Full-Service includes some of the operations that are currently in CSIC 9211 and 9212. The remaining establishments in these industries, namely those providing limited service are combined with the establishments in CSIC 9213 to form the Limited-Service Eating Places industry of NAICS. New detail for foodservices contractors, caterers, and mobile caterers has been established from within CSIC 9214.

For Mexico, parts of CMAP 931011 (all but cafeterias, dining cars, and vending machines), 931013, and 931015 are combined in the full-service classification. CMAP 931012 (except industrial cafeterias), 931014, and 931015 make up the new Limited-Service Eating Place industry group.

For the United States, USIC 5812 is split into separate detail for full-service, limited-service, and special services restaurants with additional U.S. detail for special services including foodservice contractors, caterers, and mobile caterers, a total of six new industries.

Accommodations

Limitations and Constraints of the NAICS Classification

There are some limitations to the draft accommodations structure. Accommodation establishments, especially hotels and motels, provide many services other than lodging. For example, many establishments have restaurants. Others have recreational facilities. Small establishments with very limited lodging facilities may offer no amenities at all. Hotels and motels are accordingly not homogeneous with respect to the services they provide. Moreover, this is by far the largest

industry in the subsector. Nevertheless, no acceptable way was found to clearly demarcate the hotel and motel industry into more detailed industries that would be collectible in all three countries, and would apply to the operations of the industry in all three countries. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a NAICS industry level in order to ensure full comparability among the three countries.

A General Outline

The accommodations area is defined to include establishments that are primarily engaged in providing short-term accommodations. The industry groups and industries within accommodations have been grouped based on the various levels of services and facilities provided. The NAICS industries are described below.

Hotels and Motels primarily provide traditional types of lodging services to travelers. In addition to lodging, a range of other services may be provided.

Casino Hotels include both lodging and gaming casinos as an integrated facility. Both the lodging and gaming services are generally major operations and a separate industry has been created to classify these establishments. Casino Hotels are classified in this industry regardless of whether separate data are available for the gambling and hotel activities of these establishments. This industry is becoming large in the United States, though it does not currently exist in Canada and Mexico.

Other Traveler Accommodations include bed and breakfast establishments, hostels, and other establishments that provide lodging to travelers but provide few of the types of ancillary services that hotels and motels commonly provide.

Recreational Vehicle Parks and Camps provide special types of accommodations for travelers, vacationers, and others. The facilities are often outdoors (such as campsites) and are recreational in nature.

Rooming and Boarding Houses include establishments renting rooms, with or without board, for indefinite periods. This industry primarily includes establishments known as rooming houses and student residences.

Changes to the National Classifications

This section highlights some changes to each country's current industry classification of accommodations. The most significant are:

For the United States, the distinction between membership and non-membership organizations that provide lodging has been deleted from the classification. Such activities will be classified based upon the type of accommodations being provided. The current industry for hotels and motels (SIC 7011) has been divided into four NAICS industries. Also, separate industries for recreational vehicle parks and sporting camps have been combined.

For Canada, the proposal regroups four existing industries (CSIC's 9111, 9112, 9113, 9114) into two NAICS industries within the Traveler Accommodations industry group. In addition, three existing industries have been combined into a recreational vehicle parks and camp industry.

For Mexico, the proposal regroups three existing industries (CMAP's 932001, 932002, 932012) into two NAICS industries within the industry group for traveler accommodations.

Section B—Annex: United States National Industry Detail

As explained in the *Structure* presentation of this notice, the three country agreement on NAICS envisions that each country may choose to develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the two NAICS industry subsectors covered in Part III of this notice. In the following tables, proposed 5-digit detail is indicated in italics. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means ''part of''. The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status Code	1987 USIC Code	1987 USIC description
XX	Foodservices and Drinking Places			
XXX	Full-Service Restaurants			
XXXX	Full-Service Restaurants	N	*5812	Eating Places.
XXX	Limited-Service Eating Places			
XXXX	Limited-Service Restaurants and Cafeterias			
XXXXX	*Limited-Service Restaurants*	N	*5812	Eating Places(Limited-Service Restaurants).
XXXXX	*Cafeterias*	N	*5812	Eating Places (Cafeterias).
XXXX	Refreshment Places	N	*5812	Eating Places (Refreshment Places).
			*5461	Retail Bakeries (Snacks).
XXX	Special Foodservices			
XXXX	Foodservice Contractors	N	*5812	Eating Places (Food Service Contractors).
XXXX	Caterers	N	*5812	Eating Places (Caterers).
XXXX	Mobile Caterers	N	*5963	Direct Selling Establishments (Mobile Caterers).
XXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).			
XXXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages)	E	5813	Drinking Places (Alcoholic Beverages).
XX	Accommodations			
XXX	Traveler Accommodations			
XXXX	Hotels and Motels, except Casino Hotels	R	*7011	Hotels and Motels (Hotels and Motels, Except Casino Hotels).

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means ''part of''. The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status Code	1987 USIC Code	1987 USIC description
XXXX			*7041	Organization Hotels and Lodging Houses, on Membership Basis (Except Hotels).
XXXX	Casino Hotels	N	*7011	Hotels and Motels (Casino Hotels).
XXXX	Other Traveler Accommodations			
XXXXX	*Bed and Breakfast Inns*	N	*7011	Hotels and Motels (Bed and Breakfast Inns)
XXXXX	*All Other Traveler Accommodations*	N	*7011	Hotels and Motels (Except Hotels, Motels and Bed and Breakfast Inns).
XXX	Recreation and Other Accommodations		*7041	Organization Hotels and Lodging Houses, on Membership Basis (Except Hotels)
XXXX	Recreational Vehicle Parks and Camps.			
XXXXX	*Sporting and Recreation Camps*	E	7032	Sporting and Recreational Camps.
XXXXX	*Recreational Vehicle Parks and Campgrounds*E	E	7033	Recreational Vehicle Parks and Campgrounds
XXXX	Rooming and Boarding Houses	R	7021	Rooming and Boarding Houses.
			*7041	Organization Hotels and Lodging Houses, on Membership Basis (Rooming and Boarding Houses).

TABLE 2

The abbreviation ''pt'' means ''part of''. @ means a time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

1987 USIC code	1987 USIC description	1997 U.S. description
5812@	Eating Places	Full-Service Restaurants. Limited-Service Restaurants. Cafeterias. Refreshment Places (pt). Foodservice Contractors. Caterers.
5813	Drinking Places	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).
7011	Hotels and Motels	Hotels and Motels, except Casino Hotels (pt). Casino Hotels. Bed and Breakfast Inns. All Other Traveler Accommodations, NEC.
7021	Rooming and Boarding Houses	Rooming and Boarding Houses (pt).
7032	Sporting and Recreational Camps	Sporting and Recreation Camps.
7033	Recreational Vehicle Parks and Campsites.	Recreational Vehicle Parks and Campgrounds.
7041@	Organization Hotels and Lodging Houses, on Membership Basis.	Hotels and Motels, except Casino Hotels (pt.). Rooming and Boarding Houses (pt).

Description of Changes to the U.S. System

1. Foodservices and Drinking Places—Seven new industries are added to the 1997 industry structure for this industry subsector. New industries are the following:

Full-Service Restaurants from part of 1987 Industry Code 5812, Eating Places.

Limited-Service Restaurants from part of 1987 Industry Code 5812, Eating Places.

Cafeterias from part of 1987 Industry Code 5812, Eating Places.

Refreshment Places from parts of 1987 Industry Code 5812, Eating Places and Industry Code 5461, Retail Bakeries.

Foodservice Contractors from part of 1987 Industry Code 5812, Eating Places.

Caterers from part of 1987 Industry Code 5812, Eating Places.

Mobile Caterers transferred from part of 1987 Industry Code 5963, Direct Selling Establishments.

The number of Foodserving and Drinking Places increased from 2 in 1987 to 8 in 1997. For time series linkage, 1 of the 1987 industries is comparable within three percent of the 1997 industries. Industry 5812 was split into 6 new industries.

2. Accommodations—Three new industries are added to the 1997 industry structure for this industry subsector. New industries are the following:

Casino Hotels from part of 1987 Industry Code 7011, Hotels and Motels.

Bed and Breakfast Inns from part of 1987 Industry Code 7011, Hotels and Motels.

Other Traveler Accommodations, NEC from part of 1987 Industry Code 7011, Hotels and Motels.

One industry was deleted from this industry subsector.

Organization Hotels and Lodging Houses, on Membership Basis was deleted and the accommodations were split between Hotels and Motels, except Casino Hotels and Rooming and Boarding Houses.

The number of 1997 Accommodations Industries increased from 5 in 1987 to 7 in 1997. For time series linkage, 4 of the 5 1987 industries are comparable within three percent of the 1997 industries.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs

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Wednesday
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Part IV

Securities and Exchange Commission

17 CFR Part 230 et al.

Money Market Fund Prospectuses and Quarterly Reporting; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, and 274

[Release Nos. 33–7196; IC–21216; S7–21–95]

RIN 3235–AG55

Money Market Fund Prospectuses

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules, forms, and staff Guides.

SUMMARY: The Commission is proposing amendments to the registration forms for money market funds. The amendments would tailor the prospectus disclosure requirements to the unique characteristics of money market funds. These changes are intended to allow money market funds to prepare prospectuses that are shorter, simpler, more informative, and more readily understandable to investors.

DATES: Comments on the proposed rule and form amendments and on the proposed staff Guides must be received on or before September 27, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–21–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Martha H. Platt, Senior Attorney, or Robert E. Plaze, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation; for accounting questions, contact James F. Volk, Assistant Chief Accountant, (202) 942–0637, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''the Commission'') today is proposing for comment amendments to Form N–1A [17 CFR 239.15A and 274.11A] and Form N–3 [17 CFR 239.17a and 274.11b], the registration forms used by open-end management investment companies (''mutual funds'') and separate accounts organized as management investment companies (''separate accounts'') to comply with the registration statement requirements of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''1940 Act'') and to register their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''1933 Act''). The proposed amendments would shorten and simplify money market fund prospectuses. The Commission is proposing additional amendments to Form N–1A that would: (1) modify the manner in which the yield of a tax exempt money market fund is calculated; (2) change the calculation of total return for partial years in the financial highlights table; (3) remove the requirement that funds file a schedule of performance quotation computations; and (4) amend the instructions regarding the fee table. Conforming amendments are being proposed to rule 482 under the 1933 Act [17 CFR 230.482] and Form N–2 [17 CFR 239.14 and 274.11a–1], the registration form for closed-end management investment companies. The Commission also is publishing related changes to staff Guides to Forms N–1A and N–3.

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Executive Summary

The Commission is proposing to amend the prospectus disclosure requirements of Form N–1A to permit and encourage money market funds (''money funds'') to provide shorter prospectuses that are more relevant to the needs of typical money fund investors. The Commission believes that the proposed rule and form amendments will significantly shorten and simplify money fund prospectuses and provide valuable information to investors in more useable formats. The most significant of the proposed changes are summarized below.

First, the multi-line financial highlights table would be replaced with a bar graph showing a fund's total returns for each of the last ten years. The bar graph is intended to provide investors with information regarding fund performance in a simple, graphic format that is easy to understand.

Second, a money fund's description of its portfolio and investment techniques would be greatly abbreviated. Money fund prospectuses often contain detailed, technical descriptions of instruments and investment techniques that are unlikely to assist an investor in understanding a money fund's essential characteristics. The Commission is concerned that these complicated descriptions add substantial length and complexity to money fund prospectuses, which may discourage investors from reading important information in the prospectuses. The Commission proposes to address this concern by permitting all money funds to describe themselves in their prospectuses with very basic, general statements about their investment objectives and portfolio composition.

The narrative disclosure that money funds would remove from their prospectuses in response to the proposals described above would be relocated to the Statement of Additional Information (''SAI''), which is available to investors upon request and without charge.

I. Background and Summary of Proposed Amendments

Money funds are open-end management investment companies that invest in short-term debt instruments or instruments that have similar characteristics. Money funds currently hold over $692 billion in assets [1] in approximately 25 million shareholder accounts.[2] Through these funds, individual investors are able to participate in the money markets.

Like other mutual funds, money funds offer investors a diversified and professionally managed portfolio of securities. Many investors select money funds as part of their investment plans because these funds have characteristics that allow them to be used as a cash management tool. These characteristics

[1] Money Fund Report (July 7, 1995). $574 billion is invested in taxable funds and $118 billion is invested in tax exempt funds. *Id.*

[2] Investment Company Institute Mutual Fund Fact Book 99 (35th ed. 1995). See Investment Company Act Rel. No. 17589 (July 17, 1990) [55 FR 30239 (July 25, 1990)] at nn. 3–7 and 15–18, and accompanying text, for a summary of the development of money funds.

include relative safety of principal, a high degree of liquidity, a wide range of shareholder services (including check-writing), and maintenance of a stable net asset value, usually of $1.00. Money funds are not protected by federal deposit insurance, and there is no guarantee that a money fund will always be able to maintain a stable net asset value.[3] Nevertheless, money funds' success at maintaining a stable $1.00 share price has encouraged investors to view these funds as alternatives to bank deposit and checking accounts.[4]

Form N–1A is the registration form that mutual funds, including money funds, use to satisfy the registration statement requirements of the 1940 Act and to register their shares under the 1933 Act. Form N–1A permits mutual funds to provide investors with a simplified prospectus covering matters of fundamental importance about the funds. Upon request, detailed information is available in an SAI. When the Commission proposed Form N–1A in the early 1980s, money funds were relatively new, tax exempt money funds had just been introduced, and money funds invested in only a few types of relatively simple instruments.[5] Accordingly, few provisions of the form reflect the unique characteristics of money funds or specify the level of disclosure appropriate for describing the many different types of instruments that now comprise money fund portfolios. As a result, although money funds are acknowledged as being the most stable and conservative mutual funds, their prospectus disclosure is often more detailed and technical than that of other mutual funds.

