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Wednesday
August 9, 1995

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Contents

Federal Register

Vol. 60, No. 153

Wednesday, August 9, 1995

Agency for International Development
RULES
Federal claims collection:
Tax refund offset, 40456–40457

Agricultural Research Service
NOTICES
Meetings:
National Genetic Resources Advisory Council, 40558

Agriculture Department
See Agricultural Research Service
See Forest Service
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 40558

Army Department
See Engineers Corps
NOTICES
Meetings:
Science Board, 40571–40572
Military traffic management:
Command option to extend guaranteed traffic, 40572

Centers for Disease Control and Prevention
NOTICES
Meetings:
Workers' Family Protection Task Force, 40594

Children and Families Administration
RULES
Adoption and foster care data collection under Titles IV–B and IV–E of Social Security Act; reporting and recordkeeping requirements, 40505–40508

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Iowa, 40559
Louisiana, 40559
Missouri, 40559
Oklahoma, 40559

Coast Guard
RULES
Ports and waterways safety:
Shark River, NJ; safety zone, 40458–40459
PROPOSED RULES
Boating safety:
Boats and associated equipment—
Propeller guards on houseboats and other displacement-type recreational vessels; mandatory requirements; comment request, 40545
Ports and waterways safety:
Hempstead Harbor, NY; safety zone, 40543–40545
NOTICES
Environmental statements; availability, etc.:
Coast Guard activities along U.S. Atlantic coast, 40631–40632

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 40559–40565

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Needle-craft display models; export visa and quota requirements; exemption, 40571

Community Services Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Low income home energy assistance program, 40597

Defense Department
See Army Department
See Engineers Corps
NOTICES
Committees; establishment, renewal, termination, etc.:
Defense Policy Board Advisory Committee, 40571

Education Department
PROPOSED RULES
Special education and rehabilitative services:
Technology-related assistance for individuals with disabilities State grants program, 40688–40701

Employment and Training Administration
NOTICES
Adjustment assistance:
Ackerman Shirt Co., Inc., et al., 40611–40612
Hayward Pool Products et al., 40612–40613
Kerr-McGee Corp., 40614
Xerox Corp., 40615
Zenith Distributing Corp., 40615
Adjustment assistance and NAFTA transitional adjustment assistance:
Hilco Coast Processing Co., Inc., et al., 40613–40614

Energy Department
See Energy Efficiency and Renewable Energy Office
See Energy Information Administration
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Natural gas exportation and importation:
Sandoval Energy Corp., 40580

Energy Efficiency and Renewable Energy Office
PROPOSED RULES
Energy conservation:
Alternative fueled vehicle acquisition requirements; implementation
Correction, 40539–40540

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 40573

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
San Pedro Creek, CA; Section 205 flood control project, 40572–40573

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
On-board diagnostic systems and emission-related repairs on 1994 and later model year light-duty vehicles and trucks, 40474–40498
Air quality implementation plans:
Preparation, adoption, and submittal—
Air quality models guideline, 40465–40474
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Clethodim, 40503–40505
Myclobutanil, 40500–40503
Tebuconazole, 40498–40500
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyproconazole, 40545–40548
NOTICES
Pesticides; emergency exemptions, etc.
Carbofuran, 40584–40585

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Realtek Semi-Conductor Co. Ltd., 40565–40566

Family Support Administration
See Community Services Office

Federal Aviation Administration
NOTICES
Meetings:
RTCA, Inc.; correction, 40632

Federal Communications Commission
RULES
Common carrier services:
General wireless communications service (4660–4685 MHz band), 40712–40732
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 40585

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
S.D. Warren Co., 40578
Hydroelectric applications, 40573–40575
Natural gas certificate filings:
Northwest Pipeline Corp. et al., 40575–40576
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 40576
Algonquin LNG, Inc., 40576
Eastern Shore Natural Gas Co., 40576
NorAm Gas Transmission Co., 40577
Northern Natural Gas Co., 40577
Northwest Pipeline Corp., 40577–40578
Tennessee Gas Pipeline Co., 40578–40579
Transcontinental Gas Pipe Line Corp., 40579
Trunkline Gas Co., 40579
West Texas Gas, Inc., 40579
Williams Natural Gas Co., 40579–40580

Federal Railroad Administration
NOTICES
Traffic control systems; discontinuance and removal:
Utah Railway Co. et al., 40632–40633

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
BOK Financial Corp., 40585
Matteucci, Ralph L., et al., 40585–40586
Southern Financial Bancorp, Inc., et al., 40586
Spencer Bancorporation, Inc., 40586

Federal Trade Commission
RULES
Antitrust Improvements Act:
Mergers and acquisitions; premerger notification and report form, 40704–40710
Industry guides:
Wigs and hairpieces; labeling, advertising, and sale; CFR part removed, 40453

Fish and Wildlife Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority), 40461–40465
Customary and traditional use determinations; review policies, 40459–40461
PROPOSED RULES
Endangered and threatened species:
San Diego thornmint, etc. (four plants from southwestern California and Baja California, Mexico), 40549–40557
NOTICES
Endangered and threatened species permit applications, 40599

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Isoflurane, 40455–40456
Oxytetracycline hydrochloride soluble powder, 40454–40455

Forest Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority), 40461–40465
Customary and traditional use determinations; review policies, 40459–40461
NOTICES
Meetings:
California Coast Province Advisory Committee, 40558
Olympic Provincial Interagency Executive Committee Advisory Committee, 40558–40559

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration

See Community Services Office
See Food and Drug Administration
See Health Care Financing Administration
RULES
Committee management; CFR part removed, 40505
NOTICES
Organization, functions, and authority delegations:
Children and Families Administration, 40586–40594

Health Care Financing Administration
NOTICES
Medicaid:
Demonstration project proposals, new and pending—May, 40594–40597

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 40580–40584

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 40597–40598, 40640–40686
Privacy Act:
Systems of records, 40598

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
NOTICES
Organization, functions, and authority delegations:
National Park Service; reorganization, 40601–40602

Internal Revenue Service
NOTICES
Meetings:
Art Advisory Panel, 40633

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental statements; availability, etc.:
Lower Rio Grande Flood Control Project—Main Floodway; Quisto Energy Corp. gas well, 40603

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Silicon metal from—Argentina, 40566–40568
Countervailing duties:
Small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from—Italy, 40569–40571
Countervailing duty orders:
Revocation, 40568–40569

Interstate Commerce Commission
PROPOSED RULES
Rulmaking petitions:
Invoiceless billing transactions between shippers and carriers, 40548–40549
NOTICES
Railroad operation, acquisition, construction, etc.:
Southern Pacific Transportation Co. et al., 40602–40603

Justice Department
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 40604–40611

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Opening of public lands:
Arizona, 40598–40599

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Miscellaneous amendments, 40508–40538

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 40624–40625

National Oceanic and Atmospheric Administration
PROPOSED RULES
Marine sanctuaries:
Monterey Bay National Marine Sanctuary, CA; jade collection, 40540–40542

National Park Service
NOTICES
Meetings:
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 40599–40600
National Register of Historic Places:
Pending nominations, 40600
Native American human remains and associated funerary objects:
Glacier Bay National Park and Preserve, AK; Hoonah Tlingit inventory, 40600
Phoebe A. Hearst Museum of Anthropology, CA; olla and amulet, 40600–40601

Nuclear Regulatory Commission
NOTICES
Petitions; Director's decisions:
Northeast Nuclear Energy Co., 40625–40626
Applications, hearings, determinations, etc.:
Public Service Co. of Colorado, 40626–40627

Occupational Safety and Health Administration
RULES
Safety and health standards, etc.:
Logging operations, 40457–40458

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Bankers Trust Co., 40622–40624
Boston Safe Deposit, 40615–40622
Prohibited trade practices:
Mellon Bank, N.A., et al.; correction, 40624

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 40627–40628
Federal position classification structure; occupational series consolidation, 40628–40629
Meetings:
Federal Prevailing Rate Advisory Committee, 40629

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Prosser, NE, 40629
Strang, NE, 40629–40630

Presidential Documents
PROCLAMATIONS
Special observances:
Minority Enterprise Development Week (Proc. 6815), 40735

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 40636

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc.; correction, 40637
Agency information collection activities under OMB review; correction, 40637
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc.; correction, 40637
Applications, hearings, determinations, etc.:
Stifel Nicolaus & Co., Inc., 40630–40631

Small Business Administration
NOTICES
Meetings; district and regional advisory councils:
Honolulu, 40631

Social Security Administration
PROPOSED RULES
Suplemental security income:
Aged, blind, and disabled—
Valuation of in-kind support and maintenance with cost-of-living adjustment, 40542–40543

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 40633–40634

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Art of Louis-Leopold Boilly: Modern Life in Napoleanic France, 40634
Butcher, the Baker, the Candlestick-Maker, 40634

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review
Certificate showing residence and heirs of deceased veterans or beneficiary, 40634–40635
State cemetery data, 40635

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 40640–40686

Part III
Department of Education, 40688–40701

Part IV
Federal Trade Commission, 40704–40710

Part V
Federal Communications Commission, 40712–40732

Part VI
The President, 40735

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.

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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.

3 CFR

Proclamations:

6815 40735

10 CFR

Proposed Rules:

490 40539

15 CFR

Proposed Rules:

944 50540

16 CFR

252 40453
800 40704
803 40704

20 CFR

Proposed Rules:

416 40542

21 CFR

510 (2 documents) 40454, 40455
520 40454
529 40455

22 CFR

213 40456

29 CFR

1910 40457

33 CFR

165 40458

Proposed Rules:

165 40543
183 40545

34 CFR

Proposed Rules:

345 40688

36 CFR

242 (2 documents) 40459, 40461

40 CFR

9 40474
51 40465
52 40465
86 40474
180 (3 documents) 40498, 40500, 40503
185 40503

Proposed Rules:

180 40545

45 CFR

11 40505
1355 40505

47 CFR

1 40712
26 40712

48 CFR

1801 40508
1803 40508
1804 40508
1805 40508
1808 40508
1809 40508
1810 40508
1812 40508
1814 40508
1815 40508
1819 40508
1822 40508
1825 40508
1827 40508
1829 40508
1831 40508
1833 40508
1835 40508
1837 40508
1839 40508
1846 40508
1849 40508
1850 40508
1852 40508
1853 40508
1870 40508

49 CFR

Proposed Rules:

1051 40548
1220 40548

50 CFR

100 (2 documents) 40459, 40461

Proposed Rules:

17 40549

Rules and Regulations

Federal Register
Vol. 60, No. 153
Wednesday, August 9, 1995

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

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

FEDERAL TRADE COMMISSION

16 CFR Part 252

Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces

AGENCY: Federal Trade Commission.

ACTION: Rescission of the Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces.

SUMMARY: The Federal Trade Commission (the ''Commission''), as part of its periodic review of all its guides and rules, announces that it has concluded a review of its Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces (''Guides'' or ''Wig Guides''). The Commission has decided to rescind the Guides.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Ann Stahl Guler, Investigator, Federal Trade Commission, Los Angeles Regional Office, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–7890.

SUPPLEMENTARY INFORMATION:

I. Background

The Wig Guides were issued by the Commission in 1970.[1] The Guides concerned representations and disclosures in the advertising and labeling of hairpieces for women and men, including wigs, falls, chignons, and toupees. On April 15, 1994, the Commission published a Notice in the **Federal Register** soliciting comment on the Guides.[2] Specifically, the Commission solicited comments on the costs and benefits of the Guides and their regulatory and economic effect. The comment period closed June 14, 1994. The Commission received two comments in response to the Notice. They are discussed in Part II below.

II. Comments Received

The Commission received comments from one organization, the American Hair Loss Council (AHLC), and one individual, Johanna Ehmann, RN. Ms. Ehmann's comment did not refer to the Guides, but provided copies of a booklet entitled *Hair Loss and Cancer Therapy* to aid the Commission in its review of the Guides.

The AHLC supported retention of the Guides. It also proposed expanding the Guides to encompass ''Hair Addition System,'' such as hair implants.

III. Conclusion

The Commission has concluded its regulatory review of the Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces by rescinding the Guides. The Commission based its decision on the fact that existing statutes adequately address the consumer protection issues that originally gave rise to the Guides.

Section 252.3 of the Guides stated that the foreign origin of all imported industry products must be disclosed on labels and in advertising. The Tariff Act requires that all wigs and other hairpieces, whether made from human, animal, or synthetic hair, be labeled as to country of origin.[3]

Section 252.4 of the Guides, providing that highly flammable wigs and related products should not be sold in the United States, has been superseded by statutory changes. Two years after the Wig Guides were issued, Congress transferred enforcement of the Flammable Fabrics Act to the newly-created Consumer Product Safety Commission.[4]

Section 252.2 stated that labels and advertising should disclose whether hair is composed of human or artificial hair (or a combination of both); Section 252.6 said that used industry products should be labeled as such. The remaining sections of the Guides delineated specific misrepresentations as to styling characteristics,[5] as well as general misrepresentations;[6] limited designations of hair such as ''natural'' and ''genuine'' to human hair;[7] and provided definitions of ''handmade,''[8] ''custom-made'' and similar terms,[9] ''custom-colored'' and related terms,[10] and ''virgin'' hair.[11]

The United States now imports nearly all wigs sold domestically, except for those produced by a few custom wig makers. The Commission is not aware of any unique consumer protection issues currently associated with the advertising or labeling of wigs and other hairpieces. The comments submitted to the Commission demonstrated no continuing need by the wig industry for special Commission guidance. If, in the future, practices in the sale of wigs are determined to be materially misleading and to cause consumer harm, the Commission can address such practices under Section 5 of the Federal Trade Commission Act.[12]

List of Subjects in 16 CFR Part 252

Advertising, Cosmetics, Labeling, Trade practices, Wigs and Hairpieces.

By direction of the Commission.

Donald S. Clark,

Secretary.

PART 252—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 252.

[FR Doc. 95–19545 Filed 8–8–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. 16 CFR 1.5.

[2] 59 FR 18005.

[3] 19 U.S.C. § 1304; Tariffs 6703, 6704, *Harmonized Tariff Schedule of the United States* (1995).

[4] 15 U.S.C. § 2079(b).

[5] 16 CFR § 252.10.

[6] 16 CFR § 252.1.

[7] 16 CFR § 252.5.

[8] 16 CFR § 252.7.

[9] 16 CFR § 252.8.

[10] 16 CFR § 252.9.

[11] 16 CFR § 252.11.