While detailed disclosure about investment policies and portfolio securities may be material to investors choosing among other types of funds, it may not be material to a money fund investor. Money fund investment policies and the composition of money fund portfolios are subject to much more detailed regulation under the 1940 Act and, as a result, are very similar.[6] While the differences among taxable money funds, tax exempt money funds, and money funds that invest only in U.S. government securities may be material to money fund investors, small differences in types of portfolio holdings that differentiate money funds within each of these groups may not be particularly important to investors, who typically select money funds on the basis of convenience, shareholder services, or yield.

Based upon these considerations, the Commission is proposing to revise the prospectus disclosure requirements for money funds to account for the unique characteristics of money funds and the regulatory structure to which they are subject. The revisions would result in shorter and more comprehensible prospectuses that are more relevant to the needs of typical money fund investors.[7]

II. Discussion of the Proposed Amemdments

A. Proposed Revisions Pertaining to Money Fund Prospectuses

1. Replacement of Financial Highlights Table

The financial highlights table currently required by Item 3(a) of Form N–1A[8] provides summary financial information about a fund, including the fund's total return for each of the previous ten fiscal years.[9] Although the table provides useful information for investors in stock and bond funds generally, some of the table's items are generally not relevant to money fund investors because money funds rarely experience changes in per share net asset value or realize capital gains.

The Commission proposes to replace the financial highlights table in money fund prospectuses with a bar graph showing the fund's total return for each of its last ten fiscal years.[10] Because most of a money fund's return consists of dividends, the bar graph would primarily reflect the fund's annual yield. Money funds occasionally recognize capital gains as a result of the disposition of a portfolio security, which would be reflected in the bar graph as part of the fund's total return. If a fund makes capital gains distributions during the period, a footnote to the graph would state the amount of the distribution per share and indicate that the amount of the distribution is indicated in the bar graph by a shaded or otherwise distinctively marked area of the bar for each year for which such a distribution was made.[11] The bar graph would be accompanied by statements that: (1) Past performance is not predictive of future performance; (2) performance is primarily affected by short-term interest rates and fund expenses; and (3) more detailed information regarding performance is contained in the financial statements in the SAI.

The bar graph is intended to provide investors with a depiction of historical

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[3] Item 1(a)(vi) of Form N–1A requires a money fund to disclose this fact on the cover of its prospectus.

[4] An exception to this historical success occurred in September 1994 when the US Government Money Market Fund, a series of Community Bankers Mutual Fund, Inc. that had invested in certain adjustable rate notes, announced that it would liquidate and distribute less than $1.00 per share to its shareholders. See, *e.g.*, Olaf de Senerpont Domis and Karen Talley, ''Collapse of Money Fund Seen Heightening Derivatives Scrutiny,'' American Banker, Sept. 29, 1994 at 1, 3; Leslie Wayne, ''For Money Market Investors, New Cautions,'' N.Y. Times, Sept. 29, 1994 at D1, D8.

[5] In the 1980s, these funds generally restricted their investments to short-term U.S. government securities, bank instruments, and commercial paper. See, *e.g.*, In the Matter of Intercapital Liquid Asset Fund, Inc., *et al.*, Investment Company Act Rel. No. 10201 (Apr. 12, 1978) [43 FR 16830 (Apr. 20, 1978)] (notice of applications for exemption from section 2(a)(41) of 1940 Act and rules promulgated thereunder and order for hearing on ten related applications). By contrast, money funds today invest in a vast array of instruments, many of which have complex structures. The types of instruments available are constantly expanding in response to demand from money funds. See *infra*, Section II.A.2 of this Release. This trend is especially marked in the case of tax exempt money funds, where the demand for securities that are eligible for money fund investment has resulted in the investment banking community developing many types of new instruments. See Investment Company Act Rel. No. 19959 (Dec. 15, 1993) [58 FR 68585 (Dec. 28, 1993)] (''Release 19959'') (proposing further amendments to tighten the risk-limiting conditions of rule 2a–7, 17 CFR 270.2a–7) at nn. 24–25 and accompanying text. All references to rule 2a–7 or any paragraph of the rule will be to 17 CFR 270.2a–7.

[6] Rule 2a–7 [17 CFR 270.2a–7] allows money funds to use the amortized cost method of valuation and the penny-rounding method of share pricing to assist in maintaining a stable share price. In addition, any investment company that holds itself out as a money fund may only invest in U.S. dollar-denominated instruments and must meet the risk-limiting conditions of rule 2a–7 regarding portfolio quality, maturity, and diversification. Paragraphs (b), (c)(2), (c)(3) and (c)(4) of rule 2a–7. These conditions limit a fund's exposure to credit, interest rate, and currency risk. All references to rule 2a–7 or any paragraph of the rule will be to 17 CFR 270.2a–7.

[7] In addition, shorter prospectuses would result in reduced printing and mailing costs. Those costs usually are borne by the fund and, indirectly, by fund shareholders.

[8] Most of the form amendments are being proposed for both Form N–1A and Form N–3. For ease of reference, citations to proposed and current form items and instructions refer to Form N–1A unless the context otherwise requires.

[9] The financial highlights table contains the following fourteen items: beginning net asset value; net investment income; net gains (losses); total income from investment operations; dividends from net investment income; distributions from capital gains; returns of capital; total distributions; ending net asset value; total return; total net assets; ratio of expenses to average net assets; ratio of net income to average net assets; and portfolio turnover rate. The table is required to contain information for the fund's last ten fiscal years. Item 23 of Form N–1A requires that the financial highlights information for each of the previous five fiscal years be provided in fund annual reports to shareholders.

[10] Proposed Item 3(b). The financial statements for the fund's previous fiscal year would continue to be required in the SAI. See Item 23 of Form N–1A. While other mutual funds currently are required to provide a performance graph and discussion of performance in their prospectuses or annual reports, money funds are exempt from those requirements of Form N–1A. See Investment Company Act Rel. No. 19382 (Apr. 6, 1993), [58 FR 19050 (Apr. 12, 1993)] (''Release 19382'').

[11] Proposed Item 3(b) of Form N–1A.

fund returns in a format that is simple and understandable. The Commission is particularly concerned that investors with long-term financial goals, such as those using mutual funds to fund a retirement plan, understand that money funds provide them with substantially less of an opportunity for long-term growth than other types of mutual funds.

Comment is requested whether funds should be required to compare their performance during each of the ten years with that of an index, and, if so, what type of index should be required for the comparison. Such a comparison would permit investors to compare how the fund performed relative to alternative investments or industry averages. For example, should money funds be required to compare their total returns to changes in the Consumer Price Index, or to a securities index? In order to foster comparability among funds, should the Commission prescribe the scale of the vertical and horizontal axes of the graph and other formatting specifications?

The Commission requests comment whether money fund investors are likely to use historical performance information when selecting a money fund. Alternatively, or supplementally, should the Commission require a short-term depiction of fund yield, such as a line graph comparing the fund's yield during the last twelve months with that of an index of short-term or money funds securities. Would investors find a line graph showing recent yields useful in money fund annual and semi-annual reports to shareholders, documents that focus on the more recent financial history of the fund? Should such a graph be substituted for the current financial highlights tables in those reports?

2. Descriptions of Investment Policies and Techniques

Item 4(a) of Form N–1A requires a fund to describe how it proposes to achieve its investment objectives. The Commission is proposing to amend this item to reduce substantially the amount of detailed, technical information regarding investment policies, techniques, and instruments now found in money fund prospectuses. In addition, this item would be reorganized to clarify its requirements.

Item 4(a)(ii) of Form N–1A currently requires ''a short description of the types of securities'' in which a fund invests, as well as any ''special investment practices or techniques'' used by the fund in connection with those securities and ''significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management)'' that the fund uses or intends to use in the foreseeable future.[12] The responses to paragraphs (a) and (b) of Item 4 have become the longest and most complex section of many money fund prospectuses.[13] The responses often include detailed descriptions of numerous types of instruments, including U.S. Treasury bills and notes, government agency securities, short-term tranches of collateralized mortgage obligations and other types of asset-backed securities, certificates of deposit, bankers' acceptances, floating and variable rate securities, commercial paper, and repurchase and reverse repurchase agreements. The list is even longer for tax exempt money fund prospectuses, which may contain descriptions of variable rate demand notes; put bonds; general obligation bonds; bond, revenue, and tax anticipation notes; industrial development bonds; lease obligations; tax exempt commercial paper; and ''synthetic'' instruments, such as tender option bonds and custodial receipts. Descriptions of particular securities are often accompanied by lengthy descriptions of investment techniques, such as purchasing securities on a ''when-issued'' basis and acquisition of stand-by commitments.[14]

The following is a typical description of a portfolio security for a tax exempt money fund currently provided in response to Item 4(a):

> The Fund may purchase participation interests in municipal securities that have fixed, floating or variable rates of interest. These participation interests will be purchased from financial institutions that sell undivided interests in the securities that underlie the instrument. The Fund will only purchase such an interest if: (i) the underlying securities mature in twelve months or less or the instrument includes a right to demand payment (a ''demand feature''), usually exercisable within no more than seven days; (ii) the security meets certain quality standards set forth by the Fund and federal regulation; and (iii) the security is accompanied by an opinion of counsel or is the subject of a ruling from the Internal Revenue Service stating that the interest earned is exempt from federal income tax.

Another tax exempt money fund describes the investment technique of purchasing municipal bonds on a ''when-issued'' basis, also in response to Item 4(a), as follows:

> The Fund may purchase Municipal Obligations on a ''when-issued'' basis—the purchase of securities which are paid for and delivered beyond the normal settlement date. The Fund will generally not pay for such securities or start earning interest on them until they are received. Securities purchased on a when-issued basis are recorded as an asset and subject to changes in value based upon changes in the general level of interest rates. The Fund expects that its commitments to purchase when-issued securities will not exceed 25% of total assets, absent unusual market conditions, and that it will not commit to purchase when-issued securities beyond 45 days. The Fund does not intend to purchase when-issued securities for speculative purposes but only to further its investment objective.

To be eligible for money fund investment under rule 2a–7, the instruments described above all must be high quality and, although they may have different mechanisms for determining interest rates or maturity, all are designed to have the stability of principal and yield of short-term debt instruments. The riskiness of any particular investment technique is further limited by rule 2a–7's maturity and currency denomination conditions,[15] as well as the requirement that the board of directors adopt procedures designed to maintain a stable share price or net asset value.[16]

Because of the limitations on securities in which a money fund is permitted to invest, the particular types of securities in which a fund invests are unlikely to be an important factor for most investors when selecting a money fund.[17] Moreover, detailed, technical

[12] Item 4(b)(ii) (proposed instruction 3(ii) to item 4(a)) permits a fund simply to identify a practice if five percent or less of the fund's net assets are placed ''at risk'' by the practice. Money funds generally are not able to take advantage of this opportunity to simplify their disclosure because they require the flexibility to employ, above the five percent ''at risk'' level, many or all of the investment practices they describe.

[13] Some money funds, however, already limit those descriptions to general, basic statements about the securities in which they invest.

[14] Descriptions of particular types of securities (Item 4(a)(ii)(B)(1)) and various investment techniques (Item 4(a)(ii)(B)(1) and (D)) used by a fund often appear together in the same section of money market fund prospectuses.

[15] Rule 2a–7 limits the amount of currency risk to which money funds can be exposed by restricting their investments to U.S. dollar-denominated instruments. Paragraph (c)(3) of rule 2a–7. The rule limits the interest rate and credit risks to which money funds can be exposed by requiring that they maintain a dollar-weighted average portfolio maturity of no more than ninety days and generally invest in individual securities that have remaining maturities of no more than 397 days. Paragraph (c)(2) of rule 2a–7.

[16] See paragraph (c) of rule 2a–7.

[17] The Commission has considered whether disclosure of each type of security may provide investors with information they can use to avoid investment in money market funds investing in securities whose characteristics may threaten the fund's stable net asset value. In 1994 a number of fund advisers took steps to maintain the share values of money funds that had invested in adjustable rate securities that had interest rate adjustment formulas that did not result in the value

descriptions of instruments and investment techniques are unlikely to contribute to investor understanding of a money fund's essential characteristics. Finally, these complicated descriptions often add substantial length to money fund prospectuses, contributing to investors' perceptions that prospectuses are too complicated and discouraging them from reading the important information that is in the prospectuses.

To address these concerns, the Commission is proposing to add an instruction to Item 4 stating that it is sufficient for a money fund to describe the characteristics of the fund and its portfolio in very general and basic terms (*e.g.*, that it seeks to maintain a stable net asset value of $1.00 by investing in a portfolio of high-quality, short-term debt obligations issued by corporations, banks and other financial institutions), and that a listing or description of the particular instruments that the fund may purchase is not necessary.[18] If the fund limits investment to a group of securities or a type of issuer (*e.g.*, to U.S. government securities), the fund would also be required to identify any other group of securities or type of issuer in which it has reserved the right to invest more than five percent of assets, unless the fund has not invested more than five percent of its assets in those securities within the past year and has no current intention of doing so in the foreseeable future.[19] For example, if the ''XYZ U.S. Government Money Market Fund'' reserves the right to invest twenty percent of its assets in corporate obligations and has invested in such securities within the past year, the fund would state that in its prospectus.

The proposed instruction is intended to encourage funds to avoid lengthy descriptions of the areas currently covered by Item 4(a) that have resulted in technical, multi-page descriptions of types of securities and investment policies and techniques. Instead, the detailed descriptions of instruments and techniques would be placed in the SAI, where they would be available upon request to interested investors, including those who restrict their investments in mutual funds to funds that invest only in particular types of instruments.[20] The proposed instruction makes clear that the Commission is not proposing to eliminate from money fund prospectuses discussion of those material investment policies that distinguish one group of money funds from another.[21] For example, a fund would be expected to state, as appropriate, that it proposes to achieve its investment objective by investing only in Government securities, securities exempt from the income taxes of a particular state, or securities exempt from federal income taxation. The proposed instruction also makes explicit that a money fund is not required to describe the detailed investment policies that it has adopted in order to comply with rule 2a–7.[22]

The proposed changes should not be interpreted to suggest that the Commission believes that investment in a money fund is riskless. No substantive changes are being proposed to existing Item 4(c) (Item 4(b), as proposed to be amended), which requires a money fund to discuss ''briefly the principal risk factors associated with investment'' in the fund, including risk factors peculiar to the fund and those of the same fund type generally. Money funds would continue to respond to this sub-item and to Item 1(a) of Form N–1A, which requires a money fund to disclose on the cover page of its prospectus that an investment in the fund is neither insured nor guaranteed by the U.S. government and that there can be no assurance that the fund will be able to maintain a stable net asset value.[23] A money fund that is sold by or through a bank, or whose name is the same as, or similar to, the name of a bank that advises or sells the fund's shares, would also continue to be required to prominently disclose on the cover page of its prospectus that shares in the fund are not deposits or obligations of, or guaranteed or endorsed by, the bank, and that the shares are not federally insured.[24]

3. Inclusion of Description of Advertised Performance Data in SAI

Item 3(c) currently requires a brief explanation in the prospectus of how the fund calculates performance data that it advertises.[25] Because money fund yields are calculated in a uniform manner prescribed by the Commission, an investor is unlikely to use these descriptions when evaluating advertisements by the fund. The Commission therefore proposes to permit a money fund to place its response to this item in the SAI if the response is incorporated by reference into the prospectus.[26] The Commission requests comment on whether this option should be made available to other mutual funds.[27]

4. Summary Description of Securities Valuation

Item 7(b) of Form N–1A requires funds to describe, among other things, the way in which the public offering price of fund shares is determined and the timing of the determination. The methodologies money funds use to calculate their net asset values are prescribed by the 1940 Act and Commission rules and are designed so that the value of each share represents the pro rata value of the assets of the fund, typically at a stabilized share

of the security returning to par on the interest rate reset date as required by rule 2a–7; the adviser of one fund holding these instruments was not in a position to take steps to maintain the fund's share price. See supra, note 4. Under the current requirements of Form N–1A, these funds disclosed that they invest in adjustable rate instruments, but generally did not describe the terms of the interest rate adjustment formula of each instrument. Thus, even under the current rules, investors are not able to ascertain whether to avoid funds investing in inappropriate securities. Because the interest rate adjustment formulas are complicated, if the Commission were to require disclosure of the formulas, money market fund prospectuses would be considerably longer and more complex, even though most investors could not be expected to draw any conclusions as to the appropriateness of a particular adjustable rate security.

[18] Proposed Instruction 1 to Item 4(a).

[19] Proposed Instruction 1(b) to Item 4(a).

[20] Proposed Instruction 3 to Item 13. Requiring more detailed disclosure in the SAI also enables Commission staff to review whether the fund's stated policies and techniques comply with regulatory requirements.

[21] Proposed Instruction 1(b) to Item 4(a).

[22] The Commission also proposes to reorganize the current structure of sub-item 4(a). Several paragraphs would be redesignated as instructions to reflect their modifying the more general requirements of Item 4.

[23] In addition, other amendments that were proposed to Form N–1A in 1993 would require a money fund to disclose the fund's reliance on credit and liquidity enhancements from third parties when more than forty percent of the fund's portfolio consists of securities subject to such features and, for single state tax exempt money market funds, the risks associated with reduced issuer diversification and greater geographic concentration. See Release 19959, *supra* note 5 at nn. 196–197.

[24] See Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management (May 13, 1993).

[25] This disclosure provides a basis for inclusion of performance information in advertisements. Rule 482 advertisements may only include information the ''substance of which'' is included in the fund's statutory prospectus. For performance quotations, this requirement is met if the methodology for calculating performance is set forth in the prospectus. See Dechert, Price & Rhoads (pub. avail. Nov. 12, 1979). The Division has recommended eliminating the ''substance of which'' requirement (see Protecting Investors: A Half Century of Investment Company Regulation 349, Division of Investment Management, United States Securities and Exchange Commission (May 1992)), and legislation has been introduced that would eliminate the requirement (see H.R. 1495, 104th Cong., 1st Sess. § 3 (1995)).

[26] Proposed Instruction to Item 3(d). Because information incorporated by reference from the SAI is deemed to be included in the prospectus, the legal requirement that the substance of the information in an advertisement be contained in the statutory prospectus would be met. If adopted, the response to this item would be the only response to a prospectus item that could be incorporated by reference from the SAI.

[27] The Division is considering deleting the guide regarding explanations of performance data from Form N–1A (Guide 32).

value of $1.00.[28] The descriptions of these methodologies, which tend to be complicated, may be less important to money fund investors than the fact that the share price represents a pro rata share of the fund's net assets. Therefore, the Commission is proposing to permit money funds simply to state in the prospectus that the share price represents a pro rata share of the net assets of the fund, and to describe in the SAI the pricing method employed by the fund.[29]

In the case of a money fund that seeks to maintain a stable net asset value, the timing of the determination of the share price each day may not be material to an investor who will ordinarily receive the same price per share regardless of the time a payment is made or a redemption tendered.[30] Therefore, the Commission is proposing to relieve money funds that seek to maintain a stable net asset value from the requirement to disclose in the prospectus the timing of the determination of the offering price. This information would continue to appear in the SAI.[31]

B. Other Amendments

1. Calculation of Tax Exempt Money Fund Yield

Tax exempt funds typically advertise a ''tax free'' yield. Under staff guides, a money fund that holds itself out as distributing income that is exempt from income taxation may invest up to twenty percent of its net assets in taxable securities or invest its assets so as much as twenty percent of its income is taxable.[32] In addition, most tax exempt money funds reserve the authority to temporarily invest any or all of the fund's assets in taxable securities if no suitable tax-exempt securities are available. Because taxable instruments generally have higher yields than tax exempt instruments, a prospective investor may be unaware that a tax exempt fund's relatively higher yield may be the result of the inclusion of some taxable securities in its portfolio. Therefore, the Commission is proposing to revise the money fund yield formula set forth in Item 22(a) of Form N–1A to require a tax exempt fund to reduce any taxable income by a percentage equal to the highest marginal income tax rate in effect at the time the yield is quoted.[33] The tax-adjusted yield would represent a more accurate tax-free yield.[34]

2. Total Return Calculation

The Commission is proposing a technical amendment to the instructions regarding calculation of the total return in the financial highlights table that would apply to all management investment companies using Forms N–1A and N–2.[35] Instruction 11(e) to Item 3 of Form N–1A currently requires a fund to annualize total return for partial year periods. The Commission is concerned that annualization of performance based on a short period may result in a distorted performance figure that may mislead investors.[36] The Commission proposes to amend the instruction in Form N–1A and add an instruction to Form N–2 to require that performance for a period of less than twelve months be stated without annualization.

3. Amendments to Fee Table

The Commission is proposing several technical amendments to Item 2 of Form N–1A, which requires a fund to provide in its prospectus a table summarizing the transaction and operating expenses associated with an investment in the fund. In addition, the fee table provides examples of what expenses a shareholder would pay if shares were redeemed at the end of several time periods.

Instruction 13(a) to Item 2(a) of Form N–1A instructs funds that have expense reimbursement or fee waiver arrangements that reduce fund operating expenses to reflect these arrangements in their fee table if the reimbursement or waiver ''will continue.'' The Commission is proposing to amend the instruction to clarify that the phrase ''will continue'' applies regardless of whether a guarantee that the arrangement will continue is in place. A fund is required to update its prospectus by means of a prospectus supplement or ''sticker'' to reflect a material change in the reimbursement or waiver arrangement.[37] As a result, fund shareholders will be informed of decreases in amounts reimbursed or fees waived that would have a material affect on fund expenses.

Two amendments are being proposed to conform Form N–1A to Forms N–3 and N–4. The instructions to the example in the table would be amended to permit a new fund to adjust the data in the example to reflect the completion of amortization of expenses associated with organizing the fund[38] and to prescribe a method for allocating account fees charged to shareholders in an investment company complex or a series company.[39]

Funds are currently required to provide a brief explanation of the table immediately after the table. The proposed amended instruction would permit funds to provide the explanation ''contiguous to'' the table, giving funds additional discretion to determine how the table's purposes can be made clear to investors.[40]

4. Exhibit 16 to Form N–1A

Funds are currently required by Item 24 of Form N–1A to include as an exhibit to their financial statements a schedule showing how the fund computes performance quotations. The Commission is proposing to remove this requirement. Funds' calculations of their performance data instead will be reviewed during fund examinations.

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[28] The methodologies include amortized cost (acquisition cost as adjusted for amortization of premium or accretion of discount), market value (marking to market daily), and fair value (good faith estimate by the board of directors) and combinations of these methods.

[29] See Item 19, Instruction 1 (valuation procedure). Money market funds would continue to state in the prospectus when the fund will not process requests to purchase or sell shares. See Guide 28 to Form N–1A (interpreting Item 7 regarding days on which fund will not price shares).

[30] Perhaps more important to a money market fund investor is the relationship of the timing of a share purchase to the accrual of dividends on the investment (for example, whether dividends on shares begin to accrue on the day the fund receives the investment, or on the next business day). This information would continue to be required in the prospectus in response to Item 6(f) (Capital Stock and Other Securities). Funds also would be required to disclose the date on which dividends cease accruing as the result of a redemption. Proposed Instruction to Item 8(a) (Redemption and Repurchase).

[31] See Item 19, Instruction 3 (timing of calculation of net asset value). A money market fund that does not maintain a stable net asset value would continue to describe the timing of its share price calculation in the prospectus.

[32] See Guide 1 to Form N–1A.

[33] If a fund represents itself as being free from state and/or local income taxation as well as federal income taxation, the fund would also be required to reduce the yield of those securities that are not exempt from state and/or local income taxation by the highest marginal state and/or local income tax rates for individuals.

[34] The Commission is also proposing technical amendments to rule 482 and Form N–1A to clarify that money market funds may advertise tax equivalent and tax equivalent effective yields and how those yields should be calculated.

[35] If the proposed amendments to Item 3 are adopted, money market funds would be exempt from the Financial Highlights table requirement.

[36] Notwithstanding the current instruction, the Commission urges funds not to annualize the total return for a partial year.

[37] The Commission acknowledges that a material change requiring a stickering of a fund's prospectus would ordinarily not occur where a fee waiver or reimbursement is increased, thereby reducing fund expenses.

[38] Instruction 14(a) to Form N–1A.

[39] Proposed Instruction 14(i) to Item 2(a) of Form N–1A.

[40] See General Instruction 1 to Item 2, as proposed to be amended.

C. Request for Comments Regarding Prospectus Simplification Generally

The Commission is currently reviewing the prospectus disclosure requirements for all management investment companies to determine what changes might improve further the quality of prospectus disclosure, particularly in light of regulatory developments and changes in the investment company industry.[41] The Commission would consider proposing further amendments to Form N–1A to simplify and generally improve the quality of prospectus disclosure to investors in other types of mutual funds. The Commission requests comments and suggestions about ways in which the Form may be amended to further shorten and simplify prospectus disclosure for other mutual funds. Specifically, the Commission seeks comment on: (i) whether some information currently required to be presented in narrative form could be presented more effectively in a graphic, pictorial, or tabular format; and (ii) whether the appropriate allocation of required disclosure between the prospectus and the SAI should be clarified.

The Commission also requests comment on the utility to investors of money fund portfolio schedules, which are provided in semi-annual reports to shareholders.[42] Do these schedules provide useful information for investors? Should other information be provided instead or in a different format from that currently required?

III. Amendments to Staff Guides

Form N–1A is accompanied by a series of staff guides designed, among other things, to clarify the disclosure requirements in the form. The Appendix to this release contains draft revisions to the current guides.

The Division of Investment Management (the ''Division'') intends to revise Guides 3, 4, 8 and 22 to Form N–1A to reflect the amendments proposed today. Guide 3 (Investment Objectives and Policies) would be revised to urge money funds to be concise in describing the manner in which they propose to achieve their investment objectives and would state that a general description of the types of instruments in which the fund may invest and the issuers of those instruments generally should be sufficient; that listing or describing each type of instrument in which the fund may invest is not required; and that detailed descriptions of rule 2a–7's requirements and the various nationally recognized statistical rating organizations (''NRSROs'') and the ratings they assign should be omitted. The Division staff intends to revise Guide 4 (Types of Securities) to state that money funds are not required to list or describe the particular instruments in which the fund may invest. Guide 8 (Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements) would be revised to state that money funds should discuss the use of certain trading practices in the SAI in response to Item 13 rather than in the prospectus. Finally, Guide 22 (Government Securities) would be amended to shift some of the disclosure money funds place in their prospectuses about U.S. Government securities to the SAI.

The Division also intends to revise Guides 4 and 5 to clarify certain other matters applicable to money funds. Guide 4 (Types of Securities) would be revised to clarify the Commission's policy that money funds may not invest more than ten percent of their assets in illiquid securities.[43] Guide 5 (Portfolio Turnover) would be amended to indicate that money funds need not discuss the effects of portfolio turnover, as an investment technique, in the prospectus. Money funds would still be required to discuss the effects of portfolio turnover in the SAI.[44]

The Division requests comment on the proposed changes to the guides and the deletion of the guides regarding performance data,[45] as well as any suggestions for amendment of existing guides that would result in improved disclosure by money funds and other types of mutual funds.

IV. Transition Period

If adopted, the proposed amendments would become effective sixty days after publication in the **Federal Register**. Funds would be required to conform their prospectuses and SAIs to the amendments in their next post-effective amendment filed after the conclusion of the sixty day period that updates financial statements pursuant to the requirements of section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)]. New funds would be required to implement the new requirements in registration statements filed after the conclusion of the sixty day period.

V. General Request for Comments

All interested persons who wish to submit written comments on the proposed form, rule, and Guide amendments discussed in this release, to suggest other amendments to Forms N–1A and N–3, or to comment on related matters that might have a significant impact upon the proposals discussed in this release, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed text to amend the Form or related rules or staff guides.