[12] Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1), prohibits unfair or deceptive acts or practices in or affecting commerce.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Rhone Merieux Canada, Inc. The ANADA provides for the use of a generic oxytetracycline hydrochloride soluble powder administered orally in drinking water for the control of certain diseases of chickens and turkeys and the treatment and control of certain diseases of swine, all susceptible to oxytetracycline.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Rhone Merieux Canada, Inc., 345 Boul. Labbe Blvd., North Victoriaville, QC, G6P 1B1, Canada, filed ANADA 200–144 which provides for use of oxytetracycline hydrochloride soluble powder in drinking water of chickens, turkeys, and swine. The medicated drinking water is used as follows: (1) Chickens for control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to oxytetracycline; control of chronic respiratory disease (CRD) and air sac infections caused by *M. gallisepticum* and *Escherichia coli* susceptible to oxytetracycline; control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline; (2) turkeys for control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline; infectious synovitis caused by *M. synoviae* susceptible to oxytetracycline; and control of complicating bacterial organisms associated with blue comb (transmissible enteritis; coronaviral enteritis) susceptible to oxytetracycline; (3) swine for control and treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline; and (4) breeding swine for control and treatment of leptospirosis (reducing the incidence of abortions and shedding of leptospira) caused by *Leptospira pomona* susceptible to oxytetracycline.

Approval of ANADA 200–144 for oxytetracycline soluble powder is a generic copy of I. D. Russell's NADA 130–435 (Oxytet Soluble). The ANADA is approved as of June 26, 1995, and the regulations in § 520.1660d (21 CFR 520.1660d) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, Rhone Merieux Canada, Inc., has not been previously listed in 21 CFR 510.600(c) as sponsor of an approved application. That section is amended to add entries for the firm.

In addition, the regulation contains an outdated paragraph citing the National Academy of Sciences/National Research Council (NAS/NRC) status of these products. The Generic Animal Drug and Patent Term Restoration Act of 1988 changed that status, therefore, § 520.1660d(c)(2) is removed and reserved.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drug, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Rhone Merieux Canada, Inc.,'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''047015'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Rhone Merieux Canada, Inc., 345 Boul. Labbe Blvd., North, Victoriaville, QC, G6P 1B1 Canada	047015
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
047015	Rhone Merieux Canada, Inc., 345 Boul. Labbe Blvd., North, Victoriaville, QC G6P 1B1 Canada.
* * *	* * * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1660d [Amended]

2. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in paragraph (b)(2) by adding the phrase ''and 047015'' after ''017144,'' and by removing and reserving paragraph (c).

Dated: July 31, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–19634 Filed 8–8–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 529

Animal Drugs, Feeds, and Related Products; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Halocarbon Laboratories, Division of Halocarbon Products Corp. The ANADA provides for use of isoflurane as an inhalant for induction and maintenance of general anesthesia in horses and dogs.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center For Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Halocarbon Laboratories, Division of Halocarbon Products Corp., 887 Kinderkamack Rd., P.O. Box 661, River Ridge, NJ 07661, filed ANADA 200–129 which provides for inhalant use of isoflurane for induction and maintenance of general anesthesia in horses and dogs. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–129 for Halocarbon Laboratories' isoflurane is as a generic copy of Anaquest's NADA 135–773 for AErrane® (isoflurane). The ANADA is approved as of June 29, 1995, and the regulations are amended by revising 21 CFR 529.1186(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary. In addition, Halocarbon Laboratories has not been previously listed in 21 CFR 510.600(c) as sponsor of an approved application. That section is amended to add entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Halocarbon Laboratories'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''012164'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	* *
Halocarbon Laboratories, Division of Halocarbon Products Corp., 887 Kinderkamack Rd., P.O. Box 661, River Ridge, NJ 07661.	012164
* * * * *	* *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * * *
012164	Halocarbon Laboratories, Division of Halocarbon Products Corp., 887 Kinderkamack Rd., P.O. Box 661, River Ridge, NJ 07661.
* * *	* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 529.1186 is amended by revising paragraph (b) to read as follows:

§ 529.1186 Isoflurane.

* * * * *

(b) *Sponsors.* See Nos. 000074, 010019, and 012164 in § 510.600(c) of this chapter.

* * * * *

Dated: July 31, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–19684 Filed 8–8–95; 8:45 am]

BILLING CODE 4160–01–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 213

RIN 0422–AA25

Collection of Debts by Tax Refund Offset

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: The Agency for International Development is amending its debt collection regulations to implement the tax refund offset provisions of 31 U.S.C. 3720A.

DATES: Effective August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jan W. Miller, Office of the General Counsel, Room 6881, N.S., Agency for International Development, Washington, DC 20523; (202) 647–6380.

SUPPLEMENTARY INFORMATION: A proposal to amend 22 CFR part 213 to allow the agency to recover delinquent debts owed the United States Government through the offset of tax refunds was published in the **Federal Register** on January 12, 1995, (60 FR 2911). No comments were received.

Regulatory Impact

This rule is not a ''significant regulatory action'' under Executive Order No. 12866.

Environmental Impact

This action does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 22 CFR Part 213

Claims, salary offset.

Accordingly, 22 CFR part 213 is amended as follows:

1. The authority citation for part 213 is revised to read as follows:

Authority: Sec. 621 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381; subpart B also issued under 5 U.S.C. 5514; 5 CFR 550, subpart K. Subpart C also issued under 31 U.S.C. 3720A.

2. Part 213 is amended to add a new subpart C as follows:

PART 213—COLLECTION OF CLAIMS

* * * * *

Subpart C—Collection of Debts by Tax Refund Offset

213.21 Purpose.
213.22 Applicability and scope.
213.23 Administrative charges.
213.24 Pre-offset notice.
213.25 Reasonable attempt to notify and clear and concise notification.
213.26 Consideration of evidence and notification of decision.
213.27 Change in conditions after submission to IRS.

Subpart C—Collection of Debts by Tax Refund Offset

§ 213.21 Purpose.

This subpart establishes procedures for AID to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to AID.

§ 213.22 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due and legally enforceable debt owed to the United States.

(b) A past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except for judgement debt or other debts specifically exempt from this requirement, is referred within 10 years after AID's right of action accrues;

(2) In the case of individuals, is at least $25.00.

(3) In the case of business debtors is at least $100.00;

(4) In the case of individual debtors, cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a).

(5) Is ineligible for or cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(6) Is the debt of a debtor (or in the case of an individual debtor, his or her spouse) for whom AID records do not show debtor has filed for bankruptcy under title 11 of the United States Code or for whom AID can clearly establish at the time of the referral that an automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect;

(7) Has been disclosed by AID to a consumer reporting agency as authorized by 31 U.S.C. 3711(f); and

(8) For which AID has given notice, considered any evidence, and determined that the debt is past-due and legally enforceable under the provisions of this subpart.

§ 213.23 Administrative charges.

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

§ 213.24 Pre-Offset Notice.

(a) Before AID refers a debt to the IRS, it will notify or make a reasonable attempt to notify the debtor that:

(1) The debt is past due;

(2) Unless repaid within 60 calendar days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(3) The debtor has at least 60 days from the date of the notice to present evidence that all or part of such debt is

not past-due or not legally enforceable; and

(4) AID will consider any evidence presented by the debtor and determine whether any part of such debt is past-due and legally enforceable.

(b) The notice will explain to the debtor the manner in which the debtor may present such evidence to AID.

§ 213.25 Reasonable attempt to notify and clear and concise notification.

(a) *Reasonable attempt to notify.* AID will have made a reasonable attempt to notify the debtor under § 213.24(a) it is used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103 (m)(2) or (m)(4), unless AID receives clear and concise notification from the debtor that notices are to be sent to an address different from the address obtained from the IRS.

(b) *Clear and concise notification.* Clear and concise notification means that the debtor has provided AID with written notification containing the debtor's name and identifying number (as defined in the Internal Revenue Code, 26 U.S.C. 6109), the debtor's new address, and the debtor's intent to have the notices sent to the new address.

§ 213.26 Consideration of evidence and notification of decision.

(a) AID will give the debtor at least 60 days from the date of the pre-offset notice to present evidence. Evidence that collection of the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

(b) If the evidence presented is not considered by an employee of AID but by an entity or person acting for AID, the debtor will have at least 30 days from the date the entity or person notifies the debtor that all or part of the debt is past-due and legally enforceable to request review by an employee of AID of any unresolved dispute.

(c) AID will provide the debtor with its decision and the decision of any entity or person acting for AID on to whether all or part of the debt is past-due and legally enforceable. The decision will include a statement of the basis or principal bases for the decision.

§ 213.27 Change in conditions after submission to IRS.

AID will promptly notify the IRS if, after submission of a debt to the IRS for offset, AID:

(a) Determines that an error has been made with respect to the information submitted to the IRS;

(b) Receives a payment or credits a payment, other than an IRS offset, to the account of the debtor;

(c) Receives notice that the debtor has filed for bankruptcy under title 11 of the United States Code or the debt has been discharged in bankruptcy;

(d) Receives notice that an offset was made at the time when the automatic stay provisions of 11 U.S.C. 362 were in effect;

(e) Receives notice that the debt has been extinguished by death; or

(f) Refunds all or part of the offset amount to the debtor.

Dated: March 21, 1995.

Donald K. Charney,

Chief Financial Officer.

[FR Doc. 95–19588 Filed 8–8–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–048]

Logging Operations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of partial stay.

SUMMARY: on October 12, 1994, OSHA published a final logging standard providing protection for workers in logging operations (59 FR 51672). The final rule (29 CFR 1910.266) had an effective date of February 9, 1995. On February 8, 1995, OSHA published a notice of a partial stay for six-months, until August 9, 1995, of 12 provisions of the final rule (60 FR 7447). This notice extends the partial stay of those 12 provisions for 30-days, until September 8, 1995.

EFFECTIVE DATE: The partial stay of enforcement will continue to be effective until September 8, 1995. The remaining requirements of § 1910.266, which became effective on February 9, 1995, are unaffected by this document.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Liblong, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202)–219–8148.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1994, OSHA published a final logging standard providing protection for workers in logging operations (59 FR 51672). The final rule (29 CFR 1910.266) had an effective date of February 9, 1995.

After the final rule was published, the Equipment Manufacturers Institute (EMI), the Portable Power Equipment Manufacturers Association (PPEMA), and Homelite, a manufacturer of chain saws, filed timely petitions under section 6(f) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) seeking judicial review of the standard. After the deadline for filing such petitions had passed, the Associated California Loggers, the Associated Oregon Loggers, Inc., the Montana Logging Association, and the Washington Contract Loggers Association also filed objections to the final rule with OSHA.

These parties and organizations raised questions about certain provisions of the final rule. After consideration of their questions, OSHA published a **Federal Register** notice (60 FR 7447, Feb. 8, 1995) staying 12 provisions of the standard for six-months, until August 9, 1995. The provisions OSHA stayed were: (d)(1)(v)—insofar as it requires foot protection to be chain-saw resistant; (d)(1)(vii)—insofar as it required face protection; (d)(2)(iii)—annual review and approval of first-aid kits by a health care provider; (f)(2)(iv)—machine operation on slopes; (f)(2)(xi)—machine shutdown procedures; (f)(3)(ii)—ROPS specifications; (f)(3)(vii) and (viii)—machine cab enclosures; (f)(7)(ii)—insofar as it requires machine parking brakes to be able to stop a moving machine; (g)(1) and (2)—maintenance and inspection requirements insofar as they apply to employee-owned vehicles; (h)(2)(vii)—the backcut requirement insofar as it applies to Humboldt cutting. The remaining requirements of 1910.266 were unaffected by the partial stay and went into effect on February 9, 1995.

In the notice announcing the partial stay, OSHA said the six-month delay of the 12 provisions would give the Agency time to clarify language in the regulatory text and preamble so it most accurately expressed the Agency's intent with respect to the provisions in question and to provide additional information with regard to some of the provisions. OSHA is extending the partial stay on the above listed provisions for a 30-days, until September 8, 1995, in order to complete its reconsideration of the issues, complete corrections and clarifications in the regulatory text and preamble, and revise its compliance directive to reflect those changes.

List of Subjects

29 CFR Part 1910

Chain saw, Forestry, Harvesting, Incorporation by reference, Logging, Occupational safety and health, Pulpwood timber, Training

29 CFR Part 1928

Agriculture, Migrant labor, Occupational safety and health

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of August, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

For the reasons set forth above, 29 CFR 1910 is hereby amended as follows:

PART 1910—[AMENDED]

1. The authority citation for subpart R of part 1910 continues to read as follows:

AUTHORITY: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

Section 1910.272 also issued under 5 U.S.C. 553.

2. The note at the end of § 1910.266, is revised to read as follows:

§ 1910.266 Logging operations.

* * * * *

Note: In the **Federal Register** of August 9, 1995, OSHA extended the stay of the following paragraphs of § 1910.266 until September 8, 1995. The remaining requirements of § 1910.266, which became effective on February 9, 1995, are unaffected by the extension of the partial stay:

1. (d)(1)(v)—insofar as it requires foot protection to be chain-saw resistant.
2. (d)(1)(vii)—insofar as it required face protection.
3. (d)(2)(iii).
4. (f)(2)(iv).
5. (f)(2)(xi).
6. (f)(3)(ii).
7. (f)(3)(vii).
8. (f)(3)(viii).
9. (f)(7)(ii)—insofar as it requires parking brakes to be able to stop a moving machine.
10. (g)(1) and (g)(2) insofar as they require inspection and maintenance of employee-owned vehicles.
11. (h)(2)(vii)—insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

[FR Doc. 95–19649 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–064]

RIN 2115–AA97

Safety Zone: Belmar Power Boat Race, Shark River, Belmar, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Belmar Power Boat Race located in the Shark River, Belmar, New Jersy, on Sunday, August 20, 1995, from 11 a.m. until 5 p.m. This rectangular safety zone closes all waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards.

EFFECTIVE DATE: This rule is effective on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On June 30, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 34192). Interested persons were requested to submit comments on or before July 31, 1995. No comments were received. A public hearing was not requested and one was not held. The Coast Guard is promulgating this temporary final rule as proposed. Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the NPRM comment period deemed necessary to give adequate public notice, there was insufficient time to publish this temporary final rule 30 days prior to the event. The delay that would be encountered to allow for a 30 day delayed effective date would cause the cancellation of this event. Cancellation of this event is contrary to the public interest. Adequate measures are being taken to ensure mariners are made aware of this regulation. This rule will be locally published in the First Coast Guard District's Local Notice to Mariners, and announced via Safety Marine Information Broadcasts.

Background and Purpose

The East Coast Boat Racing Club of New Jersey submitted an Application for Approval of Marine Event for a power boat race in Shark River, New Jersey. This regulation establishes a rectangular safety zone in the waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards, and bounded by the lines of latitude 40°10′48″N and 40°10′55″N, and the lines of longitude 074°01′58″W and 074°02′26″W (NAD 1983). This regulation is in effect on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or termianted sooner by the Captain of the Port New York. This safety zone prevents vessels not participating in this event from transiting this portion of the Shark River, Belmar, New Jersey. Vessels participating in this event include race participants and race committee craft. All other vessels, swimmers, and personal watercraft of any nature are precluded from entering or moving within the safety zone. This regulation is needed to protect the boating public, as well as the participants, from the hazards associated with high speed power boat racing in confined waters.