VI. Cost/Benefit of Proposal

The changes to Forms N–1A and N–3 and related rules proposed today are intended to shorten and simplify the prospectuses provided to investors and potential investors in money funds and to improve the quality of prospectus disclosure by these funds. The proposed revisions should benefit investors by providing them with a shorter, clearer and, therefore, more useful document and better enable investors to make an informed investment decision. Because the proposed revisions would shorten the prospectuses provided by most money funds, the revisions should reduce the burdens of preparing and the cost of mailing the prospectus for funds. That information which is transferred from the prospectus to the SAI will lengthen the SAIs of some funds; however, the number of investors typically requesting the SAI is much lower than the number of investors to whom the prospectus will be provided. The Commission is interested in any public comment concerning the cost savings or cost burdens to money funds of all sizes affected by these proposals.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in

[41] The Commission recently issued a concept release regarding mutual fund risk disclosure and requested comment regarding a broad range of issues related to this topic. See Investment Company Act Rel. No. 20974 (Mar. 29, 1995) [60 FR 17172 (Apr. 4, 1995)].

[42] Rule 30d–1 [17 CFR 270.30d–1] requires that shareholder reports contain the financial statements specified in the appropriate investment company registration statement form. Instructions for preparing financial statements are contained in the registration statement forms, which refer to the requirements of Regulation S–X. See, *e.g.*, instructions to Item 23 of Form N–1A.

[43] See Investment Company Act Rel. No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)]. See also Investment Company Institute (pub. avail. Dec. 9, 1992). The limit on illiquid holdings by other types of mutual funds is fifteen percent of net assets. See Investment Company Act Rel. No. 18612 (Mar. 12, 1992). See also Merrill Lynch Money Markets, Inc. (pub. avail. Jan. 14, 1994) (subject to certain conditions, limit on illiquid securities does not apply to commercial paper issued in reliance on Section 4(2) of the 1933 Act).

[44] In the 1993 amendments to Form N–1A, money funds were explicitly exempted from the requirement to state their portfolio turnover rates in the Financial Highlights table. See Release 19382, *supra* note 10 at n.3.

[45] See *supra* note 31.

accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the proposed amendments are intended to simplify money fund prospectus disclosure. Pertinent information contained in the preceding section of this release (''Cost/Benefit of Proposal'') is also reflected in the Analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Martha H. Platt, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 79*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by removing the word ''or'' at the end of paragraph (d)(1); removing the period and adding ''; or'' at the end of paragraph (d)(2); and adding paragraph (d)(3) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(d) * * *

(3) In the case of a money market fund holding itself out as distributing income exempt from regular federal income tax, in addition to the quotation of yields described in paragraphs (d)(1) and (d)(2) of this section:

(i) A quotation of current yield described in paragraph (d)(1) of this section and a corresponding quotation of tax equivalent yield based on the method of computation prescribed in Form N–1A, relating to the same base period and of equal prominence; or

(ii) A quotation of current yield and effective yield and corresponding quotations of tax equivalent current yield and tax equivalent effective yield based on methods of computation prescribed in Form N–1A, relating to the same base period and of equal prominence.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: Form N–2 does not and the amendments will not appear in the Code of Federal Regulations.

5. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by removing ''and'' at the end of paragraph (b), removing the period at the end of paragraph (c), adding ''; and'' at the end of paragraph (c), and adding instruction 13.d. to Item 4.1, to read as follows:

Form N–2

* * * * *

Item 4. Financial Highlights

1. *General* * * *

Instructions

General Instructions

* * * * *

Total Investment Return

13. * * *

d. for a period of less than a full fiscal year, state the total investment return for the period and disclose in a note to the table that the figure is not annualized.

* * * * *

Note: Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

6. General Instruction A of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding a second paragraph (unnumbered) to read as follows:

Form N–1A

* * * * *

General Instructions

A. Rule as to Use of Form N–1A

* * * * *

Several Items of Form N–1A contain specific provisions or instructions for money market fund Registrants. *See* General Instruction E and Items 1, 3, 4, 7, and 8 of Part A, Items 13, 22 and 23 of Part B, and Item 32 of Part C. In addition, money market fund registrants need not respond to Items 5(c) and 5A.

* * * * *

7. General Instruction E of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by removing the second sentence of the second paragraph (unnumbered) and adding two sentences to the end of that paragraph, to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

E. Incorporation by Reference

* * * * *

* * * In general, a Registrant may incorporate by reference, in answer to any item in a registration statement filed on Form N–1A not required to be included in a prospectus, any information contained elsewhere in the registration statement or any information contained in other statements, applications or reports filed with the Commission, except that a money market fund Registrant's response to Item 3(d) may be incorporated into the prospectus by reference from the Statement. A money market fund Registrant that elects to incorporate its response to Item 3(d) from the Statement of Additional Information is not required as a result of that incorporation to physically deliver the Statement with the prospectus if the Statement is available as described in the first paragraph of this instruction.

* * * * *

8. Item 1, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction immediately following paragraph (a)(iii), to read as follows:

Form N–1A

* * * * *

Part A

Information Required in a Prospectus

Item 1. Cover Page

(a) * * *

(iii) * * *

Instruction

A money market fund Registrant incorporating by reference from the Statement of Additional Information only its response to Item 3(d) must

include within the prospectus a statement that information has been incorporated into the prospectus by reference from the Statement of Additional Information, but may omit the statement from its cover page.

9. Item 2, General Instruction 1 of Form N–1A (referenced in §§ 239.15A and 274.11A) is revised by removing ''Immediately after'' and adding in its place ''Contiguous to''.

10. Item 2, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A is amended by adding paragraph (c) instruction 13 to read as follows:

Form N–1A

* * * * *

Part A

Information Required in a Prospectus

Item 2. Synopsis

(a)(i) * * *

Instructions

General Instructions * * *

Annual Fund Operating Expenses * * *

13. (a) * * *

(c) The registrant should reflect any expense reimbursement or fee waiver arrangement that reduced any fund operating expense that is expected to continue, regardless of whether the reimbursement or waiver arrangement has been guaranteed.

11. Item 2, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A is amended by adding '', except that an appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made'' before the semi-colon at the end of instruction 14(a).

12. Item 2, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A is amended by adding paragraph (*i*) to instruction 14 to read as follows:

Form N–1A

* * * * *

Part A

Information Required in a Prospectus

Item 2. Synopsis

(a)(i) * * *

Instructions

General Instructions * * *

Example

14. * * *

(i) Reflect any administrative fee collected by dividing the total amount of the fee collected during the year by all funds or series whose shareholders are subject to the administrative fee by the total average net assets of all the funds or series. Add the resulting percentage to ''Annual Fund Operating Expenses'' and assume that it remains the same in each of the one, three, five, and ten-year periods. New Registrants should estimate administrative fees collected.

13. Item 3 of Form N–1A (§§ 239.15A and 274.11A) is amended by revising the introductory text of paragraph (a) and revising instruction 11(e) to paragraph (a), redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), and adding paragraph (b) and an instruction to newly designated paragraph (d) to read as follows:

Form N–1A

* * * * *

Item 3. Condensed Financial Information

(a) For a Registrant other than a money market fund, furnish the following information for the Registrant, or for the Registrant and its subsidiaries, consolidated as prescribed in Rule 6–03 [17 CFR 210.6–03] of Regulation S–X.

* * * * *

Instructions

General Instructions

* * * * *

Total Return

11. * * *

(e) for a period of less than a full fiscal year, state the total return for the period and disclose in a note to the table that the figure is not annualized.

* * * * *

(b) For a money market fund Registrant, provide a bar graph showing the annual total returns of the fund for each of the last ten fiscal years, or the life of the fund if less than ten years. The graph should also show the return for each year in numerical form. Accompany the graph with a statement or statements that: (1) Past performance is not predictive of future performance; (2) money market fund performance is primarily affected by short-term interest rates and fund expenses (and provide a cross-reference to the Registrant's tabular responses to Item 2(a), unless the bar graph and tabular responses to Item 2(a) appear on the same page of the prospectus); and (3) financial statements providing more detailed information regarding the fund's performance are contained in the Statement of Additional Information.

Instructions

General

Briefly explain the nature of the information contained in the bar graph and that the information is derived from the financial statements in the Statement of Additional Information. The auditor's report as to the financial statements need not be included in the prospectus. Note that the auditor's report as to the fund's financial data reflected in the bar graph is included elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

Bar Graph Presentation

1. *Partial Years/New Registrants.* Do not reflect partial fiscal years in the bar graph. The first year shown in the graph will be the first full fiscal year for which: (i) the Registrant's registration statement was effective (or, in the case of a series, the Registrant offered shares of the series); or (ii) the Registrant (or series) invested its assets in accordance with its investment objectives.

2. *Total Return.* Calculate total return as prescribed in Instruction 11 to Item 3(a) of this form.

3. *Distribution of Capital Gains.* If the fund made capital gains distributions during the period, state in a footnote to the graph what the amount of the distribution per share was and state that such distribution is reflected in the bar graph by means of a shaded or otherwise distinctively marked area within the bar for each year in which capital gains distributions were made.

4. *Format.* Measure return on the vertical axis of the bar graph and measure time in yearly increments on the horizontal axis.

5. *Series Companies.* Treat each series as a separate Registrant for purposes of this item.

* * * * *

(d) * * *

Instruction

A money market fund Registrant may incorporate its response to this sub-item from the Statement of Additional Information. *See* General Instruction E.

* * * * *

14. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by revising Item 4 to read as follows:

Form N–1A

* * * * *

Item 4. General Description of Registrant

(a) Concisely discuss the organization and operation or proposed operation of the Registrant. Include the following:

(i) basic identifying information, including:

(A) the date and form of organization of the Registrant and the name of the state or other sovereign power under the laws of which it is organized; and

(B) the classification and subclassification of the Registrant pursuant to Sections 4 and 5 of the 1940 Act [15 U.S.C. 80a–4, 80a–5];

(ii) a concise description of the investment objectives and policies of the Registrant, including, if those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement to that effect; and

(iii) a concise discussion of how the Registrant proposes to achieve such objectives, including:

(A) a short description of the types of securities in which the Registrant invests or will invest principally and, if applicable, any special investment practices or techniques that will be employed in connection with investing in such securities;

(B) if the Registrant proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries;

(C) identification of any other policies of the Registrant that may not be changed without the vote of the majority of the outstanding voting securities, including those policies which the Registrant deems to be fundamental within the meaning of Section 8(b) of the 1940 Act; and

(D) a concise description of those significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (a)(iii) (A)–(C) above that the Registrant employs or has the current intention of employing in the foreseeable future.

Instructions

1. In responding to paragraph (a)(iii) of this item (other than paragraph (a)(iii)(B), regarding concentration), it is sufficient for a money market fund Registrant to: (a) describe the characteristics of the Registrant in general terms (*e.g.*, that it seeks to maintain a stable net asset value of $1.00 by investing in a portfolio of high quality short-term debt obligations issued by corporations, banks, and other financial institutions, etc.) without listing or describing the particular instruments in which the fund may invest or explaining detailed investment policies designed to comply with rule 2a–7 of the 1940 Act; and (b) if the fund limits investment to a group of securities or a type of issuer (*e.g.*, to U.S. government securities, or securities the distributions from which are exempt from federal income taxes), identify: (i) the group of securities or type of issuer and (ii) any other group of securities or type of issuer in which the fund reserves the right to invest more than 5% of its assets and state the maximum percentage of the fund's assets that may be so invested, unless the Registrant has not invested more than 5% of its assets in those securities within the past year and has no current intention of doing so in the foreseeable future.

2. ''Concentration,'' for purposes of paragraph (a)(iii)(2), is deemed to be 25% or more of the value of the Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. A fund's policy on concentration should not be inconsistent with the Registrant's name.

3. Discussion of types of investments that will not constitute the Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically, and notwithstanding paragraph (a) above:

(i) If the effect of a policy is to prohibit a particular practice, or, if the policy permits a particular practice but the Registrant has not employed that practice within the past year and has no current intention of doing so in the foreseeable future, do not include disclosure as to that policy; and

(ii) If such a policy has the effect of limiting a particular practice in such a way that no more than 5% of the Registrant's net assets are at risk, or, if the Registrant has not followed that practice within the last year in such a manner that more than 5% of the Registrant's net assets were at risk, and does not have a current intention of following such practice in the foreseeable future in such a manner that more than 5% of the Registrant's net assets will be at risk, disclosure of information in the prospectus about such practice should be limited to that which is necessary to identify the practice.

(b) Discuss briefly the principal risk factors associated with investment in the Registrant, including factors peculiar to the Registrant as well as those generally attendant to investment in an investment company with investment policies and objectives similar to the Registrant's.

* * * * *

15. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction following paragraph (b) of Item 7 to read as follows:

Form N–1A

* * * * *

Item 7. Purchase of Securities Being Offered

* * * * *

(b) * * *

Instruction

In responding to sub-item (b)(i), a money market fund Registrant need only state that the public offering price per share represents a proportionate interest in the net assets of the fund. In responding to sub-item (b)(ii), a money market fund Registrant that seeks to maintain a stabilized net asset value need not state the time of day at which net asset value is calculated.

* * * * *

16. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction following paragraph (a) of Item 8 to read as follows:

Form N–1A

* * * * *

Item 8. Redemption or Repurchase

(a) * * *

Instruction

In responding to paragraph (a), a money market fund Registrant need not discuss the timing of share pricing but should state how the timing of a redemption request will affect the accrual or payment of dividends.

* * * * *

17. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction 3 following paragraph (b) of Item 13 to read as follows:

Form N–1A

* * * * *

Item 13. Investment Objectives and Policies

* * * * *

(b) * * *

Instructions

* * * * *

3. In responding to this item, a money market fund Registrant should include descriptions of:

(i) The types of instruments which it purchases or intends to purchase;

(ii) The types of issuers that issue the instruments in which it intends to invest;

(iii) Significant investment policies or techniques (*e.g.*, forward delivery contracts, repurchase agreements, and standby commitments) that the Registrant employs or has the current intention of employing in the foreseeable future; and

(iv) The quality, maturity, and diversity restrictions which pertain to money market fund investments, to the extent such descriptions are not included in the prospectus in response to Instruction 1 to Item 4.