Regulatory Evaluation

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 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Shark River to nonparticipating vessel traffic on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation prevents traffic from transiting a small portion of Shark River off of Maclearie Park north of the charted navigation channel, the effect of this regulation will not be significant for several reasons: the limited duration of the event; mariners can transit to the south of the zone via the charted navigation channel; the safety zone does not impact any charted navigation channel; the affected portion of Shark River is charted as having only 2 feet of water; there is approximately 300 yards of open water, with minimum water depths, between the north boundary of the safety zone and the closest point of land; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the power boat race under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process.

Lists of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set our in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–064, is added to read as follows:

§ 165.T01–064 Safety Zone; Belmar Power Boat Race, Shark River, Belmar, New Jersey.

(a) *Location.* This rectangular safety zone includes all waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards, and bounded by the lines of latitude 40°10′48″N and 40°10′55″N, and the line of longitude 074°01′58″W and 074°02′26″W (NAD 1983).

(b) *Effective period.* This section is in effect on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port of New York.

(c) *Regulation.* (1) Vessels not participating in this event, swimmers, and personal watercraft of any nature and precluded from entering or moving within the safety zone.

(2) The general regulations contained in 33 CFR 165.23 apply.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 31, 1995.

J. Rutkovsky,

Commander, U.S. Coast Guard, Captain of the Port, New York Acting.

[FR Doc. 95–19674 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

[4310–55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Federal Public Lands in Alaska, Customary and Traditional Use Determinations; Review Policies

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Review Policies.

SUMMARY: Pursuant to the regulatory authority at 36 CFR 242.10(a), 242.18(b) and 50 CFR 100.10(a) and 100.18(b), the Federal Subsistence Board (Board) provides notice of a revised procedure for reviewing customary and traditional use determinations, and details the associated administrative process, under the Federal Subsistence Management Program. This document also rescinds the previous policy published in the **Federal Register** on July 15, 1994.

EFECTIVE DATE: The Federal Subsistence Board policies contained in this document shall be effective August 9, 1995.

ADDRESSES: Any comments concerning this document may be sent to the Chair, Federal Subsistence Board, c/o Richard S. Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road,

Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628; telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Background

In 1990, the Board assumed subsistence management responsibilities on Federal public lands and adopted the existing State of Alaska customary and traditional use determinations (55 FR 27125). Such determinations identified customary and traditional subsistence uses of certain fish and wildlife resources by specific communities and areas in Alaska. Due to changes in the rural status of some communities, public comments on the draft environmental impact statement ''Subsistence Management for Federal Public Lands in Alaska'' (October 7, 1991), comments received on temporary and implementing subsistence regulations, and customary and traditional use determination appeals submitted under the temporary subsistence regulations, the Board recognized the need for new assessments of existing customary and traditional use determinations. However, the Board deferred action on customary and traditional use until after July 1, 1992 (the effective date of final implementing rules for the Federal subsistence program) and indicated that a customary and traditional use determination process and schedule would be developed and published (57 FR 22948–22949). Customary and traditional use determination assessments were begun in regard to the Kenai Peninsula and Upper Tanana areas in 1992, and the Copper River Basin more recently. These areas were prioritized based upon public comments received during the environmental impact statement process and subsequent Board meetings. On July 15, 1994, a notice set forth an initial customary and traditional use determination schedule to be updated on a routine basis dependent upon input from the public and Federal Subsistence Regional Advisory Councils (Regional Councils). Details of the administrative process involved in customary and traditional assessments, public and advisory council input opportunities, and decision making steps, were also set forth. During a meeting of the Chairs of the Regional Councils and the Staff Committee of the Board on February 13, 1995, a consensus was reached that prompted Board revision of the customary and traditional use determination process.

Revised Customary and Traditional Use Determination Procedures

Based on the recommendation of the Regional Council Chairs, the Board is implementing a revised process for dealing with customary and traditional use determinations. The Board will entertain proposals to revise the customary and traditional use determinations at the same time as it accepts proposals for changes to the seasons and harvest limits. This period normally occurs from mid-August/early September to late October/early November each year. Because of the backlog of customary and traditional use determination proposals that have been held over from previous years and staff limitations, the Regional Councils may be asked to prioritize which of the proposals should be reviewed each year. The Regional Councils may focus their attention on community or area uses of large mammals (ungulates and bears) where there are specific problems that preclude local users from harvesting a resource rather than clarifying areas where a ''no determination'' situation exists.

The Board retains the authority to initiate assessments and make determinations related to the customary and traditional use of any species taking into consideration recommendations of any appropriate Regional Council(s).

Existing regulations at 36 CFR 242.16(b) and 50 CFR 100.16(b) identify eight factors that exemplify customary and traditional subsistence uses of a community or area. Although the customary and traditional use of a resource may be self evident to local users, the Board will base its determination of customary and traditional use on substantial information of a reasonable and defensible nature. The extent to which a community, group of communities, or area meet the characteristics of customary and traditional use are exemplified by eight factors, as follows:

1. A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

2. A pattern of use recurring in specific seasons for many years;

3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

7. A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community or area.

All participating Federal agencies and the Regional Councils have substantial roles in the revision of customary and traditional use determinations. All proposals received in a timely manner will be circulated to the pertinent Regional Council(s) and the public for comment at the same time as proposed changes in the subsistence harvest regulations. A staff analysis will also be prepared for consideration during the late Winter/Spring Regional Council meetings, along with the public comments received. The extent of the staff analysis may vary with the complexity of the proposal. The Regional Councils will have an opportunity to review the analyses, deliberate, and forward their recommendations to the Board for action.

The Board may not be able to address all customary and traditional use determination proposals during this year's regulatory cycle. Consequently, the Board may need to establish priorities. These priorities will be based on public requests, recommendations of Regional Councils and Federal land management agencies, and the availability of personnel and financial resources to conduct the work.

Drafting Information: This policy was drafted under the guidance of Richard S. Pospahala, U.S. Fish and Wildlife Service, Alaska Regional Office, Office of Subsistence Management, Anchorage, Alaska. The primary authors were Taylor Brelsford and William Knauer of the same office; Sandy Rabinowitch of the National Park Service, Alaska Regional Office; Tom Boyd, Bureau of Land Management, Alaska State Office; and Ken Thompson, USDA-Forest Service, Alaska Regional Office.

Dated: July 27, 1995. Dated: July 28, 1995.

Richard S. Pospahala,

Acting Chair, Federal Subsistence Board.

Robert W. Williams,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 95–19482 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AC82

Subsistence Management Regulations for Public Lands in Alaska, Subparts C and D—1995–1996 Subsistence Taking of Fish and Wildlife Regulations for the Kenai Peninsula

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes customary and traditional use determinations and seasons and harvest limits related to the taking of moose for subsistence uses on Federal lands on the Kenai Peninsula during the 1995–1996 regulatory year.

EFFECTIVE DATES: The amendments to § ____.24 are effective August 10, 1995. The amendments to § ____.25 are effective August 10, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau Alaska 99802–1628, telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Customary and Traditional Use Determinations

The Federal Subsistence Board (Board) implemented a systematic program for review of customary and traditional use determinations as provided for in 36 CFR 242 and 50 CFR 100. As a priority consideration, the Board focused its determinations on community or area uses of large mammals (ungulates and bears), examining uses of species of large mammals by communities or areas rather than focusing on individual herds or populations. The Board recognized that subsistence resource use patterns of neighboring communities are often interrelated and should be analyzed concurrently.

Existing regulations at 36 CFR 242.16(b) and 50 CFR 100.16(b) identify eight factors that a community or area shall generally exhibit which exemplify customary and traditional subsistence uses. The eight factors are as follows:

1. A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;
2. A pattern of use recurring in specific seasons for many years;
3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditional by local characteristics;
4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;
5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations including consideration of alteration of past practices due to recent technological advances, where appropriate;
6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;
7. A pattern of use in which the harvest is shared or distributed within a definable community of persons; and
8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community or area.

Each Federal Subsistence Regional Advisory Council (Regional Council) has a substantial role in reviewing and developing information on which to base a recommendation to the Board concerning customary and traditional use determinations. The Southcentral Regional Council had available for consideraton an extensive compilation of existing information on historic and contemporary large mammal resource use patterns by rural Kenai Peninsula communities. A draft report, dated December 8, 1993, incorporated information from historic ethnographic sources; census data; community surveys conducted by the Alaska Department of Fish and Game, Division of Subsistence; and harvest ticket and sealing records compiled by the Alaska Department of Fish and Game.

During its public meeting of February 28–March 2, 1995, the Southcentral Regional Council reviewed and discussed written information and oral testimony on resource use patterns as related to the eight factors for the Kenai Peninsula rural communities of Whittier, Hope, Cooper Landing, Ninilchik, the Homer rural area, Nanwalek (formerly known as English Bay), Port Graham and Seldovia. Based on this review and discussion, the Southcentral Regional Council developed and submitted to the Board recommendations for customary and traditional use determinations for rural communities in Units 7 and 15. The Board adopted these recommendations, and subsequently issued a proposed rule announcing its action. Following the public comment period for the proposed rule, the Southcentral Regional Council convened in a public session on July 12, 1995, and re-evaluated the recommendations reflected in the proposed rule, revising its recommendation to the Board. The revised recommendations called for positive customary and traditional use determinations for moose in Unit 15 by the communities of Ninilchik, Seldovia, Nanwalek, and Port Graham. The revised recommendations also called for deferral of customary and traditional use findings for species other than moose, and for communities other than Ninilchik, Seldovia, Nanwalek, and Port Graham.

At its July 13, 1995, public meeting, the Board amended the proposed rule in response to several considerations. A primary consideration was the revised recommendations submitted by the Southcentral Regional Council. An additional consideration was compelling public testimony calling into question the factual basis for the proposed customary and traditional use determinations. A related concern was that the customary and traditional use determinations in the proposed rule may not have been supported by substantial evidence reflecting the eight factors used to access customary and traditional uses, particularly with regard to the factors concerning long-term consistent pattern of local resource use and the community's pattern of reliance upon a wide diversity of local resources for cultural, economic, social and nutritional needs.

The Board adopted the Southcentral Regional Council's revised

recommendation to defer action on customary and traditional use determinations for species other than moose, and for communities other than Ninilchik, Seldovia, Nanwalek, and Port Graham. The Board also adopted the Southcentral Regional Council's revised recommendation that the communities of Ninilchik, Seldovia, Nanwalek, and Port Graham have customary and traditional use of moose in Units 15(B) and 15(C). The Board deferred the Southcentral Regional Council's recommendation calling for positive customary and traditional use determinations for moose in Unit 15(A) for the communities of Ninilchik and Seldovia because use of this subunit by residents of Ninilchik and Seldovia is extremely low. The aforementioned customary and use determinations are found in the changes delineated for section ____.24.

Changes for the 1995–1996 Seasons and Bag Limit Regulations

The Regional Council also proposed Federal subsistence seasons for the taking of moose on public lands in Unit 15. The Regional Council recommendation was for an any-bull harvest season beginning August 10, 1995 and ending September 20, 1995. The Board, however, was persuaded by the biological data concluding that recognized principles of fish and wildlife conservation would be violated in that adverse impacts would result to the moose population from any significant harvest of bulls in the middle age categories. Since 1987, antler restrictions have been a key part of the management efforts to rectify alarmingly low bull:cow ratios in the Kenai Peninsula moose population. This management regime has had positive effects, resulting in a dramatic improvement in the moose population composition, allowing for longer hunting seasons, larger animals being taken, and a larger overall harvest. However, the gains could be reversed and conservation of a healthy moose population jeopardized under an any-bull subsistence harvest opportunity. The adverse impacts of an any-bull harvest could also be detrimental to the satisfaction of subsistence opportunities over the longer term. In addition, local wildlife biologists report that the high snow fall of the 1994–95 winter has resulted in high natural mortality, with virtually no recruitment into the spike-fork age class of bull moose anticipated this coming year. The Board therefore retained the antler restriction previously in effect as a part of the subsistence seasons in Unit 15 to avoid adverse biological consequences. The seasons and harvest limits are found in the changes to section ____.25.

Regulations contained in this final rule will take effect on August 10, 1995. The Departments waived the 30-day effective date time period for the final rule in order to provide the maximum opportunity for public participation during the comment period following publication of the proposed rule, while simultaneously allowing the hunting season to start on August 10, 1995.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR §§ 100.1 to 100.24 and 36 CFR §§ 242.1 to 242.24, remain effective and apply to this proposed rule. Therefore, all definitions located at 50 CFR § 100.4 and 36 CFR § 242.4 apply to regulations found in these subparts. The identified sections include definitions for the following terms:

''*Federal lands* means lands and waters and interests therein title to which is in the United States''; and ''*public land* or *public lands* means lands situated in Alaska which are Federal lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act.''

Public Review Process—Public Meetings and Analysis of Comments

Following publication of the proposed rule on May 9, 1995 (60 FR 24601), public meetings were held in Seldovia, Port Graham, Hope, Cooper Landing, Soldotna, Homer, Ninilchik, and Anchorage. The Southcentral Regional Council met in a public session on July 12, 1995, to review the proposed rule and public comments and to develop a final recommendation to the Board. The Board also met in a public session on July 13, 1995, to review the comments and reach a final decision on the proposed rule. During the 60-day comment period and in the months preceding it, the Board received 183 written comments, numerous phone calls, and one petition, in addition to oral testimony presented at the various meetings which were attended by over 500 people. The comments and testimony were overwhelmingly opposed to the proposed rule and the rural designations on the Kenai Peninsula. Following is an analysis of public comments:

A number of commentors indicated that their community's proposed customary and traditional use determinations were in error, particularly for some communities in Unit 15. As discussed above, the Regional Council and Board have reexamined those determinations. The final rule reflects revised customary and traditional use determinations that comport with the best information available relative to customary and traditional uses.

Some commentors felt that the moose season is being set too early in the year. The weather is too warm and the meat will spoil before it can be taken care of. This concern is not without merit, but the State has used early seasons on a regular basis and, if harvested wildlife are dressed immediately and kept cool, the meat can be prevented from spoiling. A later season would expose rutting bulls to possible overharvest and the meat of bulls in rut is not as palatable.

Two commentors suggested eliminating hunting seasons and initiating a family harvest quota. If seasons were eliminated, hunting during the summer could significantly increase the harvest of prime breeding animals because of incomplete antler development; hunting during the spring could put unwanted stress on the pregnant cows, possibly reducing the calving rate. Existing regulations do allow the Board to establish a family quota, community harvest system, or other alternative harvest systems consistent with historic harvest patterns. A family quota system was not part of the recommendation before the Board in the current rulemaking. However, a proposal requesting this type of system could be submitted this fall for Board consideration in the next regulatory cycle.

Some commentors believed that the antler restrictions are not a customary and traditional harvest practice and are a restriction on the subsistence user. The Board recognizes that harvesting animals based on antler restrictions is not a customary or traditional practice. However, antler restrictions have been demonstrably effective in improving the health of the Kenai Peninsula moose population, which suffered from very low bull:cow ratios as recently as 1986.

These antler restrictions protect the continued opportunity for the satisfaction of subsistence needs over the long term and provide more meat for the subsistence user.

Some commentors believed that ANILCA requires that Federal lands be closed to harvest by non-subsistence users before any restriction, such as the antler restriction, is imposed on subsistence hunters. The Board recognizes the responsibility to provide a meaningful priority for subsistence uses over non-subsistence uses on the Federal public lands, and that non-subsistence uses must be reduced or proscribed before subsistence uses are limited. The Board determined that after a decade and a half with no subsistence seasons, the Federal subsistence moose season for Unit 15(B) and 15(C) on the Kenai Peninsula represents a major advance in providing for subsistence uses. The subsistence moose season adopted by the Board implements a subsistence priority in that during the first ten days of the season, subsistence users exercise an exclusive harvest opportunity on Federal public lands. This will result in a significant reallocation of harvest toward subsistence users. Non-Federally qualified subsistence users are restricted to entering Federal lands to hunt moose ten days later under the State season starting on August 20. The Federal and State seasons both end of September 20, and both include the antler restriction, which is at the center of management efforts to conserve a healthy moose population on the Kenai Peninsula.

Many commentors believed that the rural priority unfairly discriminates against non-rural residents. Sections 801(5), 802(1), and 803 of ANILCA confine the eligibility for qualifying for a subsistence priority to rural Alaska residents. The Board is obligated to implement the rural priority as mandated by Congress in ANILCA.

A large number of commentors believe that the communities of Hope, Cooper Landing, Ninilchik, and other areas on the Peninsula with the exception of Port Graham, Nanwalek, and possibly Seldovia are non-rural. The issue of whether or not a community is rural or nonrural for the purposes of Title VIII is beyond the scope of this rulemaking. The Board will, however, in the future, reexamine these communities to determine if their status should be changed. That effort will be widely publicized and comments solicited from the public.

Two commentors indicated that they believed an economic analysis should be completed for this rule. The economic impacts of this rule are minimal, because there is no closure of Federal public lands to non-Federally qualified users. Should it be necessary to close the Federal lands to non-Federally qualified users, a more detailed examination of the economic impacts will be completed.

A number of commentors were concerned about non-residents and part-time summer residents, as well as new residents hunting under the Federal Subsistence Management regulations. Federal regulations prohibit anyone except Federally-qualified subsistence users from hunting under the Federal Subsistence Management regulations. The regulations define resident as ''any person who has his or her primary, permanent home within Alaska and whenever absent . . . has the intention of returning to it.'' These regulations automatically disqualify nonresidents and part-time residents. They do provide the opportunity for new residents moving permanently into a rural community to adopt the practices of that community, including the subsistence taking of fish and wildlife resources.

A few commentors felt that non-rural residents were discriminated against because they had no representation on the Southcentral Regional Council. The only requirement for membership on the Regional Council is residency within the region. Applications are solicited annually with the most qualified individuals, based on their knowledge of subsistence uses and needs and their knowledge of other uses of fish and wildlife resources, being recommended to the Secretaries for appointment. Members of the Regional Councils represent their entire region. Currently two members of the Southcentral Regional Council are from the Kenai Peninsula.

A few individuals stated that there was inadequate opportunity for public input. Recognizing the level of public concern and the importance of this issue, the Board set a comment period that exceeded 60 days and held public hearings in 7 communities on the Kenai Peninsula plus Anchorage. The hearings were held during the day and in the evening, during the week and on the weekend to provide ample opportunity for public comment.

Some commentors felt that the proposed regulations ignore the purposes for which the Kenai National Wildlife Refuge was established and that subsistence is not consistent with those purposes. The purposes of the refuge as stated in Section 303 of ANILCA and the Section 804 subsistence priority are not mutually exclusive. Implementation of the subsistence priority does not prevent the Fish and Wildlife Service from fulfilling its responsibility to manage the Kenai Refuge according to the Section 303 purposes.

Many commentors indicated that the Federal government should not be involved in management of fish and wildlife resources in Alaska. The Secretaries and the Board agree that it is preferable for the State of Alaska to manage the subsistence taking and use of fish and wildlife. However, until such time as the State comes into compliance with Title VIII, the Federal government must provide implementation of Title VIII as directed by Congress.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (EIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement a modified Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulation for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–

22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which found that the Federal Subsistence Management Program, under a modified Alternative IV with an annual process for setting hunting and fishing regulations, had no significant possibility of a significant restriction of subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for the permit(s) required by this document is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, DC 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

This rule was not subject to OMB review under Executive Order 12866.

Economic Effects

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of ''Federalism Effects'' as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA–Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Section ____.24(a)(1) is amended in the table under ''Area,'' ''Species,'' and ''Determination'' by removing the entry for ''Unit 15 (A) and (B),'' and two entries for ''Unit 15(C)'' for ''Moose'' and adding the following new entries in their place to read as follows:

§ ____.24 Customary and traditional use determinations.

(a) * * *

(1) * * *

Area	Species	Determination
* * *	* * *	* * *
Unit 15(A)	Moose	No subsistence.
Unit 15 (B) and (C)	Moose	Residents of Ninilchik, Seldovia, Nanwalek, and Port Graham.
* * *	* * *	* * *

* * * * *

3. Section ____.25(k)(15)(iii)(D) is amended in the table under ''Hunting'' by adding an entry for ''Moose'' after the entry for ''Black Bear'' to read as follows:

§ ____.25 Subsistence taking of wildlife.

* * * * *

(k) * * *

(15) * * *
(iii) * * *
(D) * * *

	Harvest limits	Open season
HUNTING:		
* * * * * * *		
Moose:		
Unit 15 (B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.		Aug.10–Sept. 20.
Remainder of Unit 15		No open season.
* * * * * * *		

* * * * *

Dated: July 27, 1995.

Richard S. Pospahala,

Acting Chair, Federal Subsistence Board.

Dated: July 28, 1995.

Robert W. Williams,

Regional Forester, USDA—Forest Service.

[FR Doc. 95–19483 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH–FRL–5268–8; Docket No. A–92–65]

RIN 2060–AG04

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The ''Guideline on Air Quality Models (Revised)'' (hereinafter, the ''Guideline''), as modified by supplement A (1987) and supplement B (1993), sets forth air quality models and guidance for estimating the air quality impacts of sources and for specifying emission limits for them. The Guideline, codified as appendix W to 40 CFR part 51, is referenced in the PSD (Prevention of Significant Deterioration) regulations and is applied to SIP revisions for existing sources and to all new source reviews. On November 28, 1994 EPA issued a Notice of Proposed Rulemaking to augment the final rule that was published on July 20, 1993. Today EPA takes final action that makes several additions and changes as supplement C to the Guideline. Supplement C does the following: incorporates improved algorithms for treatment of area sources and dry deposition in the Industrial Source Complex (ISC) model, adopts a solar radiation/delta-T (SRDT) method for estimating atmospheric stability categories, adopts a new screening approach for assessing annual NO_2 impacts, and adds SLAB and HGSYSTEM as alternative models. This action is responsive to public comments received. Adoption of these new and refined modeling techniques and associated guidance should significantly improve the technical basis for impact assessment of air pollution sources.

EFFECTIVE DATE: This rule is effective September 8, 1995.

ADDRESSES: Docket Statement: All documents relevant to this rule have been placed in Docket No. A–92–65, located in the Air Docket (6102), Room M–1500, Waterside Mall, Attention: Docket A–92–65, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the address above.

Document Availability: Copies of supplement C to the Guideline may be obtained by downloading a text file from the SCRAM (Support Center for Regulatory Air Models) electronic bulletin board system by dialing in on (919) 541–5742. Supplement C may also be obtained upon written request from the Air Quality Modeling Group, U.S. Environmental Protection Agency (MD–14), Research Triangle Park, NC 27711. The ''Guideline on Air Quality Models (Revised)'' (1986), supplement A (1987), supplement B (1993), and supplement C (1995) are for sale from the U.S. Department of Commerce, Technical Information Service (NTIS), 5825 Port Royal Road, Springfield, VA 22161. These documents are also available for inspection at each of the ten EPA Regional Offices and at the EPA library at 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5561 or C. Thomas Coulter, telephone (919) 541–0832.

SUPPLEMENTARY INFORMATION:

Background [1]

The purpose of the Guideline [2] is to promote consistency in the use of modeling within the air management process. The Guideline provides model users with a common basis for estimating pollution concentrations, assessing control strategies and specifying emission limits; these activities are regulated at 40 CFR 51.46, 51.63, 51.112, 51.117, 51.150, 51.160, 51.166, and 51.21. The Guideline was originally published in April 1978. It was incorporated by reference in the regulations for the Prevention of Significant Deterioration of Air Quality

[1] In reviewing this preamble, note the distinction between the terms ''supplement'' and ''appendix''. Supplements A, B and C contain the replacement pages to effect Guideline revisions; appendix A to the Guideline is the repository for preferred models, while appendix B is the repository for alternate models justified for use on a case-by-case basis.

[2] Guideline on Air Quality Models ''(Revised)''(1986)[EPA–450/2–78–027R], with supplement A (1987) and supplement B (1993), hereinafter, the ''Guideline''. The Guideline is published as appendix W of 40 CFR part 51. The text of appendix W will be appropriately modified to effect the revisions incorporated as supplement C.

in June 1978 (43 FR 26380). The Guideline was subsequently revised in 1986 (51 FR 32176), and later updated with the addition of supplement A in 1987 (53 FR 393). The last such revision was supplement B, issued on July 20, 1993 (58 FR 38816). The revisions in supplement B included techniques and guidance for situations where specific procedures had not previously been available, and also improved several previously adopted techniques.

During the public comment period for supplement B, EPA received requests to consider several additional new modeling techniques and suggestions for enhanced technical guidance. However, because there was not sufficient time for the public to review the new techniques and technical guidance before promulgation of supplement B, the new models and enhanced technical guidance could not be included in the supplement B rulemaking. Thus, in a subsequent regulatory proposal, EPA proposed to revise the Guideline and sought public comment on the following four items: incorporation of improved algorithms for treatment of area sources and dry deposition in the Industrial Source Complex (ISC) model, adoption of a solar radiation/delta-T (SRDT) method for estimating atmospheric stability categories, adoption of a new screening approach for assessing annual NO_2 impacts, and addition of SLAB and HGSYSTEM as alternative models.

Final Action

Today's action amends appendix W of 40 CFR part 51 to effect the revisions known as supplement C, slightly modified in form since proposal. All significant comments have been considered, and whenever they revealed any new information or suggested any alternative solutions, such were considered in EPA's final action.

As proposed, EPA is replacing the area source algorithm in the Industrial Source Complex model with a new one based on a double integration of the Gaussian plume kernel for area sources. This replacement includes that of the finite line segment approximation employed by the short term version of ISC and of the virtual point source technique used in the long term version of ISC.

As proposed, EPA is replacing the dry deposition algorithm in ISC with an improved technique that is more accurate for estimating deposition for small (i.e., < 20μm diameter) particles. Use the deposition algorithm in modeling analyses in which particle settling is considered important will remain optional.

EPA will adopt the solar radiation/delta-T (SRDT) method for Pasquill-Gifford (P–G) stability classification discussed in section 9 of appendix W. However, instead of adopting the SRDT method as a replacement for the currently accepted turbulence-based methods (i.e., σ_ϕ and σ_θ), as proposed, SRDT will join them as an ensemble of acceptable methods. Furthermore, while the current hierarchy of acceptable methods is eliminated, the Turner method using on-site wind speed and representative cloud cover observations, remains the preferred classification method.

As proposed, EPA revises the annual NO_2 screening technique described in section 6 of appendix W. The new technique, known as the Ambient Ratio Method (ARM), is simpler and less conservative than the Ozone Limiting Method (OLM) it replaces.

As proposed, EPA adds two new models, namely SLAB and HGSYSTEM, as alternative models for use on a case-by-case basis.

Discussion of Public Comments and Issues

All comments submitted to Docket No. A–92–65 are filed in Docket Category IV–D. EPA has summarized these comments, developed detailed responses, and drawn conclusions on appropriate actions for this Notice of Final Rulemaking in an external Agency document.[3] In this document, all significant comments have been considered and discussed. Whenever the comments revealed any new information or suggested any alternative solutions, such were considered in EPA's final action.

Major issues raised by the commenters, along with EPA responses, are summarized below. Guidance and editorial changes associated with the resolution of these issues are adopted in the appropriate sections of the Guideline and are promulgated as supplement C (1995) to the ''Guideline on Air Quality Models (Revised)'' (1986) (Docket Item V–B–1). See the ADDRESSES section of this Notice (above) for general availability.

Although a more detailed summary of the comments and EPA's responses are contained in the aforementioned response-to-comments document (Docket Item V–C–1), the remainder of this preamble section overviews the primary issues encountered by the Agency during the public comment period. This overview also serves to explain the changes to the Guideline from today's action, and the main technical and policy concerns addressed by the Agency. In our view, all of the changes being made reasonably implement the mandates of the Clean Air Act, and are in fact beneficial to both EPA and the regulated community. While modeling by its nature involves approximation based on scientific methodology, and entails utilization of advanced technology as it evolves, EPA believes these changes respond to recent advances in the area so that the Guideline continues to be comprised of the best and most proven of the available models and analytical techniques, as well as reflect reasonable policy choices.

1. Enhancements to the Industrial Source Complex (ISC2) Model

While for clarification these enhancements are discussed separately, EPA will integrate these enhancements into one model for actual use. Several conforming Guideline revisions will be made: (a) the latest version of ISC that integrates the revised algorithms will be called ISC3, and will hereafter be specified only in main references (section 12) and in its description in appendix A; (b) the term ''ISC2'' (the version of ISC currently in use) in all but appendix A (i.e., in sections 7.1, 7.2.2, 7.2.5, 7.2.8, 8.2.5 and 8.2.7) will be revised to the more generic ''ISC'' to make future Guideline revisions more manageable; and (c) section 4.2.1 will be amended to say that the latest version of SCREEN (i.e., SCREEN3), a screening model that uses ISC algorithms, will be specified in the main references, and ''SCREEN2'' in section 4.2.1 and 5.2.1.1 will be changed to ''SCREEN''.

A. Area Source Algorithm

There was general public support for adoption of the proposed area source algorithm. Some concern, however, was expressed over the evaluation of the algorithm's performance being based on wind tunnel simulations. A commenter urged the Agency to evaluate the algorithm using a particular ''available field data'' set. EPA had been aware of the value of such data for evaluation purposes generally but the use of the specific data set cited by the commenter was recommended against by EPA's contractor. And since other such data sets were unavailable, EPA feels that the wind tunnel evaluation was the best possible. EPA will therefore adopt the algorithm, as proposed.

[3] ''Summary of Public Comments and EPA Responses on the Proposal for Supplement C to the Guideline of Air Quality Models (Revised)''; August 1995 (Air Docket A–92–65, Item V–C–1).

B. Dry Deposition Algorithm

No comments were received about the proposed algorithm's performance in ISCST. Regarding ISCLT, however, concern was expressed over the algorithm's 50-fold increase in deposition estimates for small particles from near-surface releases compared with the current algorithm. As explained in the response-to- comments document, EPA investigated the commenter's perception and explained the apparent disparity in performance is explicable in terms of a series of independent effects related to the improvements made in the new algorithm. EPA will adopt the algorithm, as proposed.