* * * * *

18. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by revising the introductory text of paragraph (a), redesignating paragraphs (a)(iii) and (a)(iv) as paragraphs (a)(v) and (a)(vi); adding paragraphs (a)(iii), (a)(iv), and (a)(vii); revising Instruction 4 to paragraph (a); adding Instruction 5 to paragraph (a); and revising the introductory text of paragraph (b)(iii) of Item 22 to read as follows:

Form N–1A

* * * * *

Item 22. Calculation of Performance Data

(a) *Money Market Funds.* If a money market fund Registrant advertises a yield quotation, an effective yield quotation, a tax equivalent yield quotation, or a tax equivalent effective yield quotation, furnish:

* * * * *

(iii) A tax equivalent current yield quotation computed by dividing that portion of the yield of the Registrant (as computed pursuant to Item 22(a)(i)) which is tax-exempt by one minus a stated income tax rate and adding the product to that portion, if any, of the yield of the Registrant that is not tax-exempt;

(iv) A tax equivalent effective yield quotation computed by dividing that portion of the effective yield of the Registrant (as computed pursuant to Item 22(a)(ii)) which is tax-exempt by one minus a stated income tax rate and adding the product to that portion, if any, of the yield of the Registrant that is not tax-exempt;

* * * * *

(vii) The income tax rate used in the computation.

Instructions

* * * * *

4. If the Registrant does not advertise any of the four types of yield, it need not disclose or discuss the computation of that yield.

5. If the Registrant holds itself out as distributing income that is exempt from federal and/or state and/or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), the Registrant must reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, employing the maximum rate for individual income taxation. For example, if the Registrant holds itself out as distributing income exempt from federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Registrants.*

* * * * *

(iii) *Tax Equivalent Yield.* If the Registrant advertises a tax equivalent yield, furnish,

* * * * *

19. Form N–1A (referenced in §§ 239.15A and 274.11A), paragraph (b) of Item 24, is amended by removing paragraph (16) and redesignating paragraphs (17) and (18) as paragraphs (16) and (17).

20. Guide 3 to Form N–1A is revised to read as follows:

Guide 3. Investment Objective and Policies

In the response to Item 4, the registrant's investment objective and policies (including the types of securities in which it will invest) should be clearly and concisely stated in the prospectus so that they may be readily understood by the investor. Because the circumstances of each registrant will vary, it is not possible to define precisely what level of investment would make a particular type of investment one in which the registrant invests ''principally,'' as that term is used in Item 4. As a general matter, however, the level of disclosure as to a particular type of investment should be consistent with the prominence of that type of investment in the registrant's portfolio. The prospectus should emphasize the main types of investments the registrant proposes to make and the principal risks inherent in such investments. Accordingly, discussions of types of investments that will not constitute the registrant's principal portfolio emphasis should be as brief as possible and, in many cases, may be limited to identifying the particular type of investments. (As discussed below, the instructions delineate certain circumstances in which disclosure may be so limited.) Similar treatment should be accorded to other types of practices, such as borrowing money. In order to achieve the objective of clear and concise disclosure, registrants should avoid extensive legal and technical detail and need not discuss every possible contingency, such as remote risks.[3]

Money market fund registrants in particular are urged to be concise in describing the manner in which they propose to achieve their investment objectives (item 4(a)(iii)). A general description of the types of instruments in which the registrant may invest (*i.e.*, short-term, high quality instruments) and the types of issuers that issue the securities in which the registrant may invest (*e.g.*, corporations, banks, etc.) should generally be sufficient. As stated in Instruction 1 to Item 4, listing or describing each type of instrument in which the registrant may invest is not required; however, the registrant should identify those groups of securities or types of issuers in which it has reserved the right to invest more than 5% of its assets, unless it has not invested more than 5% of its assets in those securities or issuers within the past year and has no current intention of doing so in the foreseeable future. Registrants should omit detailed descriptions of rule 2a–7's requirements and the various NRSROs and the ratings they assign to securities in which the fund may or does invest. More detailed responses regarding investment policies and techniques should be provided in the Statement of Additional Information in response to Item 13.

Pursuant to Instruction 3(i) to Item 4(a), the registrant should omit from the prospectus disclosure about so-called negative investment policies, that is, policies that prohibit a particular type of investment or practice. Item 4(a) may have particular applicability to those types of activities for which section 8(b) of the 1940 Act specifically requires that there be information in the registration statement. Although Item 4(a) generally does not attempt to define what or how much disclosure should be made about particular practices, Instruction 3(ii) calls for minimal disclosure of policies registrant will not follow to a significant extent. Specifically, if not more than 5 percent of the registrant's net assets will be at risk, the prospectus should merely identify the policy or practice. For example, if a registrant planned to

[3] See individual subject headings of these Guidelines concerning disclosure for specific investment techniques or policies.

invest no more than 5 percent of its net assets in speculative growth stocks, it would be sufficient to state that policy in the prospectus without elaboration.

The response to Item 13 should include a fuller discussion in the Statement of Additional Information of those investment policies of the registrant with respect to which an abbreviated or no narrative description is included in the prospectus. Fuller descriptions of the registrant's principal types of investment may also be appropriate, depending on the circumstances. If the registrant has not used a policy in the past, the registrant should disclose that fact, as well as its intention with respect to that policy in the coming year in the Statement of Additional Information in responding to Item 13.

21. Guide 4 to Form N–1A is amended by adding a footnote at the end of the first sentence to read as follows:

Guide 4. Types of Securities

* * * * *

[4] As set forth in instruction 1 to Item 4, money market fund Registrants are not required to list or describe the particular instruments in which the fund may invest.

* * * * *

22. Guide 4 to Form N–1A is amended by adding a sentence and a footnote in the last paragraph (unnumbered) after the phrase ''fifteen percent of its net assets.'' to read as follows:

Guide 4. Types of Securities

* * * * *

* * * A money market fund is limited to investing less than ten percent of its assets in illiquid securities.[5] * * *

* * * * *

23. Guide 5 to Form N–1A is amended by adding a footnote at the end of the first sentence to read as follows, and sequentially renumbering all subsequent footnotes in the guides to Form N–1A:

Guide 5. Portfolio Turnover

* * * * *

[6] Money market funds are not required to discuss the effects of portfolio turnover in their prospectuses.

* * * * *

24. Guide 8 to Form N–1A is amended by adding a sentence to the second paragraph (unnumbered) following the third sentence to read as follows:

[5] *See* Investment Company Act Rel. No. 13380 (July 11, 1983), 48 FR 32555 (July 18, 1983). *See also* Investment Company Institute (pub. avail. Dec. 9, 1992).

Guide 8. Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements

* * * * *

* * * Money market funds should discuss their use of these trading practices in the Statement of Additional Information in response to Item 13 (*see* Instruction 1 to Item 4(a)(iii) and Instruction 3 to Item 13). * * *

25. Guide 22 to Form N–1A is amended to read as follows:

Guide 22. Government Securities

If the registrant is investing in United States Government securities, the prospectus should reflect under what conditions, and to what extent the registrant intends to invest its assets in United States Government securities.

If a registrant other than a money market fund is investing to a significant extent in United States Government securities on a routine basis, the prospectus should include the following information: (i) The types of Government securities in which the fund will invest; (ii) examples of Government agencies and instrumentalities in whose securities the fund will invest; and (iii) whether the securities of such agency or instrumentality are: (a) Supported by full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported only by the credit of the agency or instrumentality, or (d) supported by the United States in some other way. If the registrant is a money market fund, the disclosure described in (i)–(iii) above should be placed in the Statement of Additional Information.

If the registrant is a money market fund holding itself out as investing in United States Government securities, and the registrant does not invest all of its assets in securities backed by the full faith and credit of the United States Government, the fund should not suggest in its prospectus or sales material that there is no credit risk associated with the fund's investments.

26. Guide 28 to Form N–1A is amended by removing the following phrase in the first sentence of the tenth paragraph (unnumbered): ''with portfolio securities that mature in one year or less''.

27. General Instruction A of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding a paragraph between the first and second (unnumbered) paragraphs to read as follows:

Form N–3

* * * * *

General Instructions

A. Rule as to Use of Form N–3

* * * * *

Several Items of Form N–3 contain specific provisions or instructions for money market accounts. *See* General Instruction G and Items 1, 4, 5, 11, 12, of Part A, Items 19 and 27 of Part B, and Item 37 of Part C.

* * * * *

Note: Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

28. General Instruction G of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by removing the period and adding a comma at the end of the second paragraph (unnumbered) and adding the following to read as follows:

Form N–3

* * * * *

General Instructions

* * * * *

G. Incorporation by Reference

* * * * *

* * *, except that a Registrant's response to Item 4(d) may be incorporated into the prospectus by reference from the Statement of Additional Information. A money market account electing to incorporate its response to Item 4(d) from the Statement of Additional Information will not be required as a result of that incorporation to physically deliver the Statement with the prospectus if the Statement is available as described in the first paragraph of this instruction.

* * * * *

29. Item 1 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction at the end of paragraph (a)(vi) to read as follows:

Form N–3

* * * * *

Item 1. Cover Page

(a) * * *
(vi) * * *

Instruction

A money market account incorporating by reference from the Statement of Additional Information only its response to Item 4(c) must include within the prospectus a statement that information has been incorporated into the prospectus by reference from the Statement of Additional Information, but may omit the statement from its cover page.

* * * * *

30. Item 3 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by

revising General Instruction 1 by removing ''Immediately after'' and substituting in its place ''Contiguous to''.

31. Item 3 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding paragraph (c) to instruction 18 to read as follows:

Form N–3

* * * * *

Item 3. Synopsis

(a) * * *

Annual Expenses * * *

18. (a) * * *

(b) * * *

(c) The registrant should reflect any expense reimbursement or fee waiver arrangement that reduced any operating expense that is expected to continue, regardless of whether the reimbursement or waiver arrangement has been guaranteed.

32. Item 4 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by revising the introductory text of paragraph (a), redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), adding paragraph (b), and adding an instruction to newly designated paragraph (d) to read as follows:

Form N–3

* * * * *

Item 4. Condensed Financial Information

(a) For all registrants other than money market accounts, furnish the following information for each class of accumulation units of the Registrant, or for such classes of the Registrant and its subsidiaries consolidated as prescribed in Rule 6–03 of Regulation S–X [17 CFR 210.6–03].

* * * * *

(b) For each money market account, provide a bar graph showing the annual total returns of the account for each of the last ten fiscal years, or the life of the account if less than ten years. The graph should also show the return for each year in numerical form. Accompany the graph with a statement or statements that: (1) Past performance is not predictive of future performance; (2) money market account performance is primarily affected by short-term interest rates and expenses (and provide a cross-reference to the Registrant's tabular responses to Item 3(a), unless the bar graph and tabular responses to Item 3(a) appear on the same page of the prospectus); and (3) financial statements providing more detailed information regarding the account's performance are contained in the Statement of Additional Information.

Instructions

General

Briefly explain the nature of the information contained in the bar graph and that the information is derived from the financial statements in the Statement of Additional Information. The auditor's report as to the financial statements need not be included in the prospectus. Note that the auditor's report as to the fund's financial data reflected in the bar graph is included elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

Bar Graph Presentation

1. *Partial Years/New Registrants.* Do not reflect partial fiscal years in the bar graph. The first year shown in the graph will be the first full fiscal year for which: (i) The Registrant's registration statement was effective (or, in the case of a series, the Registrant offered shares of the account); or (ii) the Registrant (or account) invested its assets in accordance with its investment objectives.

2. *Total Return.* Calculate total return as prescribed in Instruction 11 to Item 3(a) of Form N–1A.

3. *Distribution of Capital Gains.* If the account made capital gains distributions during the period, state in a footnote to the graph what the amount of the distribution per share was and state that such distribution is reflected in the bar graph by means of a shaded or otherwise distinctively marked area within the bar for each year in which capital gains distributions were made.

4. *Format.* Measure return on the vertical axis of the bar graph and measure time in yearly increments on the horizontal axis.

5. *Series Companies.* Treat each sub-account as a separate Registrant for purposes of this item.

* * * * *

(d) * * *

Instruction

A money market account may incorporate its response to this item from the Statement of Additional Information. See General Instruction G.

* * * * *

33. Item 5 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by revising paragraph (c)(ii), removing paragraph (d), and redesignating paragraph (e) as paragraph (d) to read as follows:

Form N–3

* * * * *

Item 5. General Description of Registrant and Insurance Company

* * * * *

(c) * * *

(ii) how the Registrant proposes to achieve its objectives, including:

(A) a short description of the types of securities in which the Registrant invests or will invest principally and, if applicable, any special investment practices or techniques that will be employed in connection with investing in such securities;

(B) if the Registrant proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries;

(C) the identity of other policies of the Registrant that may be changed only with the approval of a majority of votes, including those policies which the Registrant deems to be fundamental within the meaning of Section 8(b) of the 1940 Act; and

(D) those significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (A), (B) or (C) above that Registrant employs or intends to employ in the foreseeable future.

Instructions

1. In responding to paragraph (c)(ii) of this item (other than paragraph (c)(ii)(B), regarding concentration), it is sufficient for a money market account to:

(a) Describe the characteristics of the account in general terms (*e.g.*, that it seeks to maintain a stable net asset value of $1.00 by investing in a portfolio of high quality short-term debt obligations, issued by corporations, banks, and other financial institutions, etc.) without listing or describing the particular instruments in which the account may invest or explaining detailed investment policies designed to comply with rule 2a–7 of the 1940 Act; and

(b) If the account limits investment to a group of securities or a type of issuer (*e.g.*, to U.S. government securities), identify: (i) the group of securities or type of issuer and (ii) any other group of securities of type of issuer in which the fund reserves the right to invest more than 5% of its assets and state the maximum percentage of the fund's assets that may be so invested, unless the account has not invested more than 5% of its assets in those securities within the past year and has no current intention of doing so in the foreseeable future.

2. ''Concentration'', for purposes of paragraph (c)(ii)(B), is deemed to be 25% or more of the value of Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. Registrant's policy on concentration should not be inconsistent with Registrant's name.