In the proposal, EPA solicited public comment on whether it would be appropriate to require that the new dry deposition algorithm be used for all ISC analyses involving particulate matter in any of the programs for which Guideline usage is required under 40 CFR parts 51 and 52. No comments were received. EPA will continue to allow optional use of the algorithm on a case-by-case basis, depending on the application and on the availability of source specific, fractionated emissions data.

2. Enhancements to On-Site Stability Classification

Much of the expressed public concern was based on a perception of substantial added costs the SRDT method would add to meteorological monitoring programs. As stated in the response-to-comments document, investigation of the cost factors associated with instrumenting a meteorological tower to implement the SRDT method (i.e., ΔT and insolation) showed that such would add approximately $2500–$3500. Relative to the cost of all the monitoring equipment, including data acquisition systems, tower, etc., the added instrumentation costs for implementing the SRDT method are approximately 25 to 45 percent of the total costs (depending on tower height). Thus, as was pointed out in public comment, there is a capital cost associated with implementation of the SRDT method, but EPA believes that cost is not excessive, particularly in relation to the total monitoring program.

While no analyses were offered to directly refute the viability of the SRDT method on a technical basis, there was general concern over the SRDT method's proposed replacement of the currently acceptable turbulence based methods (i.e., σ_ϕ or σ_θ), particularly given that the evaluation report for the SRDT method did not demonstrate its superiority over the latter methods.

Therefore, in an effort to balance an array of concerns, consistent with the intent and motivation for the proposal, EPA will adopt the SRDT method but revise the current hierarchical system of stability classification in Guideline section 9.3.3.2. Specifically, the Turner method using site-specific wind speed and representative cloud cover and ceiling height will be preferred for estimating P–G stability categories. This preference is founded in the fundamental radiation basis for P–G categories. In the absence of requisite data to implement the Turner method, however, the SRDT method or one of the turbulence based methods may be used. Regarding the collection of requisite representative cloud cover data for implementing the preferred Turner method, it should be noted that the operative word is representative. The previous distinction made for ''off-site'', associated with the last choice in the current hierarchy, is semantic. ''On-site'' is a preferable ideal; what is important is representativeness. As aptly pointed out in public comments, when representative off-site'' cloud cover data are judiciously used, there can be good P–G category correspondence with what would have been obtained using strictly on-site observations. The emphasis on representativeness, inherent in EPA's final action, should obviate the historical contention over this semantic issue. As stated in the proposal, the on-site guidance[4] will be revised by addendum to reflect the new stability classification system, including the SRDT methodology. The document will also be revised to add some additional guidance on considerations of representativeness with respect to the Turner method.

3. Screening Approaches for Assessing Annual NO_2 Impact

Public comments were generally supportive of the proposed NO_2 screening approach: the ARM. Some, however, recommended the retention of OLM that ARM was proposed to replace. As stated in EPA's response, this recommendation would imply that OLM, applied on an hourly basis as a tertiary screening method, would yield a better estimation of annual NO_2 impact. EPA believes, however that application of OLM in this manner is affected by several technical and logistical problems. Because the oversimplified OLM approach does not necessarily result in more accurate estimates, adding OLM as a third tier screening method to be implemented on a hourly basis for screening is unnecessary. Therefore, EPA will adopt the Ambient Ratio Method, as proposed.

4. Modeling Techniques for Toxic Air Pollutants

There was support for EPA's proposal to adopt two new models for treating dense gas releases. Therefore, as proposed, EPA will add these models, SLAB and HGSYSTEM Version 3.0, to the Guideline where they will accompany DEGADIS, another appendix B model for treating dense gas releases for use on a case-by-case basis.

Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of E.O. 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act on 1980, 44 U.S.C. 3501 et seq.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of regulations on small ''entities''. The final action taken today is a supplement to the notice of final rulemaking that was published on July 20, 1993 (58 FR 38816). As described earlier in this

[4] Environmental Protection Agency, 1987. On-Site Meteorological Program Guidance for Regulatory Modeling Applications. EPA Publication No. EPA–450/4–87–013. U.S. Environmental Protection Agency, Research Triangle Park, NC.

preamble, the revisions here promulgated as supplement C to the Guideline encompass the use of new model algorithms and techniques for using those models. This rule merely updates existing technical requirements for air quality modeling analyses mandated by various Clean Air Act programs (e.g., prevention of significant deterioration, new source review, SIP revisions) and imposes no new regulatory burdens. As such, there will be no additional impact on small entities regarding reporting, recordkeeping, compliance requirements, as stated in the notice of final rulemaking (aforementioned). Furthermore, this final rule does not duplicate, overlap, or conflict with other federal rules. Thus, pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that the attached final rule will not have a significant impact on a substantial number of such entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

Authority: This rule is issued under the authority granted by sections 110(a)(2), 165(e), 172 (a) & (c), 173, 301(a)(1) and 320 of the 1990 Clean Air Act Amendments, 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) & (c), 7503, 7601(a)(1) and 7620, respectively.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

Parts 51 and 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7620.

§ 51.112 [Amended]

2. In § 51.112, paragraphs (a)(1) and (a)(2) are amended by revising ''and supplement B (1993)'' to read '', supplement B (1993) and supplement C (1995)''.

§ 51.160 [Amended]

3. In § 51.160, paragraphs (f)(1) and (f)(2) are amended by revising ''and supplement B (1993)'' to read '', supplement B (1993) and supplement C (1995)''.

§ 51.166 [Amended]

4. In § 51.166, paragraphs (l)(1) and (l)(2) are amended by revising ''and supplement B (1993)'' to read '', supplement B (1993) and supplement C (1995)''.

5. Appendix W to part 51, section 4.2.1 is amended by removing ''SCREEN2, is available.[19, 20]'' in the last sentence of the first paragraph and adding ''SCREEN2, is available.[19, 20] For the current version of SCREEN, see reference 20.''

6. Appendix W to part 51, section 4.2.2 is amended by revising Table 4–1 to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

* * * * *

TABLE 4–1.—PREFERRED MODELS FOR SELECTED APPLICATIONS IN SIMPLE TERRAIN

	Land use	Model [1]
Short Term (i.e., 1–24 hours):		
Single Source	Rural	CRSTER
	Urban	RAM
Multiple Source	Rural	MPTER
	Urban	RAM
Complicated Sources [2].	Rural/ Urban.	ISCST [3]
Buoyant Industrial Line Sources.	Rural	BLP
Long Term (i.e., monthly, seasonal or annual):		
Single Source	Rural	CRSTER
	Urban	RAM
Multiple Source	Rural	MPTER
	Urban	CDM 2.0 or RAM [4]
Complicated Sources [2].	Rural/ Urban.	ISCLT [3]
Buoyant Industrial Line Sources.	Rural	BLP

* * * * *

[1] The models as listed here reflect the applications for which they were originally intended. Several of these models have been adapted to contain options which allow them to be interchanged. For example, ISCST could be substituted for ISCLT. Similarly, for a point source application, ISCST with urban option can be substituted for RAM. Where a substitution is convenient to the user and equivalent estimates are assured, it may be made.

[2] Complicated sources are those with special problems such as aerodynamic downwash, particle deposition, volume and area sources, etc.

[3] For the current version of ISC, see reference 58 and note the model description provided in Appendix A of this document.

[4] If only a few sources in an urban area are to be modeled, RAM should be used.

* * * * *

7. Appendix W to Part 51, section 5.2.1.1 is amended by removing ''SCREEN2'' in the third paragraph and by adding ''SCREEN''.

8. Appendix W to Part 51, section 6.2.3 is revised to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

* * * * *

6.2.3 Models for Nitrogen Dioxide (Annual Average)

a. A tiered screening approach is recommended to obtain annual average estimates of NO_2 from point sources for New Source Review analysis, including PSD, and for SIP planning purposes. This multi-tiered approach is conceptually shown in Figure 6–1 below:

Figure 6–1.—Multi-Tiered Screening Approach for Estimating Annual NO_2 Concentrations From Point Sources

Tier 1:
Assume Total Conversion of NO to NO_2

Tier 2:
Multiply Annual NO_X Estimate by Empirically Derived NO_2 / NO_X Ratio

b. For Tier 1 (the initial screen), use an appropriate Gaussian model from appendix A to estimate the maximum annual average concentration and assume a total conversion of NO to NO_2. If the concentration exceeds the NAAQS and/or PSD increments for NO_2, proceed to the 2nd level screen.

c. For Tier 2 (2nd level) screening analysis, multiply the Tier 1 estimate(s) by an empirically derived NO_2 / NO_X value of 0.75 (annual national default).[36] An annual NO_2 / NO_X ratio differing from 0.75 may be used if it can be shown that such a ratio is based on data likely to be representative of the location(s) where maximum annual impact from the individual source under review occurs. In the case where several sources contribute to consumption of a PSD increment, a locally derived annual NO_2 / NO_X ratio should also be shown to be representative of the location where the maximum collective impact from the new plus existing sources occurs.

d. In urban areas, a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, i.e. minor point, area and mobile sources of NO_X; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO_X is emitted in the form of NO_2 and to use a model from appendix A for nonreactive pollutants to estimate NO_2 concentrations. A more accurate estimate can be obtained by: (1) calculating the annual average concentrations of NO_X with an urban model, and (2) converting these estimates to NO_2 concentrations using an empirically derived annual NO_2 / NO_X ratio. A value of 0.75 is recommended for this ratio. However, a spatially averaged annual NO_2 / NO_X ratio may be determined from an existing air quality monitoring network and used in lieu of the 0.75 value if it is determined to be representative of prevailing ratios in the urban area by the reviewing agency. To ensure use of appropriate locally derived annual NO_2 / NO_X ratios, monitoring data under consideration should be limited to those collected at monitors meeting siting criteria defined in 40 CFR part 58, appendix D as representative of ''neighborhood'', ''urban'', or ''regional'' scales.

Furthermore, the highest annual spatially averaged NO_2 / NO_X ratio from the most recent 3 years of complete data should be used to foster conservatism in estimated impacts.

e. To demonstrate compliance with NO_2 PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO_2 concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources with the preferred model ISCLT2.

f. More refined techniques to handle special circumstances may be considered on a case-by-case basis and agreement with the reviewing authority should be obtained. Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO_2. Where they are available, site-specific data on the conversion of NO to NO_2 may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO_X problem.

* * * * *

9. Appendix W to part 51, section 7.1 is amended by removing ''ISC2'' in the fourth paragraph and by adding ''ISC''.

10. Appendix W to part 51, section 7.2.2 is amended by removing ''ISC2'' in the third paragraph and by adding ''ISC''.

11. Appendix W to part 51, section 7.2.5 is amended by removing ''ISC2'' in the second paragraph and by adding ''ISC''.

12. Appendix W to part 51, section 7.2.8 is amended by removing ''ISC2'' in the second paragraph and by adding ''ISC''.

13. Appendix W to part 51, section 8.2.5 is amended by removing ''ISC2'' in the second paragraph and by adding ''ISC''.

14. Appendix W to part 51, section 8.2.7 is amended by removing ''total suspended particulate'' in the first paragraph and by adding ''particle''.

15. Appendix W to part 51, section 8.2.7 is amended by removing ''At least one'' in the second paragraph and by adding ''One''.

16. Appendix W to part 51, section 9.3.3.2, is revised to read as follows:

* * * * *

9.3.3.2 *Recommendations.*

a. *Site-specific Data Collection.* The document ''On-Site Meteorological Program Guidance for Regulatory Modeling Applications''[66] provides recommendations on the collection and use of on-site meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to the limited guidance on these subjects now found in the ''Ambient Monitoring Guidelines for Prevention of Significant Deterioration''.[63] Detailed information on quality assurance is provided in the ''Quality Assurance Handbook for Air Pollution Measurement Systems: Volume IV''.[67] As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the parameters to determine Pasquill-Gifford (P–G) stability categories should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide representative characterization of pollutant transport between sources and receptors of interest. The Regional Office will determine the appropriateness of the measurement locations.

b. All site-specific data should be reduced to hourly averages. Table 9–3 lists the wind related parameters and the averaging time requirements.

c. *Solar Radiation Measurements.* Total solar radiation should be measured with a reliable pyranometer, sited and operated in accordance with established on-site meteorological guidance.[66]

d. *Temperature Measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established on-site meteorological guidance.[66]

e. *Temperature Difference Measurements.* Temperature difference (ΔT) measurements for use in estimating P–G stability categories using the SRDT methodology (see Stability Categories) should be obtained using two matched

thermometers or a reliable thermocouple system to achieve adequate accuracy.

f. Siting, probe placement, and operation of ΔT systems should be based on guidance found in Chapter 3 of reference 66, and such guidance should be followed when obtaining vertical temperature gradient data for use in plume rise estimates or in determining the critical dividing streamline height.

g. *Wind Measurements.* For refined modeling applications in simple terrain situations, if a source has a stack below 100m, select the stack top height as the wind measurement height for characterization of plume dilution and transport. For sources with stacks extending above 100m, a 100m tower is suggested unless the stack top is significantly above 100m (i.e., ≥200m). In cases with stack tops ≥200m, remote sensing may be a feasible alternative. In some cases, collection of stack top wind speed may be impractical or incompatible with the input requirements of the model to be used. In such cases, the Regional Office should be consulted to determine the appropriate measurement height.

h. For refined modeling applications in complex terrain, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required. Such measurements should be obtained up to the representative plume height(s) of interest (i.e., the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (e.g., CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR if the representative plume height(s) of interest exceed 100m. The meteorological tower need not exceed the lesser of the representative plume height of interest (the highest plume height if there is more than one plume height of interest) or 100m.

i. In general, the wind speed used in determining plume height is defined as the wind speed at stack top.

j. Specifications for wind measuring instruments and systems are contained in the ''On-Site Meteorological Program Guidance for Regulatory Modeling Applications''.[66]

k. *Stability Categories.* The P–G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[50] It is recommended that the P–G stability category be estimated using the Turner method with site-specific wind speed measured at or near 10m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site-specific cloud observations are unavailable, may be found in section 6 of reference 66. In the absence of requisite data to implement the Turner method, the SRDT method or wind fluctuation statistics (i.e., the σ_E and σ_A methods) may be used.

l. The SRDT method, described in section 6.4.4.2 of reference 66, is modified slightly from that published by Bowen et al. (1983)[136] and has been evaluated with three on-site data bases.[137] The two methods of stability classification which use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in section 6.4.4 of reference 66 (note applicable tables in section 6). For additional information on the wind fluctuation methods, see references 68–72.

m. Hours in the record having missing data should be treated according to an established data substitution protocol and after valid data retrieval requirements have been met. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in section 5.3 of reference 66.

n. *Meteorological Data Processors.* The following meteorological preprocessors are recommended by EPA: RAMMET, PCRAMMET, STAR, PCSTAR, MPRM,[135] and METPRO.[24] RAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. The RAMMET format is the standard data input format used in sequential Gaussian models recommended by EPA. PCRAMMET[138] is the PC equivalent of the mainframe version (RAMMET). STAR is the recommended preprocessor for use in applications employing joint frequency distributions (wind direction and wind speed by stability class) based on NWS data. PCSTAR is the PC equivalent of the mainframe version (STAR). MPRM is the recommended preprocessor for use in applications employing on-site meteorological data. The latest version (MPRM 1.3) has been configured to implement the SRDT method for estimating P–G stability categories. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring RAMMET formatted data and STAR formatted data. In addition to on-site data, MPRM provides equivalent processing of NWS data. METPRO is the required meteorological data preprocessor for use with CTDMPLUS. All of the above mentioned data preprocessors are available for downloading from the SCRAM BBS.[19]

* * * * *

17. Appendix W to Part 51, section 12.0, is amended by:

a. Revising references 20, 36, 58 and 90; and

b. Adding references 136 through 138.