3. Discussion of types of investments that will not constitute Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically, and notwithstanding paragraph (c) above:

(a) If the effect of a policy is to prohibit a particular practice, or, if the policy permits a particular practice but the Registrant has not employed that practice within the past year and has no current intention of doing so in the foreseeable future, do not include disclosure as to that policy; and

(b) If such a policy has the effect of limiting a particular practice in such a way that no more than 5% of Registrant's net assets are at risk, or, if Registrant has not followed that practice within the last year in such a manner that more than 5% of Registrant's net assets were at risk, and does not have a current intention of following such practice in the foreseeable future in such a manner that more than 5% of Registrant's net assets will be at risk, disclosure of information in the prospectus about such practice should be limited to that which is necessary to identify the practice.

* * * * *

34. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction following Item 11(c) to read as follows:

Form N–3

* * * * *

Item 11. Purchases and Contract Value

* * * * *

(c) * * *

Instruction

In responding to sub-item 11(c), a money market account need only state that the accumulation unit value represents a proportionate interest in the net assets of the account.

* * * * *

35. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction following Item 11(d) to read as follows:

Form N–3

* * * * *

Item 11. Purchases and Contract Value

* * * * *

(d) * * *

Instruction

In responding to sub-item 11(d), a money market account that seeks to maintain a stabilized accumulation unit value need not state the time of day at which the calculation is made. * * *

36. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction following Item 12(a) to read as follows:

Form N–3

* * * * *

Item 12. Redemptions

(a) * * *

Instruction

In responding to paragraph (a), a money market account Registrant need not discuss the timing of unit value pricing but should state how the timing of a redemption request will affect the accrual of dividends.

* * * * *

37. Form N–3 (referenced in CFR §§ 239.17a and 274.11b) is amended by adding instruction 3 following Item 19(b) to read as follows:

Form N–3

* * * * *

Item 19. Investment Objectives and Policies

* * * * *

(b) * * *

Instructions:

* * * * *

3. In responding to this item, money market accounts should include descriptions of:

(a) The types of instruments which it purchases or intends to purchase;

(b) The types of issuers that issue the instruments in which it intends to invest;

(c) Significant investment policies or techniques (*e.g.*, forward delivery contracts, repurchase agreements, and standby commitments) that the Registrant employs or has the current intention of employing in the foreseeable future; and

(d) The quality, maturity, and diversity restrictions which pertain to money market account investments, to the extent such descriptions have not been included in the prospectus in response to Instruction 1 to Item 5(c).

* * * * *

38. Form N–3 (referenced in §§ 239.17a and 274.11b), paragraph (b) of Item 28, is amended by removing paragraph (16) and redesignating paragraph (17) as paragraph (16).

39. Guide 3 to Form N–3 is amended by removing the word ''basic'' in the first paragraph and substituting in its place ''principal''.

40. Guide 3 to Form N–3 is amended by adding a paragraph (unnumbered) after the first (unnumbered) paragraph to read as follows:

Guide 3. Investment Objectives and Policies

* * * * *

In particular, Registrants with money market accounts are urged to be concise in describing the manner in which such accounts propose to achieve their investment objectives (item 5(c)). A general description of the types of instruments in which a money market account may invest (*i.e.*, short-term, high quality instruments) and the types of issuers that issue the securities in which it may invest (*e.g.*, corporations, banks, etc.) should generally be sufficient. As stated in Instruction 1 to Item 5, listing or describing each type of instrument in which the money market account may invest is not required; however, the registrant should identify those groups of securities or types of issuers in which the account has reserved the right to invest more than 5% of its assets, unless it has not invested more than 5% of its assets in those securities or issuers within the past year and has no current intention of doing so in the foreseeable future. Registrants should omit detailed descriptions of rule 2a–7's requirements and the various NRSROs and the ratings they assign. More detailed responses regarding investment policies and techniques should be provided in the SAI in response to Item 13.

* * * * *

41. Guide 4 to Form N–3 is amended by adding a footnote at the end of the first sentence to read as follows:

Guide 4. Types of Securities

* * * * *

[3] As set forth in instruction 1 to Item 5, money market funds are not required to list or describe the particular instruments in which the fund may invest.

* * * * *

42. Guide 4 to Form N–3 is amended by adding a final paragraph to read as follows:

Guide 4. Types of Securities

* * * * *

If an account holds a material percentage of its assets in securities or

other assets for which there is no established market, there may be a question concerning the ability of the account to make payment within seven days of the date its shares are tendered for redemption. The usual limit on aggregate holdings of illiquid assets by separate accounts is 15 percent of net assets. A money market account is limited to investing less than ten percent of its assets in illiquid securities.[5] An illiquid asset is any asset which may not be sold or disposed of in the ordinary course of business within seven days at approximately the value at which the mutual fund has valued the instrument.[6]

* * * * *

43. Guide 5 to Form N–3 is amended by adding a footnote at the end of the first sentence to read as follows:

Guide 5. Portfolio Turnover

* * * * *

[7] Money market accounts are not required to discuss the effects of portfolio turnover in their prospectuses.

44. Guide 8 to Form N–3 is amended by adding a sentence in the second paragraph (unnumbered) following ''and standby commitment agreements.*, to read as follows, and renumbering sequentially all subsequent footnotes in the guides to Form N–3:

Guide 8. Senior Securities, Reverse Repurchase Agreements, and Standby Commitment Agreements

* * * * *

* * * Money market accounts should discuss their use of these trading practices in the Statement of Additional Information in response to Item 19 (see Instruction 1 to Item 5(c)(ii) and Instruction 3 to Item 19(b)). * * *

45. Guide 21 to Form N–3 is amended to read as follows:

Guide 21. Government Securities

If the registrant is investing in United States Government securities, the prospectus should explain when and to what extent the registrant intends to do so.

If a registrant other than a money market account is investing significantly in United States Government securities on a routine basis, the prospectus should include the following information: (1) The types of Government securities in which the separate account will invest; (2) examples of Government agencies and instrumentalities in whose securities the separate account will invest; and (3) whether the securities of such agency or instrumentality are (a) supported by the full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported only by the credit of the agency or instrumentality, or (d) supported by the United States in some other way. If the registrant is a money market account, the disclosure described in (1) through (3) above should be placed in the Statement of Additional Information.

If the registrant is a money market account holding itself out as investing in United States Government securities, and the registrant does not invest all of its assets in securities backed by the full faith and credit of the United States Government, the account should not suggest in its prospectus or in its sales material that there is no credit risk associated with the account's investments.

46. Guide 27 to Form N–3 is amended by removing the phrase in the first sentence of the tenth paragraph (unnumbered): ''with portfolio securities that mature in one year or less''.

* * * * *

Dated: July 19, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18243 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Investment Company Act Rel. No. 13380 (July 11, 1983), 48 FR 32555 (July 18, 1983). *See also* Investment Company Institute (pub. avail. Dec. 9, 1992).

[6] *See* Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 20, 1986)].

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17 CFR Parts 232, 240, 249 and 270

[Release Nos. 34–35991; IC–21217; S7–22–95]

RIN 3235–AG56

Money Market Fund Quarterly Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and rule amendment.

SUMMARY: The Commission is proposing a new rule under the Investment Company Act of 1940 that would require money market funds to file quarterly reports with the Commission identifying, describing, and providing valuation information for each security in their portfolios. The reports would be filed electronically through the Commission's EDGAR system. This information would enhance the Commission's ability to monitor money market fund compliance with the federal securities laws, particularly rule 2a–7 under the 1940 Act, the rule that permits money market funds to use special share pricing and portfolio valuation methods.

DATES: Comments on the proposed rule and rule and form amendments must be received on or before September 27, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comment letters should refer to File No. S7–22–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Martha H. Platt, Senior Attorney, (202) 942–0725, or Joseph E. Price, Deputy Office Chief, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment:

(1) Rule 30b3–1 under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''1940 Act'') that would require money market funds to file with the Commission quarterly reports regarding their portfolio holdings; and

(2) Technical amendments to Regulation S–T [17 CFR 232.301], the caCommission's general rules for electronic filings, and rule 12b–25 [17 CFR 240.12b–25] and Form 12b–25 [17 CFR 249.322] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*], to accommodate notification of late filings of the quarterly reports.

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Executive Summary

The Commission is proposing a new rule under the 1940 Act that would require money market funds (''money funds'') to file with the Commission quarterly reports regarding their portfolio holdings (the ''Money Market Fund Portfolio Schedule'' or ''Schedule''). The Schedule would be

filed electronically through the Commission's EDGAR system.

Rule 30b3–1 would require a money fund to report electronically, for each security in its portfolio: (i) The name of the security and its issuer and any guarantor of the security; (ii) the security's credit quality; (iii) whether it is illiquid; (iv) its value; (v) the percentage of the portfolio represented by the security and the percentage of the portfolio invested in securities issued by the issuer; (vi) its maturity date; and, in the case of an adjustable rate instrument, (vii) the formula used for adjusting its interest rate. A money fund would also be required to report its yield, average weighted maturity, total assets, percentage of net assets invested in illiquid securities, certain transactions between the fund and affiliated persons, and any difference between the stabilized share price of the fund (which is usually $1.00) and the per share net asset value of the fund based on the market value of its portfolio as of the end of the period. The information contained in the proposed reports would enhance the Commission's ability to monitor money fund compliance with the federal securities laws, target its limited on-site examination resources, and respond in the event of a significant market event affecting money funds and their shareholders.

I. Background

Money funds are permitted to use methods of asset valuation and share pricing that depart from the daily pricing requirements of the 1940 Act [1] and hold themselves out as offering high levels of liquidity and safety of principal.[2] As a result, money funds are subject to substantially greater Commission regulation and monitoring of their investment activities than other types of investment companies.

Money funds are subject to rule 2a–7 under the 1940 Act, which limits their investments to high quality, short-term, U.S. dollar-denominated debt instruments.[3] Under rule 2a–7, a money fund is permitted to use the amortized cost method for valuing its portfolio securities and the penny-rounding method of pricing its shares, which facilitate the maintenance of a stable share price.[4] As a condition of using these methods, rule 2a–7 requires, among other things, that a money fund's board of directors take certain steps to make sure that the fund's use of these pricing methods does not result in its shares being unfairly priced.[5] These steps include periodically determining the extent of deviation, if any, between the fund's current net asset value per share calculated using available market quotations, and the fund's amortized cost per share, and considering what action, if any, should be taken if the deviation is greater than one-half of one percent.[6] A board of directors of a fund using the penny-rounding method is required to assure that the net asset value per share, after rounding, does not deviate from the share price established for the fund.[7]

Pursuant to authority provided in the 1940 Act, the Commission periodically inspects money funds to determine compliance with the federal securities laws, including rule 2a–7. The Commission annually inspected each money fund between 1991 and 1993 in response to a series of events that threatened some money funds' ability to maintain a stable net asset value.[8] The Commission believes that, while not preventing money funds from being affected by subsequent market events, the frequency of inspections during this period contributed substantially to the level of compliance and safety of money funds.

More recently, the Commission has found it necessary to allocate its inspection resources among a wider range of investment companies. To allow the Commission to provide greater oversight of money funds than its on-site examination resources would otherwise permit, the Commission is proposing to require money funds to file quarterly reports detailing their portfolio holdings, yield, dollar-weighted average maturity, illiquid holdings, transactions with affiliated persons, and securities valuation practices with the Commission. These reports should improve the efficiency and effectiveness of the Commission's money fund examination program in several respects. First, because the reports would elicit much of the same information regarding portfolio securities that would be obtained during an on-site examination, the Commission will be able to use the reports to review compliance with many of rule 2a–7's requirements without making on-site visits. Second, the reports will enable the Commission to target funds with investment practices or portfolio holdings that suggest the need for on-site examination. Third, information in the reports will permit Commission examiners to conduct a significant portion of each on-site money market fund examination at Commission offices, reducing Commission examination costs and the disruption to funds and their advisers. Fourth, information in the reports will enable the Commission to respond when a significant market event occurs that could affect money funds and their

[1] Section 2(a)(41) of the 1940 Act [15 U.S.C. 80a–2(a)(41)] and rules 2a–4 and 22c–1 under the 1940 Act [17 CFR 270.2a–4, 270.22c–1] require funds to calculate net asset value per share by valuing portfolio securities for which market quotations are readily available at market value, and other securities and assets at fair value as determined in good faith by the board of directors. Money funds that seek to maintain a stable share price generally use either the amortized cost method of valuation or the penny-rounding method of share pricing. Under the amortized cost method, portfolio securities are valued by reference to their acquisition cost as adjusted for amortization of premium or accretion of discount. Paragraph (a)(1) of rule 2a–7 [17 CFR 270.2a–7(a)(1)]. Share price is determined under the penny-rounding method by valuing securities at market value, fair value, or amortized cost and rounding the per share net asset value to the nearest cent. Paragraph (a)(11) of rule 2a–7. All references to rule 2a–7 or any paragraph of the rule will be to 17 CFR 270.2a–7.

[2] Because of these characteristics, investors often use money funds as a substitute for demand deposits, even though money funds are not protected by federal deposit insurance, and there is no guarantee that the funds will be able to maintain stable share prices.

[3] Money funds are subject to portfolio quality, maturity, and diversification requirements under paragraphs (b), (c)(2), (c)(3), and (c)(4) of rule 2a–7. These conditions limit a fund's exposure to credit, interest rate, and currency risk. For a discussion of the effect of rule 2a–7 on the types of investments made by money market funds, see Investment Company Act Rel. No. 21216 (July 19, 1995) at n.6 and § II.A.2., a companion release being issued today in which the Commission proposes to shorten and simplify money fund prospectuses to reflect their unique characteristics and in light of the regulatory limitations on those funds.

[4] Paragraphs (a) (1) and (11) of rule 2a–7.

[5] If a fund's shares are sold or redeemed based on a net asset value that either understates or overstates the amount for which portfolio instruments could have been sold, the interests of either existing shareholders or new investors will be diluted. See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking and Currency, 76th Cong., 3d Sess. 136–138, 288 (1940).