The revisions and additions read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

* * * * *

12.0 * * *

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20. Environmental Protection Agency, 1995. SCREEN3 User's Guide. EPA Publication No. EPA–454/B–95–004. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 95–222766)

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36. Chu, S. H. and E. L.Meyer, 1991. Use of Ambient Ratios to Estimate Impact of NO_X Sources on Annual NO_2 Concentrations. Proceedings, 84th Annual Meeting & Exhibition of the Air & Waste Management Association, Vancouver, B.C.; 16–21 June 1991. (16 pp.) (Docket No. A–92–65, II–A–7)

* * * * *

58. Environmental Protection Agency, 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models, Volumes 1 and 2. EPA Publication Nos. EPA–454/B–95–003a & b. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB–95–222741 and PB 95–222758, respectively)

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90. Environmental Research and Technology, 1987. User's Guide to the Rough Terrain Diffusion Model (RTDM), Rev. 3.20. ERT document No. PD535–585. Environmental Research and Technology, Inc.,

Concord, MA (NTIS No. PB 88–171467)

* * * * *

136. Bowen, B.M., J.M. Dewart and A.I. Chen, 1983. Stability Class Determination: A Comparison for One Site. Proceedings, Sixth Symposium on Turbulence and Diffusion. American Meteorological Society, Boston, MA; pp. 211–214. (Docket No. A–92–65, II–A–5)
137. Environmental Protection Agency, 1993. An Evaluation of a Solar Radiation/Delta-T (SRDT) Method for Estimating Pasquill-Gifford (P–G) Stability Categories. EPA Publication No. EPA–454/R–93–055. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94–113958)
138. Environmental Protection Agency, 1993. PCRAMMET User's Guide. EPA Publication No. EPA–454/B–93–009. U.S. Environmental Protection Agency, Research Triangle Park, NC.

18. Appendix A to Appendix W of Part 51, is amended:

a. The Table of Contents is revised by removing ''ISC2'' and by adding ''ISC3'';

b. Section A.5 is amended by revising the Heading and Reference;

c. Section A.5 Abstract is amended by removing ''ISC2'' and by adding ''ISC3'';

d. Section A.5.a is amended by removing ''ISC2'' in the first line and by adding ''ISC3'';

e. Section A.5.b is amended by removing ''ISCST2'' and ''ISCLT2 in the second paragraph and by adding ''ISCST3'';

f. Section A.5.d is revised;

g. Section A.5.e is amended by removing ''ISC2'' in the first line and by adding ''ISC3'';

h. Section A.5.f is amended by removing ''ISC2'' in the first line and by adding ''ISC3'';

i. Section A.5.g is amended by removing ''ISC2'' in the first line and by adding ''ISC3'';

j. Section A.5.m is revised;

k. Section A.5.n is amended by adding four references in alphabetical order; and

l. Section A.REF is amended by adding a reference at the end.

The revisions and additions read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

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Appendix A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

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A.5 INDUSTRIAL SOURCE COMPLEX MODEL (ISC3)

Reference

Environmental Protection Agency, 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models, Volumes 1 and 2. EPA Publication Nos. EPA–454/B–95–003a & b. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB–95–222741 and PB 95–222758, respectively)

* * * * *

d. Type of Model

ISC3 is a Gaussian plume model. It has been revised to perform a double integration of the Gaussian plume kernel for area sources.

* * * * *

m. Physical Removal

Dry deposition effects for particles are treated using a resistance formulation in which the deposition velocity is the sum of the resistances to pollutant transfer within the surface layer of the atmosphere, plus a gravitational settling term (EPA, 1994), based on the modified surface depletion scheme of Horst (1983).

* * * * *

n. Evaluation Studies

* * * * *

Environmental Protection Agency, 1992. Comparison of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model and Wind Tunnel Data. EPA Publication No. EPA–454/R–92–014. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226751)

Environmental Protection Agency, 1992. Sensitivity Analysis of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model. EPA Publication No. EPA–454/R–92–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226769)

Environmental Protection Agency, 1992. Development and Evaluation of a Revised Area Source Algorithm for the Industrial Source Complex Long Term Model. EPA Publication No. EPA–454/R–92–016. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226777)

Environmental Protection Agency, 1994. Development and Testing of a Dry Deposition Algorithm (Revised). EPA Publication No. EPA–454/R–94–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94–183100)

* * * * *

A.REF (REFERENCES)

* * * * *

Horst, T. W., 1983. A Correction to the Gaussian Source-depletion Model. In *Precipitation Scavenging, Dry Deposition and Resuspension*. H. R. Pruppacher, R. G. Semonin, and W. G. N. Slinn, eds., Elsevier, NY.

19. Appendix B to appendix W of part 51 is amended by:

a. Adding two entries to the Table of Contents in numerical order; and

b. Adding sections B.32 and B.33 immediately following section B.31.

The additions read as follows:

Appendix B to Appendix W of Part 51—Summaries of Alternative Air Quality Models

Table of Contents

* * * * *

B.32 HGSYSTEM

B.33 SLAB

* * * * *

B.32 HGSYSTEM: Dispersion Models for Ideal Gases and Hydrogen Fluoride

References

Post, L. (ed.), 1994. HGSYSTEM 3.0 Technical Reference Manual. Shell Research Limited, Thornton Research Centre, Chester, United Kingdom. (TNER 94.059)

Post, L., 1994. HGSYSTEM 3.0 User's Manual. Shell Research Limited, Thornton Research Centre, Chester, United Kingdom. (TNER 94.058)

Availability

The PC-DOS version of the HGSYSTEM software (HGSYSTEM: Version 3.0, Programs for modeling the dispersion of ideal gas and hydrogen fluoride releases, executable programs and source code can be installed from floppy diskettes. These diskettes and all documentation are available as a package from API [(202) 682–8340] or NTIS (see Section B.0).

Technical Contacts

Doug N. Blewitt, AMOCO Corporation, 1670 Broadway / MC 2018, Denver, CO 80201, (303) 830–5312

Howard J. Feldman, American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005, (202) 682–8340

Abstract

HGSYSTEM is a PC-based software package consisting of mathematical models for estimating of one or more consecutive phases between spillage and near-field and far-field dispersion of a pollutant. The pollutant can be either

a two-phase, multi-compound mixture of non-reactive compounds or hydrogen fluoride (HF) with chemical reactions. The individual models are:

Database program:
- DATAPROP generates physical properties used in other HGSYSTEM models

Source term models:
- SPILL transient liquid release from a pressurized vessel
- HFSPILL SPILL version specifically for HF
- LPOOL evaporating multi-compound liquid pool model

Near-field dispersion models:
- AEROPLUME high-momentum jet dispersion model
- HFPLUME AEROPLUME version specifically for HF
- HEGABOX dispersion of instantaneous heavy gas releases

Far-field dispersion models:
- HEGADAS(S,T) heavy gas dispersion (steady-state and transient version)
- PGPLUME passive Gaussian dispersion

Utility programs:
- HFFLASH flashing of HF from pressurized vessel
- POSTHS/POSTHT post-processing of HEGADAS(S,T) results
- PROFILE post-processor for concentration contours of airborne plumes
- GET2COL utility for data retrieval

The models assume flat, unobstructed terrain. HGSYSTEM can be used to model steady-state, finite-duration, instantaneous and time dependent releases, depending on the individual model used. The models can be run consecutively, with relevant data being passed on from one model to the next using link files. The models can be run in batch mode or using an iterative utility program.

a. Recommendations for Regulatory Use

HGSYSTEM can be used as a refined model to estimate short-term ambient concentrations. For toxic chemical releases (non-reactive chemicals or hydrogen fluoride; 1-hour or less averaging times) the expected area of exposure to concentrations above specified threshold values can be determined. For flammable non-reactive gases it can be used to determine the area in which the cloud may ignite.

b. Input Requirements

1. HFSPILL input data: reservoir data (temperature, pressure, volume, HF mass, mass-fraction water), pipe-exit diameter and ambient pressure.

2. EVAP input data: spill rate, liquid properties, and evaporation rate (boiling pool) or ambient data (non-boiling pool).

3. HFPLUME and PLUME input data: reservoir characteristics, pollutant parameters, pipe/release data, ambient conditions, surface roughness and stability class.

4. HEGADAS input data: ambient conditions, pollutant parameters, pool data or data at transition point, surface roughness, stability class and averaging time.

5. PGPLUME input data: link data provided by HFPLUME and the averaging time.

c. Output

1. The HGSYSTEM models contain three post-processor programs which can be used to extract modeling results for graphical display by external software packages. GET2COL can be used to extract data from the model output files. HSPOST can be used to develop isopleths, extract any 2 parameters for plotting and correct for finite release duration. HTPOST can be used to produce time history plots.

2. HFSPILL output data: reservoir mass, spill rate, and other reservoir variables as a function of time. For HF liquid, HFSPILL generates link data to HFPLUME for the initial phase of choked liquid flow (flashing jet), and link data to EVAP for the subsequent phase of unchoked liquid flow (evaporating liquid pool).

3. EVAP output data: pool dimensions, pool evaporation rate, pool mass and other pool variables for steady state conditions or as a function of time. EVAP generates link data to the dispersion model HEGADAS (pool dimensions and pool evaporation rate).

4. HFPLUME and PLUME output data: plume variables (concentration, width, centroid height, temperature, velocity, etc.) as a function of downwind distance.

5. HEGADAS output data: concentration variables and temperature as a function of downwind distance and (for transient case) time.

6. PGPLUME output data: concentration as a function of downwind distance, cross-wind distance and height.

d. Type of Model

HGSYSTEM is made up of four types of dispersion models. HFPLUME and PLUME simulate the near-field dispersion and PGPLUME simulates the passive-gas dispersion downwind of a transition point. HEGADAS simulates the ground-level heavy-gas dispersion.

e. Pollutant Types

HGSYSTEM may be used to model non-reactive chemicals or hydrogen fluoride.

f. Source-Receptor Relationships

HGSYSTEM estimates the expected area of exposure to concentrations above user-specified threshold values. By imposing conservation of mass, momentum and energy the concentration, density, speed and temperature are evaluated as a function of downwind distance.

g. Plume Behavior

1. HFPLUME and PLUME: (1) are steady-state models assuming a top-hat profile with cross-section averaged plume variables; and (2) the momentum equation is taken into account for horizontal ambient shear, gravity, ground collision, gravity-slumping pressure forces and ground-surface drag.

2. HEGADAS: assumes the heavy cloud to move with the ambient wind speed, and adopts a power-law fit of the ambient wind speed for the velocity profile.

3. PGPLUME: simulates the passive-gas dispersion downwind of a transition point from HFPLUME or PLUME for steady-state and finite duration releases.

h. Horizontal Winds

A power law fit of the ambient wind speed is used.

i. Vertical Wind Speed

Not treated.

j. Horizontal Dispersion

1. HFPLUME and PLUME: Plume dilution is caused by air entrainment resulting from high plume speeds, trailing vortices in wake of falling plume (before touchdown), ambient turbulence and density stratification. Plume dispersion is assumed to be steady and momentum-dominated, and effects of downwind diffusion and wind meander (averaging time) are not taken into account.

2. HEGADAS: This model adopts a concentration similarity profile expressed in terms of an unknown center-line ground-level concentration and unknown vertical/cross-wind dispersion parameters. These quantities are determined from a number of basic equations describing gas-mass conservation, air entrainment (empirical law describing vertical top-entrainment in terms of global Richardson number), cross-wind gravity spreading (initial gravity spreading followed by gravity-current collapse) and cross-wind diffusion (Briggs formula).

3. PGPLUME: It assumes a Gaussian concentration profile in which the cross-wind and vertical dispersion coefficients are determined by empirical expressions. All unknown parameters in this profile are determined by imposing appropriate matching criteria at the transition point.

k. Vertical Dispersion

See description above.

l. Chemical Transformation

Not treated.

m. Physical Removal

Not treated.

n. Evaluation Studies

1. PLUME has been validated against field data for releases of liquified propane, and wind tunnel data for buoyant and vertically-released dense plumes. HFPLUME and PLUME have been validated against field data for releases of HF (Goldfish experiments) and propane releases. In addition, the plume rise algorithms have been tested against Hoot, Meroney, and Peterka, Ooms and Petersen databases. HEGADAS has been validated against steady and transient releases of liquid propane and LNG over water (Maplin Sands field data), steady and finite-duration pressurized releases of HF (Goldfish experiments; linked with HFPLUME), instantaneous release of Freon (Thorney Island field data; linked with the box model HEGABOX) and wind tunnel data for steady, isothermal dispersion.

2. Validation studies are contained in the following references:

McFarlane, K., Prothero, A., Puttock, J.S., Roberts, P.T. and Witlox, H.W.M., 1990. Development and validation of atmospheric dispersion models for ideal gases and hydrogen fluoride, Part I: Technical Reference Manual. Report TNER.90.015. Thornton Research Centre, Shell Research, Chester, England. [EGG 1067–1151] (NTIS No. DE 93–000953)

Witlox, H.W.M., McFarlane, K., Rees, F.J., and Puttock, J.S., 1990. Development and validation of atmospheric dispersion models for ideal gases and hydrogen fluoride, Part II: HGSYSTEM Program User's Manual. Report TNER.90.016. Thornton Research Centre, Shell Research, Chester, England. [EGG 1067–1152] (NTIS No. DE 93–000954)

B.33 SLAB

Reference

Ermak, D.L., 1990. User's Manual for SLAB: An Atmospheric Dispersion Model for Denser-than-Air Releases (UCRL-MA–105607), Lawrence Livermore National Laboratory.

Availability

1. The computer code is available on the Support Center for Regulatory Air Models Bulletin Board System (Upload/Download Area; see page B–1), and can also be obtained from: Energy Science and Technology Center, P.O. Box 1020, Oak Ridge, TN 37830, (615) 576–2606.

2. The User's Manual (NTIS No. DE 91–008443) can be obtained from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, (703) 487–4650.