[6] Paragraphs (c)(6)(ii) (A) and (B) of rule 2a–7.

[7] Paragraph (c)(7) of rule 2a–7.

[8] In 1989 and 1990, commercial paper issued by Mortgage and Realty Trust, Integrated Resources, Inc., and MNC Financial Corporation defaulted or was downgraded, resulting in significant declines in the securities' market prices, and threatening the stable net asset values of the money market funds holding them. In 1991, New Jersey insurance regulators seized Mutual Benefit Life Insurance Company (''MBLI''), a provider of demand features and other credit enhancements to securities owned by several money market funds. When MBLI could not honor its put obligations, the value of MBLI-backed securities declined substantially. Shareholders of funds that held these securities were not adversely affected because each fund's investment adviser voluntarily purchased the paper from the funds at amortized cost or principal amount, otherwise agreed to indemnify the fund, or obtained a replacement guarantor in order to prevent shareholder losses. See Investment Company Act Rel. No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] [hereinafter ''Release 19959''] (proposing further amendments to tighten the risk-limiting conditions of rule 2a–7) at nn.12 and 28 and accompanying text.

shareholders.[9] The availability of a list of portfolio securities for each money fund will permit the Commission to identify those funds that are holding distressed securities to determine whether they are appropriately pricing their securities [10] and taking other steps that may be required under rule 2a–7.[11] Finally, because the reports would be publicly available, they would permit public scrutiny of money fund investment practices through the financial press and private information services.[12] The Commission believes that this disclosure may have a salutary effect on money fund investment practices, reducing the possibility that a money fund will engage in practices that pose risks to its ability to maintain a stable net asset value.

II. Discussion

To address the concerns discussed above, the Commission is proposing new rule 30b3–1 under the 1940 Act that would require every open-end management investment company holding itself out as a money fund [13] to file a Money Market Fund Portfolio Schedule with the Commission not more than thirty days following the last day of each calendar quarter.[14] The Schedule, which is described in paragraph (d) of proposed rule 30b3–1, would be filed electronically with the Commission through the EDGAR system, pursuant to a new appendix to the EDGAR Filer Manual, and would be made publicly available.[15]

A. Money Market Fund Portfolio Schedule

The Schedule would require fund portfolio information on a security-by-security basis in the following areas:

- Identifying information: the CUSIP number assigned to the security,[16] the name of the issuer, the name of the issue (Items 12 (a)–(c)), the names of any providers of puts, demand features, bond insurance, or other guarantees for the security (Item 12 (d)),[17] and whether the security is pre-refunded (Item 12(g) or a repurchase agreement (Item 12(i));
- *Maturity information:* The security's final maturity date and maturity date currently used for purposes of determining compliance with rule 2a–7's maturity limitations (Items 12 (j) and (k)); [18]
- Interest rate information: The rate of interest the security was paying on the last day of the reporting period (Item 12(p)); whether the security is subject to any special interest rate features, such as a future change in rate structure from variable to fixed (Item 12(s)),[19] or an interest rate cap (Item 12(t)); [20] and, for an adjustable rate security, the interest rate reset formula and the frequency of the interest rate reset (*e.g.,* weekly, monthly, or quarterly) (Items 12(q) and (r));
- *Credit quality information:* Whether the security is treated as ''unrated'' and/or ''second tier'' for purposes of rule 2a–7 (Items 12 (e) and (f)); [21]
- *Liquidity:* Whether the security is illiquid (Item 12(h)); [22]
- *Valuation information:* For all funds, the market value of the security, based on quotations obtained not more than ten business days prior to the end of the quarter (Item 12(l)); and, for funds using the amortized cost method, the amortized cost of the security and any deviation between the amortized cost and market values (Item 12(m)); and
- *Diversification information:* The percentage of the fund's ''total assets'' represented by the position, and the percentage of the fund's ''total assets'' represented by all securities issued by the issuer of this security (Items 12 (n) and (o)).

The Schedule would also require a fund to categorize itself by fund type (Item 3) [23] and to provide other

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[9] *Supra* note 8. In addition, in 1994 a number of money market funds that had invested in adjustable rate securities experienced losses when these securities' interest rates failed to follow short-term market rates. See Wayne, ''For Money Market Investors, New Cautions,'' N.Y. Times, Sept. 29, 1994 at D1, D8. In one case, a money market fund holding these adjustable rate securities was forced to liquidate and redeem its shareholders at a price of less than $1.00. See de Senerpont Domis and Talley, ''Collapse of Money Fund Seen Heightening Derivatives Scrutiny,'' American Banker, Sept. 29, 1994 at 1, 3. Most recently, a major municipal issuer—Orange County—filed for bankruptcy. To maintain their funds' net asset values, several money market funds' advisers took steps to prevent the net asset value of their funds from falling below $1.00. See ''Orange County, Mired in Investment Mess, Files for Bankruptcy,'' Wall St. J., p.A1 (Dec. 7, 1994).

[10] See paragraphs (c)(6)(ii) (B) and (C) of rule 2a–7 (if the market value per share for a fund using amortized cost method deviates more than one-half of one percent from the fund's share price, the board of directors must promptly consider what action, if any, should be taken and, to the extent the deviation has dilutive or unfair results, take appropriate action to eliminate or reduce deviation, including changing the share price). Similarly, because the penny-rounding method permits rounding to the nearest one percent, if the share price of a fund using the penny-rounding method deviates by more than one-half of one percent, the share price for the fund could not be maintained. See paragraphs (a)(11) and (c)(7) of rule 2a–7.

[11] See, e.g., paragraph (c)(5)(i)(A) of rule 2a–7 (requirement to reassess promptly whether downgraded security continues to present minimal credit risks); paragraph (c)(5)(ii) of rule 2a–7 (fund must dispose of security that has become ineligible or has been determined no longer to present minimal credit risks as soon as practicable unless the board of directors finds that disposal of the portfolio security would not be in the best interests of the fund).

[12] While the reports will be available to individual investors, the Commission anticipates that, more typically, interested investors will learn about information contained in the reports in the specialized financial press that reports on money funds and other types of investment companies.

[13] Paragraph (b) of rule 2a–7 enumerates the types of activities that constitute ''holding out'' and that require compliance with rule 2a–7.

[14] Rule 12b-25 under the Securities Exchange Act of 1934 [17 CFR 240.12b–25], the general rule regarding notification to the Commission of the inability to file timely, and Form 12b–25 [17 CFR 249.322], the form for notification of late filing, would be amended to include reports pursuant to proposed rule 30b3–1 that are filed late. A money market fund filing notification of its inability to file timely would be required to file its Schedule within five days of the due date in accordance with paragraph (b)(2)(ii) of rule 12b–25.

[15] The Commission has adopted a series of rules to mandate and accommodate electronic filing through EDGAR. See Securities Act Rel. No. 6977 (Feb. 23, 1993) [58 FR 14628 (Mar. 18, 1993)] (adopting rules applying to electronic submissions generally); Investment Company Act Rel. No. 19284 (Feb. 23, 1993) [58 FR 14848 (Mar. 18, 1993)] (adopting rules specific to electronic filings by investment companies).

[16] A CUSIP number is an identification number assigned to many United States Government, municipal, and corporate securities issues through a system administered by Standard & Poor's Corporation under the authority of the American Bankers Association Committee on Uniform Security Identification Procedure (''CUSIP'').

[17] The terms ''put'' and ''demand feature'' would be defined by reference to paragraphs (a)(4) and (a)(12) of rule 2a–7.

[18] Money funds are required to maintain a dollar-weighted average portfolio maturity of not more than ninety days, and generally may not purchase any instrument with a remaining maturity of more than 397 days. See paragraph (c)(2) of rule 2a–7. A money fund may treat certain adjustable rate securities as having maturities equal to the period remaining until the securities' next interest rate readjustment date. See paragraph (d) of rule 2a–7.

[19] Such features would be required to be disclosed whether or not the triggering conditions have occurred.

[20] While the staff has interpreted rule 2a–7 as not permitting money market funds to use the maturity shortening provisions of the rule when determining the maturity of capped floaters that do not have demand features, this position has not been applied if the cap is set to comply with state usury laws and is in excess of twenty percent. See Investment Company Institute (pub. avail. June 16, 1993). For a discussion regarding determining the maturity of capped floaters under rule 2a–7, see Release 19959, *supra* note 8 at n.161.

[21] See paragraphs (a) (14) and (20) of rule 2a–7. The particular ratings assigned to a security would not be required in the report.

[22] A money market fund may hold up to ten percent of its net assets in illiquid securities. See Investment Company Institute (pub. avail. Dec. 9, 1992). The staff intends to revise Guide 4 to Form N–1A, as discussed in the companion release being proposed today, *supra* note 3 at § III, to clarify the Commission's policy that money market funds may not invest more than ten percent of their assets in illiquid securities.

[23] The fund would describe itself as primarily distributing income that is taxable or tax-exempt and, if tax-exempt, whether the fund is a Single State Fund (as defined in paragraph (a)(22) of rule 2a–7, as proposed to be amended; see Release 19959, supra note 8). The fund would also indicate whether it sells shares to retail investors or only to institutions.

information regarding the portfolio as a whole:

- For funds using the amortized cost method, the per share net asset value based on the market value of the portfolio; for funds using the penny-rounding method, the per share net asset value prior to rounding; for funds using both methods, both figures (Item 6);
- The fund's seven-day yield (Item 7); [24]
- The dollar-weighted average maturity (Item 8); [25]
- Total assets (Item 9); [26]
- The percentage of net assets invested in illiquid assets (Item 10); and
- Certain transactions between the fund and affiliated parties that occurred during the quarter that are intended to stabilize the fund's per share net asset value, including any sale of a portfolio security for a price greater than its current market value (Item 11).[27]

The Commission will consider including a requirement that information regarding the fund's compliance with the put diversification requirements of rule 2a–7 be provided in the Schedule. The Commission requests comment whether holdings of Treasury bills and repurchase agreements with the same counterparty that are collateralized fully, as well as other types of securities that commenters may suggest, should be grouped and not reported individually.[28] The Commission also requests comment on whether, instead of requiring that money funds indicate whether a security is illiquid, the rule should require funds to indicate whether the value of the security is being determined in good faith by the fund's board of directors.

B. Reporting Period

The proposed report would contain information as of the end of each calendar quarter, rather than fund fiscal quarters, so that the Commission may compare fund portfolio data and aggregate certain of the information to obtain industry-wide data. The Commission requests comment whether the reporting burden would be significantly reduced if reporting was required as of the end of the fund's fiscal quarter.

C. Appendix J to the EDGAR Filer Manual

All money funds would be required to file their Schedules through the EDGAR system.[29] Detailed instructions regarding the manner in which responses to the information items of rule 30b3–1 would be provided would be set forth in a new Appendix J to the EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission.[30] Appendix J provides instructions regarding important technical topics, such as how the information required by an item in the Schedule should be ''tagged,'' how to describe certain types of securities, what types of errors in the reports will result in the suspension or rejection of a filing, and sections of rule 2a–7 to which the fund should refer when responding to particular items.[31] The Commission expects that if the proposals are adopted, funds will use an automated process to construct their Schedules from their existing computer systems, so that Schedules can be prepared and transmitted without extensive additional data entry. Appendix J is designed to facilitate this process. Comment is requested on ways to further facilitate preparation of Schedules in this manner. Comment is also requested whether funds would be substantially assisted if the quarterly report could be transmitted not only in ASCII format, but in a format generated by widely-used or easily translated commercial software. The Commission is also considering alternative methods for receiving the data through EDGAR, including tag-less submissions.

III. Cost/Benefit Analysis

The rule and rule amendments proposed today are intended to provide information to the Commission and to the public that can be used to improve the money fund inspection capability of the Commission, money fund compliance with the federal securities laws, and investor protection. The proposals would enable the Commission to better target its on-site examinations of money funds and to respond in the event of market events that affect money funds and their shareholders.

The information required in the Schedule for each security is (or should be) maintained by money funds to ensure compliance with rule 2a–7 under the 1940 Act. The Commission has designed the Schedule and the EDGAR filing instructions in Appendix J to facilitate direct transfer of information from fund computer systems. As a result, the Commission anticipates that the majority of the costs experienced by funds will result from initial efforts to revise data capture systems. In addition, because the Schedules would need to be prepared and delivered electronically only, there would be no burdens associated with printing and mailing. Finally, quarterly reporting should result in fewer on-site money fund inspections and related costs for funds that appear to be in compliance with the federal securities laws, based on information provided in the quarterly reports.

While adoption of the proposed rule and form would impose some additional costs on money funds, the Commission has attempted to strike a balance between the Commission's need for additional information from money funds about their portfolio securities and the costs of funds providing that information. The Commission requests comment regarding these costs and benefits, and reasonable alternatives for achieving the benefits of the proposed rule.

IV. Transition Period

If proposed rule 30b3–1 is adopted, the Commission would conduct a series of test filings to test both the filing

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[24] The yield quoted would be based on the seven days ending on the last day of the reporting period and would be calculated in accordance with Item 22(a)(i) of Form N–1A.

[25] See *supra*, note 18.

[26] ''Total Assets'' is defined in paragraph (a)(18) of rule 2a–7 as meaning, for a money fund using the amortized cost method, the total amortized cost of its assets and, for any other fund, the total market-based value of its assets.

[27] Examples of these transactions include the sale of portfolio securities to an affiliated person of the fund, a contribution to the fund's net assets by an affiliated person, or the purchase of a credit enhancement for a portfolio security by an affiliate on the fund's behalf. Certain of these types of transactions are prohibited by section 17(a)(2) of the 1940 Act. The staff has taken the position regarding some of these transactions, based on the particular facts and circumstances involved, that an enforcement action would not be recommended to the Commission so long as certain conditions were met. The Commission proposed rule 17a–9 under the 1940 Act in 1993 to exempt these transactions from section 17(a) if certain conditions were met. See Release 19959, *supra* note 8, at § IV.