Abstract

The SLAB model is a computer model, PC-based, that simulates the atmospheric dispersion of denser-than-air releases. The types of releases treated by the model include a ground-level evaporating pool, an elevated horizontal jet, a stack or elevated vertical jet and an instantaneous volume source. All sources except the evaporating pool may be characterized as aerosols. Only one type of release can be processed in any individual simulation. Also, the model simulates only one set of meteorological conditions; therefore direct application of the model over time periods longer than one or two hours is not recommended.

a. Recommendations for Use

The SLAB model should be used as a refined model to estimate spatial and temporal distribution of short-term ambient concentration (e.g., 1-hour or less averaging times) and the expected area of exposure to concentrations above specified threshold values for toxic chemical releases where the release is suspected to be denser than the ambient air.

b. Input Requirements

1. The SLAB model is executed in the batch mode. Data are input directly from an external input file. There are 29 input parameters required to run each simulation. These parameters are divided into 5 categories by the user's guide: source type, source properties, spill properties, field properties, and meteorological parameters. The model is not designed to accept real-time meteorological data or convert units of input values. Chemical property data are not available within the model and must be input by the user. Some chemical and physical property data are available in the user's guide.

2. Source type is chosen as one of the following: evaporating pool release, horizontal jet release, vertical jet or stack release, or instantaneous or short duration evaporating pool release.

3. Source property data requirements are physical and chemical properties (molecular weight, vapor heat capacity at constant pressure; boiling point; latent heat of vaporization; liquid heat capacity; liquid density; saturation pressure constants), and initial liquid mass fraction in the release.

4. Spill properties include: source temperature, emission rate, source dimensions, instantaneous source mass, release duration, and elevation above ground level.

5. Required field properties are: desired concentration averaging time, maximum downwind distance (to stop the calculation), and four separate heights at which the concentration calculations are to be made.

6. Meteorological parameter requirements are: ambient measurement height, ambient wind speed at designated ambient measurement height, ambient temperature, surface roughness, relative humidity, atmospheric stability class, and inverse Monin-Obukhov length (optional, only used as an input parameter when stability class is unknown).

c. Output

1. No graphical output is generated by the current version of this program. The output print file is automatically saved and must be sent to the appropriate printer by the user after program execution. Printed output includes in tabular form:

2. Listing of model input data;

3. Instantaneous spatially-averaged cloud parameters—time, downwind distance, magnitude of peak concentration, cloud dimensions (including length for puff-type simulations), volume (or mole) and mass fractions, downwind velocity, vapor mass fraction, density, temperature, cloud velocity, vapor fraction, water content, gravity flow velocities, and entrainment velocities;

4. Time-averaged cloud parameters—parameters which may be used externally to calculate time-averaged concentrations at any location within the simulation domain (tabulated as functions of downwind distance);

5. Time-averaged concentration values at plume centerline and at five off-centerline distances (off-centerline distances are multiples of the effective cloud half-width, which varies as a function of downwind distance) at four user-specified heights and at the height of the plume centerline.

d. Type of Model

As described by Ermak (1989), transport and dispersion are calculated by solving the conservation equations for mass, species, energy, and momentum, with the cloud being modeled as either a steady-state plume, a transient puff, or a combination of both, depending on the duration of the release. In the steady-state plume mode, the crosswind-averaged conservation equations are solved and all variables depend only on the downwind distance. In the transient puff mode, the volume-averaged conservation equations are solved, and all variables depend only on the downwind travel time of the puff center of mass. Time is related to downwind distance by the height-averaged ambient wind speed. The basic conservation equations are solved via a numerical integration scheme in space and time.

e. Pollutant Types

Pollutants are assumed to be non-reactive and non-depositing dense gases or liquid-vapor mixtures (aerosols). Surface heat transfer and water vapor flux are also included in the model.

f. Source-Receptor Relationships

1. Only one source can be modeled at a time.
2. There is no limitation to the number of receptors; the downwind receptor distances are internally-calculated by the model. The SLAB calculation is carried out up to the user-specified maximum downwind distance.
3. The model contains submodels for the source characterization of evaporating pools, elevated vertical or horizontal jets, and instantaneous volume sources.

g. Plume Behavior

Plume trajectory and dispersion is based on crosswind-averaged mass, species, energy, and momentum balance equations. Surrounding terrain is assumed to be flat and of uniform surface roughness. No obstacle or building effects are taken into account.

h. Horizontal Winds

A power law approximation of the logarithmic velocity profile which accounts for stability and surface roughness is used.

i. Vertical Wind Speed

Not treated.

j. Vertical Dispersion

The crosswind dispersion parameters are calculated from formulas reported by Morgan et al. (1983), which are based on experimental data from several sources. The formulas account for entrainment due to atmospheric turbulence, surface friction, thermal convection due to ground heating, differential motion between the air and the cloud, and damping due to stable density stratification within the cloud.

k. Horizontal Dispersion

The horizontal dispersion parameters are calculated from formulas similar to those described for vertical dispersion, also from the work of Morgan, et al. (1983).

l. Chemical Transformation

The thermodynamics of the mixing of the dense gas or aerosol with ambient air (including water vapor) are treated. The relationship between the vapor and liquid fractions within the cloud is treated using the local thermodynamic equilibrium approximation. Reactions of released chemicals with water or ambient air are not treated.

m. Physical Removal

Not treated.

n. Evaluation Studies

Blewitt, D.N., J.F. Yohn, and D.L. Ermak, 1987. An Evaluation of SLAB and DEGADIS Heavy Gas Dispersion Models Using the HF Spill Test Data, Proceedings, AIChE International Conference on Vapor Cloud Modeling, Boston, MA, November, pp. 56–80.

Ermak, D.L., S.T. Chan, D.L. Morgan, and L.K. Morris, 1982. A Comparison of Dense Gas Dispersion Model Simulations with Burro Series LNG Spill Test Results, *J. Haz. Matls.*, 6: 129–160.

Zapert, J.G., R.J. Londergan, and H. Thistle, 1991. Evaluation of Dense Gas Simulation Models. EPA Publication No. EPA–450/4–90–018. U.S. Environmental Protection Agency, Research Triangle Park, NC.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

§ 52.21 [Amended]

2. In § 52.21, paragraphs (l)(1) and (l)(2) are amended by revising ''and supplement B (1993)'' to read '', supplement B (1993) and supplement C (1994)''.

[FR Doc. 95–19057 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 9 and 86

[AMS–FRL–5268–1]

RIN 2060–AE93

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and later Model Year Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes requirements for the availability of emission-related service information for all light-duty vehicles (LDVs) and light-duty trucks (LDTs) beginning with the 1994 model year (MY). Section 202(m)(5) of the Clean Air Act (CAA or Act) requires EPA to promulgate rules mandating the availability of emission-related service information for such vehicles. This rulemaking requires vehicle manufacturers to provide to the service and repair industry information necessary to service on-board diagnostic (OBD) systems and to perform other emission-related diagnosis and repair.

EFFECTIVE DATE: This final rule is effective December 7, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–90–35. The docket is located at The Air Docket, 401 M Street, S.W., Washington, D.C. 20460, and may be viewed in Room M–1500 from 8:30 a.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Cheryl Adelman, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone (313) 668–4434

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Development
II. Requirements of the OBD Final Rule
A. Availability of Service Information
B. Required Information and Emission-Related Information
C. Cost of Service Information
D. Distribution of Service Information and Timeliness
E. Enhanced Diagnostic Information
F. Enhanced Diagnostic Tools
G. Recalibration/Reprogramming
III. Public Participation
IV. Discussion of Comments and Issues
A. Definition of ''Emission-Related'' Information
B. Information Used To Manufacture Aftermarket Parts

C. Guidelines
D. Cost of Service Information
E. Distribution of Service Information
F. Timeliness
G. Media/Format
H. Enhanced Diagnostic Information
I. Enhanced Diagnostic Tools
J. Recalibration/Reprogramming
K. Regulatory Flexibility Analysis
V. Administrative Requirements
A. Administrative Designation
B. Impact on Small Entities
C. Unfunded Mandates Act
D. Electronic Copies of Rulemaking Documents
E. Paperwork Reduction Act
F. Display of OMB Control Numbers
VI. Authority

I. Background and Development

Section 202(m)(5) of the CAA, as amended by the Clean Air Act Amendments of 1990 (CAAA), directs EPA to promulgate regulations requiring vehicle manufacturers to provide to:

> any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, * * * any and all information needed to make use of the [vehicle's] emission control diagnostic system * * * and such other information including instructions for making emission-related diagnoses and repairs.

Such requirements are subject to the requirements of section 208(c) regarding protection of trade secrets; however, no such information may be withheld under section 208(c) if that information is provided (directly or indirectly) by the manufacturer to its franchised dealers or other persons engaged in the repair, diagnosing or servicing of motor vehicles.

On September 24, 1991, EPA published a notice of proposed rulemaking[1] (NPRM) outlining the Agency's proposed service information requirements. EPA subsequently reopened the comment and held public workshops to further review aspects of these requirements.[2] Today's document promulgates these regulations.

As of August 1990, 96 urban areas were in violation of the National Ambient Air Quality Standard (NAAQS) for ozone and 41 areas could not attain the NAAQS for carbon monoxide (CO). EPA estimates that currently 60% of the total tailpipe HC emissions from LDVs and LDTs are caused by the 20% of vehicles with serious emission control system malfunctions or degradation.[3] The more stringent new vehicle emission standards mandated by the Act are likely to increase further the proportion of total LDV emissions from malfunctioning vehicles.

The purpose of the OBD system and emission-control systems is to reduce emission levels of various pollutants. For such systems to achieve projected levels of emission reductions, it will be essential that they be adequately maintained and repaired. This will require automotive technicians to possess the knowledge necessary to identify and repair improperly operating emission-related systems and components. This knowledge is acquired, in part, by having access to information on the operation and repair of such systems and related components.[4]

To date, automotive technicians employed by manufacturer franchisees have had access, through their employer, to needed emission-related service and repair information. The same is not always true for other individuals who repair and service vehicles. Some manufacturers do not make available to the public all the information needed to adequately service and repair motor vehicles. Further, when information is made available, it may be difficult to locate and time consuming to obtain.

It is especially important for independent technicians to have access to needed emission-related service and repair information, including training instructions. It has been estimated that independent technicians are responsible for conducting up to 80% of all repairs.[5] In addition, independent technicians are more likely to repair the vehicles which are the most likely to violate emission standards (older vehicles, in general). This conclusion is the result of a recent study which demonstrated that (1) the level of excess emissions increases as a vehicle's mileage increases, and (2) the percentage of nondealer repairs increased and dealer repairs decreased as a vehicle's mileage increased.[6] Considering the large number of vehicles being serviced by independent technicians, it is essential that such individuals have access to adequate emission-related repair and service information.

Today's regulations are intended to preserve freedom of choice by consumers in where they obtain service and repair of emission-related systems. This can only be achieved by ensuring that all sectors of the automotive service industry have access to the information needed to perform such service and repairs.

II. Requirements of the OBD Final Rule

A. Availability of Service Information

Today's regulations require that manufacturers provide to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines all information necessary to make use of the OBD system and any information for making emission-related diagnosis and repairs, including any emission-related information that is provided by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing or servicing of motor vehicle engines.

B. Required Information and Emission-Related Information

Manufacturers are required to make available to the aftermarket ''any and all'' information needed to make use of the OBD system and such other information, including instructions for making emission-related repairs, excluding trade secrets. The scope of the information that must be provided includes the direct and indirect service and repair information that a manufacturer provides to its authorized dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Examples of direct information are service manuals, technical service bulletins (TSBs), training materials or information, diagnostic information, wiring diagrams, and any written memoranda or guidance provided to dealers. Indirect information is information provided to dealers through indirect means. Examples of indirect information include, but are not limited to, information made available through tools and equipment, such as emission-related reprogramming events, data stream information, and bi-directional control. Manufacturers are required to provide such information (or allow such information to be provided by others) to persons engaged in the repair and service of vehicles in the same or similar manner such information is provided to their dealers. Manufacturers are not required to provide such information directly without regard for protection of trade secrets.

Information for making emission-related diagnosis and repairs does not include information used to design and manufacture parts, but may include

[1] 56 FR 48272 (September 24, 1991).

[2] 57 FR 24457 (June 9, 1992); 58 FR 34013 (June 23, 1993).

[3] Regulatory Impact Analysis: On-Board Diagnostics, Appendix I; Air Docket No. A–90–35.

[4] To properly service and repair vehicles, automotive technicians require both access to needed information and training. Direct training is beyond the scope of this rulemaking; however, the availability of manufacturer training information and materials is covered by these proposed regulations.

[5] ''Service Job Analysis,'' Hunter Publishing Co., 1984.

[6] ''Survey of Vehicle Owners in the On-Board Diagnostics Program,'' Westat, Inc., July 18, 1990.

manufacturer changes to internal computer calibrations. However, a manufacturer need only provide internal calibrations to the service and repair industry to the extent it has provided such information to its dealerships.

Emission-related information includes, but is not limited to, information regarding any system, component or part of a vehicle that controls emissions and any system, component and/or part associated with the powertrain system, including, but not limited to, the engine, the fuel system and ignition system. Information must also be provided for any system, component, or part that is likely to impact emissions, such as transmission systems. In addition, EPA will monitor the results of inspection and maintenance (I/M) programs for failures resulting from systems, components or parts other than those described here. If EPA determines that a substantial number of I/M failures are occurring due to systems, components or parts other than those described here, the extent of emission-related service information will be expanded to include such items. EPA will notify any affected manufacturer(s) of its concerns and will allow such manufacturers to reply to these concerns prior to making any such determinations. Affected manufacturers will be notified of any such EPA determinations.

C. Cost of Service Information

Emission-related service information is to be made available at a reasonable price. This means the fair market price taking into consideration factors such as the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to publication of this final rule, volume discounts, and inflation. EPA is not requiring that manufacturers sell information to aftermarket service providers at the lowest price charged to their dealerships.

D. Distribution of Service Information and Timeliness

Today's rule allows each manufacturer to distribute emission-related service and repair information through the distribution mechanism it determines to be the most efficient and cost-effective. There is no requirement that manufacturers use the same distribution mechanism for dealers and aftermarket service providers. However, each manufacturer will be responsible for up-loading a complete index of required information to NTIS' (National Technical Information Service) FedWorld.[7] Manufacturers are required to make available on FedWorld an index of all information that falls within the definition of emission-related service, diagnosis and repair information.[8] This includes, but is not limited to, manuals, TSBs, all training materials, and videos. Each manufacturer title listed in the index must adequately describe the contents of the document to which it refers. If a title does not adequately describe the contents, the manufacturer shall provide a brief description that enables the user to determine whether an item contains the information being sought. If requested to do so, FedWorld will accept orders for service information and transmit them to the manufacturer's designated information distributor. The party identified in FedWorld by a manufacturer as the distributor of the manufacturer's emission-related service information can be the manufacturer itself, a publisher/distributor, or other entity that can provide the information as required.

In addition to the index, manufacturers are required to list a phone number and address where aftermarket service providers can call or write to obtain the desired information. Manufacturers must also provide the price of each item listed, as well as the price of items ordered on a subscription basis.