Related party transactions are required to be identified in fund financial statements. See 17 CFR 210.4–08(k); Statement of Financial Accounting Standards No. 57 (Related Party Disclosures), Financial Accounting Standards Board (Mar. 1982). See also Letters to Chief Financial Officers from Lawrence A. Friend, Chief Accountant, Division of Investment Management (Nov. 1, 1994 and Feb. 3, 1995).

[28] The term ''Collateralized Fully'' would be defined by reference to paragraph (a)(4) of rule 2a–7, as proposed to be amended in Release 19959, *supra* note 8 at § II.D.3.

[29] The final phase-in of investment companies to the EDGAR system is scheduled for November 1995. As proposed, the Schedule would only be filed electronically, and rule 30b3–1(c)(4) would waive the filing requirement for the period of any temporary hardship or continuing hardship exemption under Regulation S–T [17 CFR 232.201 and .202].

[30] The September 1994 edition of the EDGAR Filer Manual (Release 4.10) has been incorporated into the Code of Federal Regulations by reference. See 17 CFR 232.301. The amendments to the manual being proposed in this release would also be incorporated by reference into the Code of Federal Regulations following their adoption.

[31] A ''tag'' is used to identify information required in an EDGAR filing. 17 CFR 232.11(u).

process and to enable funds to develop the capability to transfer the information required in the Schedules from existing computer files. The Commission asks that funds that wish to participate in the test filing process so indicate in their comment letters.[32] The Commission anticipates that temporary rules would be adopted during this period. The Commission will consider comments for purposes of adopting both temporary and permanent rules. For other filers, the Commission plans to make the proposed amendments effective sixty days following the completion of the test filing period. All money funds would be required to file Money Market Fund Portfolio Schedules under rule 30b3–1 beginning with the first complete calendar quarter following conclusion of the sixty day period.

V. General Request for Comments

All interested persons who wish to submit written comments on the proposed rule and form discussed in this release, or to comment on related matters that might have a significant effect upon the proposals discussed in this release, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed text.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the proposed amendments are intended to elicit from money funds information that would improve the Commission's ability to monitor the funds' compliance with the federal securities laws. Pertinent information reflected in the Cost Benefit Analysis section of this Release is also reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Martha H. Platt, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Statutory Authority

The Commission is proposing rule 30b3–1 pursuant to sections 13 [15 U.S.C. 78m], 15(d) [15 U.S.C. 78o(d)] and 23(a) [15 U.S.C. 78w(a)] of the Securities Exchange Act of 1934 and sections 8 [15 U.S.C. 80a–8], 30 [15 U.S.C. 80a–29], 31 [15 U.S.C. 80a–30], 38 [15 U.S.C. 80a–37], and 45 [15 U.S.C. 80a–44] of the 1940 Act. The authority citations for the proposals precede the text of the rule and appendix.

[32] Information submitted in test filings by volunteering funds during the test period would be treated by the Commission as non-public.

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 232, 240 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 232—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.101 is amended by removing the word ''and'' at the end of paragraph (a)(1)(iv), removing the period at the end of paragraph (a)(1)(v) and in its place adding ''; and'' and adding paragraph (a)(1)(vi) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(vi) Quarterly reports filed by money market funds pursuant to rule 30b3–1 (§ 270.30b3–1 of this chapter).

* * * * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.12b–25 [Amended]

4. By amending § 240.12b–25 by revising the section heading to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, 10–Q, 10–QSB or report filed pursuant to rule 30b3–1.

5. By amending § 240.12b–25, paragraph (a), by adding the following phrase after the first ''thereunder'':

'', or all or any required portion of a quarterly report filed by a money market fund pursuant to rule 30b3–1 under the Investment Company Act of 1940 (17 CFR 270.30b3–1);''

6. By amending § 240.12b–25, paragraph (b)(2)(ii), by adding the following phrase after ''10–QSB,'':

''or report filed pursuant to rule 30b3–1 under the Investment Company Act of 1940 (17 CFR 270.30b3–1),''.

* * * * *

7. By amending § 240.12b–25, paragraph (g), by removing the period at the end of the paragraph and adding in its place ''or, for a quarterly report filed by a money market fund, comply with Rule 30b3–1(c)(3) under the Investment Company Act (17 CFR 270.30b3–1(c)(3)).''

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.,* unless otherwise noted;

* * * * *

§ 249.322 [Amended]

9. By amending § 249.322, paragraph (a), by adding the following phrase after ''section 13 or 15(d) of the Act'':

''or quarterly report filed by a money market fund pursuant to rule 30b3–1 under the Investment Company Act of 1940,''.

* * * * *

Note: Form 12b–25 does not and the amendments will not appear in the Code of Federal Regulations.

10. Form 12b-25 (referenced in § 249.322) is amended by adding the following after ''[ ] Form N–SAR'' to read: ''[ ] Money Market Fund Rule 30b3–1 Filing''.

11. Form 12b–25 (referenced in § 249.322) is amended by adding the following after ''Form 10–Q'' in paragraph (b) of Part II, to read: ''or filing made by a money market fund pursuant to rule 30b3–1''.

12. Form 12b–25 (referenced in § 249.322) is amended by adding the following after ''Form 10–Q,'' in Part III: ''or filing made by a money market fund pursuant to rule 30b3–1''.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

13. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* unless otherwise noted.

14. By adding § 270.30b3–1 to read as follows:

§ 270.30b3–1 Quarterly report for money market funds.

(a) *General.* Every open-end management investment company registered under the 1940 Act that holds itself out as a money market fund (''money market fund'') shall file a Money Market Fund Portfolio Schedule (''Schedule'') containing the information set forth in paragraph (d) of this section with the Commission not more than thirty days after the last day of each calendar quarter.

(b) *Format and filing of schedule.* The Schedule shall be filed through the EDGAR system and prepared in the format prescribed in Appendix J to the EDGAR Filer Manual. Money market funds also shall refer to Regulation S-T [17 CFR 232.10 through 232.903] regarding the general rules for electronic filings on the EDGAR system.

(c) *Special rules.* (1) *Master/feeder arrangements.* A money market fund that is a ''feeder fund,'' as that term is defined in General Instruction I to Form N–1A [17 CFR 239.15A and 274.11A], is not required to file a Schedule.

(2) *Series funds.* Each series of a series fund shall be considered to be a separate investment company for purposes of this section.

(3)(i) *Temporary hardship exemptions.* If a money market fund experiences unanticipated technical difficulties preventing the timely preparation and submission of its Schedule, the money market fund shall submit a written statement to the Commission no later than one business day after the date on which the Schedule was to be filed stating that the fund requires a temporary hardship exemption. A money market fund that has taken advantage of a temporary hardship exemption with regard to the filing of the Schedule shall electronically file its Schedule within six days of filing its written notification to the Commission. (ii) *Continuing hardship exemptions.* A money market fund may apply in writing for a continuing hardship exemption in accordance with paragraphs (a), (b), and (d) of § 232.202 of this chapter.

(d) *Contents of money market fund portfolio schedule.* The Schedule shall set forth the information specified in this paragraph that is applicable to the money market fund. Where the context requires, capitalized terms are used as defined in § 270.2a–7.

Item 1.
- Item 1(a) Name of registrant.
- Item 1(b) CIK number of registrant.
- Item 1(c) Investment Company Act File Number of registrant.

Item 2.
- Item 2(a) Name of money market fund.
- Item 2(b) Name of person that should be contacted regarding the information contained in this report.
- Item 2(c) Telephone number of person named in response to Item 2(b).
- Item 2(d) Securities Act File Number for money market fund.
- Item 2(e) If the Schedule pertains to a separate series of a series company, or to a sub-account of an insurance company separate account, assign a number to the series that the series will be identified by in all future filings. If a number has previously been assigned to the series in a report on Form N-SAR, use that number.

Item 3. Indicate whether the fund is a Tax Exempt Fund and, if so, whether it is a Single State Fund and the state in which the securities in which it invests are exempt from taxation. For a taxable fund, indicate whether the fund invests only in Government Securities and repurchase agreements, or in other securities as well.

Item 4. Indicate whether the fund sells shares to institutional investors only.

Item 5. State the last day of the quarter for which this information is filed.

Item 6. If the fund uses the Penny-Rounding Method of pricing, state the per share net asset value of the fund before rounding. If the fund uses the Amortized Cost Method of valuation, state the per share net asset value of the fund based on the available market quotations obtained most recently by the fund but not more than ten business days prior to the end of the quarter (or an appropriate substitute that reflects current market conditions) for the securities in the portfolio. If the fund uses both methods, provide both figures.

Item 7. State the fund's yield for the seven days ended on the last day of the quarter for which this Schedule is filed, computed in accordance with Item 22(a)(i) of Form N–1A, 17 CFR 239.15A and 274.11A.

Item 8. State the dollar-weighted average portfolio maturity calculated for purposes of determining compliance with paragraph (c)(2) of § 270.2a–7 on the last day of the quarter.

Item 9. State the Total Assets of the fund on the last day of the quarter.

Item 10. State the percentage of net assets of the fund invested in illiquid assets on the last day of the quarter.

Item 11. State whether, at any time during the quarter, an affiliated person of the fund, or any affiliated person of such person:
- (a) purchased a security from the fund at a price in excess of the security's market value;
- (b) obtained or provided liquidity or credit support for a security in the fund's portfolio; or
- (c) contributed cash or other assets to the fund to offset a realized or unrealized loss on an investment made by the fund.

Item 12. Provide the following information for each security owned by the fund as of the last day of the quarter for which this information is filed, where applicable:
- Item 12(a) CUSIP number.
- Item 12(b) Name of issuer of security.
- Item 12(c) Name of issue.
- Item 12(d) (1)–(4) Names of issuers of Puts, Demand Features, bond insurance, and other guarantees.
- Item 12(e) Whether the security is an Unrated Security.
- Item 12(f) Whether the security is a Second Tier Security.
- Item 12(g) Whether the security is a Refunded Security.
- Item 12(h) Whether the security is an illiquid security.
- Item 12(i) Whether the security is a repurchase agreement that is Collateralized Fully.
- Item 12(j) Stated maturity date.
- Item 12(k) Maturity date for purposes of § 270.2a-7.
- Item 12(l) Market value, based on the quotations obtained most recently by the fund but not more than ten business days prior to the end of the quarter.
- Item 12(m) In the case of a fund using the Amortized Cost Method of valuation:
- Item 12(m)(i) the amortized cost of the security; and
- Item 12(m)(ii) the ratio of Item 12(l) to Item 12(m)(i).
- Item 12(n) The percentage of the fund's Total Assets represented by this security.
- Item 12(o) The percentage of the fund's Total Assets comprised by all securities currently held by the fund that have been issued by this issuer.
- Item 12(p) Rate of interest the security was paying on the last day of the period for which this information is being filed.
- Item 12(q) For a Floating Rate Instrument or a Variable Rate Instrument, the formula for determining the interest rate the security will pay.
- Item 12(r) For a Floating Rate Instrument or a Variable Rate Instrument, the frequency with which the security's interest rate will be reset.
- Item 12(s) Indicate whether the security's characterization as fixed rate, Floating Rate, or Variable Rate is subject to change as the result of one or more triggering events. Briefly describe the triggering events in the form of a formula.
- Item 12(t) Indicate whether the security is subject to an interest rate cap. Describe the cap in the form of a formula.

Dated: July 19, 1995.

By the Commission.

Margaret H. MacFarland,

Deputy Secretary.

[FR Doc. 95–18244 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–P

Wednesday
July 26, 1995

Part V

Federal Trade Commission

16 CFR Part 419

Games of Chance in the Food Retailing and Gasoline Industries, Proposed Amendment of Trade Regulation Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 419

Games of Chance in the Food Retailing and Gasoline Industries, Proposed Amendment of Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Reopening of the rulemaking record and request for comment from the public.

SUMMARY: The Presiding Officer has directed that the rulemaking record in the above-captioned proceeding be reopened. Interested persons and members of the public are invited to submit written comment on any issue of fact, law, or policy which may have some bearing on the proposed amendments.

DATES: Written comments will be received until September 25, 1995.

ADDRESSES: Written comments should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell (Presiding Officer), 202–326–3642, or John M. Mendenhall (Assistant Regional Director, Cleveland Regional Office), 216–522–4210.

SUPPLEMENTARY INFORMATION: On July 7, 1988, the Commission announced the commencement of a proceeding to consider proposed amendments to the Games of Chance in the Food Retailing and Gasoline Industries Trade Regulation Rule, 16 CFR part 419, and published in the **Federal Register** (53 FR 25503) its Notice of Proposed Rulemaking and invited written comment on the proposals. In response to the notice, written submissions were received and the record was closed on September 6, 1988. A public hearing was not held because none of the interested persons expressed a desire for one. By motion dated July 13, 1995, the Commission staff requested the Presiding Officer to reopen the rulemaking record for additional comment in order to permit the receipt of timely and current information preparatory to its completion of the final staff report containing its recommendations to the Commission. Because of the length of time this proceeding has been pending, the Presiding Officer granted the motion.

In the Notice of Proposed Rulemaking the Commission sent out 24 questions which it urged interested persons to consider in their respective comments. See 53 FR 25503 at 25505–06. In the main these questions inquired as to the effect of the proposed amendments. Although not required, those questions may be used as a framework for comments submitted in response to this notice. In addition both the staff and the Presiding Officer request specific comments on Question 23, which asks if there is a continuing need for the Rule, and Question 24, which asks if any other modifications of the Rule are appropriate.

Copies of the Notice of Proposed Rulemaking issued on July 7, 1988, may be obtained from the Public Reference Room (Room 130), Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580. Telephone 202–326–2222.

The Commission has not yet reviewed the rulemaking record in this proceeding nor has it determined the nature or extent of any action it may take with respect to the Rule. Any decision by the Commission in this matter will be based solely upon the contents of the rulemaking record, including the material submitted in response to this notice.

List of Subjects in 16 CFR Part 419

Advertising, Foods, Gambling, Gasoline, Trade practices.

Henry B. Cabell,

Presiding Officer.

[FR Doc. 95–18331 Filed 7–25–95; 8:45 am]

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