Manufacturers are required to update the FedWorld index on the first and third Monday of each month or as otherwise specified by the Agency. A manufacturer may opt to update its FedWorld index more frequently. In addition, each manufacturer is responsible for paying its share of the annual cost of FedWorld. Such costs are to be paid by each manufacturer; however, payments can be made through various arrangements, e.g., a group of manufacturers can elect to determine what they would owe if paid individually and then divide that amount based on sales or other factors. The annual cost of maintaining the FedWorld database is approximately $70,000 to $75,000. To determine the cost to each manufacturer, FedWorld will divide the total cost by the number of participating manufacturers.

Manufacturers are responsible for ensuring that the party shipping the information does so within a specified time period, i.e., within one regular business day of receiving an order. Distributors are encouraged to provide by fax items which, in their entirety, are less than 20 printed pages, such as TSBs. Also, the distributor is required to send the information by overnight delivery if the ordering party requests it and assumes the cost of delivery.

The search format to be used by FedWorld, e.g., manufacturer, MY, vehicle make, and so forth, will be determined by FedWorld shortly after publication of this rule and, to the extent possible, will take into consideration suggestions from EPA, manufacturers, and aftermarket service providers.

Each manufacturer has 120 days following publication of this rule to upload its index and meet the above requirements for providing all required service information to aftermarket service providers, facilities, and others for 1994 and later MY vehicles which have been offered for sale by that date. For vehicle models introduced more than 120 days after promulgation of these regulations, manufacturers are responsible for providing service information to aftermarket service providers, facilities, and others, at the same time it is made available to dealerships. Thereafter, to the extent there are changes, emission-related service information for MY 1994 and later vehicles which becomes available shall be added to the index at the next scheduled mandated update period, i.e., first or third Monday of each month.

Since independent technicians often work on many makes of vehicles, it is important for them to have access to condensed versions of service information. Therefore, EPA encourages the manufacturers to enter into agreements with information intermediaries in a manner which ensures that condensed information is available to aftermarket service providers in a timely manner and at a reasonable cost. Since information is available in its entirety from sources identified in FedWorld, manufacturers are not responsible for condensed information published by intermediaries or other third parties. Manufacturers are, however, responsible for errors in their own materials.

EPA is not issuing any regulations in this rule that specifically require manufacturers to provide information to

[7] NTIS operates FedWorld, an online computer system that allows public access to government and other documents. FedWorld can be accessed for up to three hours a day at no charge by using a modem to dial (703) 321–3339 or by using the Internet telnet command to connect to fedworld.gov.

[8] This requirement does not apply to indirect information, which is discussed below.

intermediaries (e.g., publishers of non-manufacturer service manuals) with emission-related information. However, EPA anticipates that manufacturers will continue to provide such intermediaries with information as they have in the past.

FedWorld will make available a telephone number that aftermarket service providers can call to obtain a printed copy of the index. Since information can be downloaded without charge, EPA expects that some trade publications and associations may offer subscribers or members a printed copy if they provide a self-addressed stamped envelope.

No waivers will be granted for any of the requirements related to FedWorld. Since EPA believes that FedWorld provides an adequate means of monitoring the information being made available, manufacturers are not required to submit a plan for distributing information as part of their certification requirements.

E. Enhanced Diagnostic Information

All emission-related data stream information made available to manufacturer franchised dealers (or others in the service industry) is required to be made available to equipment and tool manufacturers. Vehicle manufacturers can, in the alternative, make such information available to independent technicians through provision of vehicle manufacturer equipment and tools. Beginning on January 1,1997, a manufacturer can only provide bi-directional control to its dealerships if it has provided equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or provided such capabilities directly to independent technicians through provision of their own tools. Manufacturers are required to make bi-directional control information available for all MYs beginning with MY 1994, if such information is provided to their dealerships. However, for MYs 1994–1996, where a manufacturer can prove that safeguards for bi-directional controls are only installed in tools, not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 MY. However, no such waiver is available for other types of data stream information.

This rulemaking does not require a manufacturer to supply any emission-related information to aftermarket service providers that it does not make available to its authorized dealerships or other third parties. For example, functional control strategies and waveform information are not required to be made available to aftermarket service providers except to the extent they are made available to authorized dealerships.

F. Enhanced Diagnostic Tools

Manufacturers are required to either make available to aftermarket tool and equipment companies any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by independent technicians to diagnose, service and repair emission-related parts, components and systems or they may sell their own diagnostic tools and equipment to independent technicians if the price of such tools is reasonable (e.g., competitively priced with aftermarket tools that would perform the same functions).

As to emission-related diagnostic and service information utilized by aftermarket tool and equipment companies that make generic tools which perform the same or similar functions as those provided by manufacturers to their dealerships, the Agency is requiring that such information be provided at the time of model introduction. This should allow adequate time for its incorporation into tools and equipment by aftermarket tool and equipment companies.

G. Recalibration/Reprogramming

Effective December 1, 1997, manufacturers are required to:

(1) make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997 by manufacturers and made available to dealerships for MYs 1994 through 1997; and

(2) for reprogramming events that are issued on or after December 1, 1997, make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) issued by manufacturers for 1994 and later MY vehicles at the same time they are made available to dealerships.

For all vehicles, reprogramming need not be provided for any recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may request a waiver from the reprogramming requirements for MYs 1994 through 1996.

EPA is providing manufacturers until December 1, 1997, to adopt and implement security measures, such as encryption or other measures, that address tampering concerns and concerns regarding proprietary information. This leadtime also provides manufacturers an opportunity to work out logistical issues related to making reprogramming available to the potentially large numbers of independent facilities that may be interested in receiving this capability. Though EPA is allowing security measures to be implemented by manufacturers, such measures are not being required by these regulations. EPA believes that manufacturers are best able to determine the extent to which the release of this information will endanger the proprietary nature of the underlying information and/or potentially lead to tampering.

Manufacturers are required to either offer for sale at a competitive market price a reprogramming tool that interfaces with the vast majority of generic portable computers or make available to aftermarket tool and equipment companies information that would enable them to manufacture such a tool. In addition, manufacturers are responsible for assuring that those independent service providers who elect not to purchase reprogramming services have access to reprogramming services at a reasonable cost and in a timely manner.

Any method adopted by a manufacturer by which reprogramming is made available to independent technicians cannot impose a significant burden on independent technicians beyond that experienced by dealerships. For example, manufacturers can sell reprogramming tools directly to independent technicians or enter into agreements with aftermarket tool companies whereby the manufacturers provide the tool companies with the information necessary to build reprogramming tools. In conjunction with one of these options, manufacturers could transmit reprogramming events directly to independent technicians by modem from a main frame computer or provide them with CD ROMs. In formulating its method of making reprogramming available to independent technicians, a manufacturer may request to meet with EPA to discuss whether the method comports with the requirements of this rule.

Manufacturers are also responsible for ensuring that aftermarket service providers have an efficient and cost-effective method for identifying whether the calibrations on a vehicle are the latest to be issued.

III. Public Participation

On September 24, 1991, EPA published a NPRM which set forth proposed requirements for emission-related service information for LDVs and LDTs. The period for submission of comments on the NPRM was scheduled to close on December 9, 1991.

On November 6 and 7, 1991, a public hearing was held. The original comment period was then extended to January 10, 1992, for comments regarding the availability of service information. In addition, workshops were held on June 30, 1992, and July 14, 1993. The comment periods for these two workshops closed on July 31, 1992, and August 13, 1993, respectively.

The CAA requirements regarding the availability of service and repair industry information necessary to perform repair and maintenance service on OBD systems and other emission-related vehicle components elicited extensive comments. Comments were received from manufacturers and their associations, mechanics and their trade associations, motor vehicle dealerships, state agencies, and private individuals. Because of the scope of the issues involved and raised by these comments, the following sections only briefly summarize comments on the major issues. For the complete response to comments, see the *Response to Comments on the Regulations Requiring the Availability of Service Information on 1994 and Later MY Light-Duty Vehicles and Light-Duty Trucks* contained in the public docket for this rule.

IV. Discussion of Comments and Issues

Comments on a wide range of issues concerning the proposed service information requirements were received. Summarized here are the comments concerning the major or controversial issues and the rationale behind EPA's final decisions. These issues are considered in more detail in the supplemental Response to Comments document prepared for this final rule and included in the docket noted earlier. Also in the Response to Comments document is consideration of other issues whose resolution is reflected in this final rule.

A. Definition of ''Emission-Related'' Information

Summary of Proposal: The proposed regulations required that ''all information'' needed to make emission-related repairs be made available to the automotive service industry. The scope of ''all information'' would include, but not be limited to, any emission-related service and repair information that a manufacturer provides to its authorized dealerships.

Based on the comments received in response to the NPRM and the June 30, 1992 workshop, EPA believed that clarification was warranted as to the systems, components and parts for which emission-related service, diagnostic and repair information must be provided by the manufacturers to aftermarket service providers. For purposes of this rule, EPA proposed that emission-related service, diagnostic and repair information would include, but not be limited to, any system, component or part of a vehicle that controls emissions and any system, components and/or part associated with the powertrain system, including, but not limited to, the fuel system and ignition system. Information would also have to be provided for any system, component, or part that could have a reasonably foreseeable impact on emissions, such as transmission systems.

In addition, EPA proposed to monitor the results of I/M programs for failures resulting from systems, components, or parts other than those described here. If EPA determines that a substantial number of I/M failures are occurring due to systems, components, or parts other than those described here, the extent of emission-related service information would be expanded in a subsequent rulemaking to include such items.

Summary of Comments: Most manufacturers recommended that the extent of service information that they must make available be limited to all service information that is required to diagnose and repair emission-related malfunctions that will cause an OBD code to be set and illuminate the ''check engine'' light. They stated that each manufacturer will determine which malfunctions will cause a significant impact on emissions, and thus, which malfunctions will store an emission-related fault code and illuminate the malfunction indicator light (MIL).

Some manufacturers commented that the proposed language is deficient in defining the information that must be included in the provision for service information. They believe this could lead to subjective interpretations, resulting in manufacturers providing distinctly different levels of information. Saab asserted that EPA's proposal to use the I/M program to later expand the definition of emission-related systems and components unnecessarily burdens manufacturers with an ever-changing, and ever-expanding, set of rules.

Generally, the aftermarket commenters endorsed the definitions of emission-related information proposed by EPA. Some aftermarket commenters responded that any attempt to distinguish between emissions-related and non-emissions-related vehicle systems and devices is nonproductive and accomplishes nothing more than to direct attention away from the important issues. According to one commenter, a valid argument can be made that virtually every component of today's vehicles can affect the performance of the vehicle's emissions system. ASIA suggested that it may be more efficient for EPA to require manufacturers to release all vehicle-related service information.

Analysis of Comments: EPA disagrees with the position that emission-related information is defined by and limited to information required to diagnose and repair malfunctions that will result in illumination of the MIL. Illumination of the MIL will not necessarily be triggered by every malfunction of emission-related parts, components and systems. To maintain air quality it is important that service and repair information on all such parts, components and systems be provided. In addition, the diagnostics requirements for OBD are limited to the engine and drivetrain, because they have the most direct impact on emissions. However, this does not alter the fact that malfunctions of other parts and components could impact emissions. Further, MIL illumination is only necessary when a single source of malfunction causes emissions to increase above the MIL threshold. As the OBD requirements and the MIL thresholds are generally designed to detect severe malfunctions, more limited malfunctions, which may still have an effect on emissions, may not trigger the MIL. Moreover, multiple malfunctions, when combined, can cause exceedance of emission thresholds even though each one individually may be insufficient to cause an emission problem severe enough to illuminate the MIL. Also, OBD only needs to flag that a problem exists and indicate the general cause (e.g., misfire)—it does not identify the precise cause of the problem which could be due to a myriad of factors, such

as lean fuel/air ratio, bad wiring or sparkplugs.

Moreover, EPA believes that the language of section 202(m)(5) requiring manufacturers to provide ''all information needed to make use of the emission control diagnostic system * * * *and* such *other* information including instructions for making emission-related diagnosis and repairs'' [emphasis added] makes it clear that other information pertinent to making emission-related repairs, in addition to information needed to make OBD-related repairs, must be provided to aftermarket service providers. Had Congress wished to limit the information availability requirement only to those repairs necessary to make full use of the OBD system, it need not have included the second phrase of the requirement, relating to other information for making emission-related repairs, or could have limited the second phrase to those repairs necessary to make repairs related to MIL illumination. Instead the second phrase broadly refers to ''emission-related diagnosis and repairs.'' Therefore, EPA believes it is reasonable to require manufacturers to provide information required for any emission-related repairs to be made available.

EPA has adopted a description of emission-related information that is consistent with previous definitions of emission-related maintenance, as set forth in EPA's ''allowable maintenance'' regulations. *See* 40 CFR § 86.088–2. Those regulations specify maintenance which may be performed on certification vehicles and establish an interpretation of ''properly maintained vehicle'' for use in the recall program. EPA made clear in those regulations that any maintenance that is likely to affect emissions would be considered emission-related:

> Emission-related maintenance means that maintenance which does substantially affect emissions or which is likely to affect the emissions deterioration of the vehicle or engine during normal in-use operation, even if the maintenance is performed at some time other than that which is recommended. 40 CFR § 86.088–2

Contrary to the suggestion of some manufacturers, EPA is not providing a specific or suggested list of parts, components or systems for which information must be provided. Such lists may be interpreted by some manufacturers as the maximum emission-related information that must be made available. In addition, continually evolving vehicle technology will result in ongoing changes as to what constitutes emission-related information. Therefore, it would not be reasonable to select a point in time and say that emission-related information is defined by what exists at that point.

Contrary to comments from some aftermarket commenters, the Agency only has the authority to require manufacturers to provide emission-related information. As previously indicated, this includes anything that is likely to affect emissions. If the Agency initially determines that a part, component or systems impacts emissions, it will notify the manufacturers who will be provided an opportunity to demonstrate otherwise if it disagrees.

EPA Decision: Emission-related information includes, but is not limited to, information regarding any system, component or part of a vehicle that controls emissions and any system, components and/or parts associated with the powertrain system, including, but not limited to, the fuel system and ignition system. Information must also be provided for any system, component, or part that is likely to impact emissions, such as transmission systems. In addition, EPA will monitor the results of I/M programs for failures resulting from systems, components or parts other than those described here. If EPA determines that a substantial number of I/M failures are occurring due to systems, components or parts other than those described here, the extent of emission-related service information will be expanded to include such items. EPA will notify any affected manufacturer(s) of its concerns and will allow such manufacturers to reply to these concerns prior to making any such determinations. Affected manufacturers will be notified of any such EPA determinations.

B. Information Used To Manufacture Aftermarket Parts

Summary of Proposal: EPA did not propose that vehicle manufacturers provide aftermarket parts manufacturers with information to design and manufacture parts.

Summary of Comments: A group of aftermarket associations commented on the importance of information used to design and manufacture parts. According to these commenters, competition in the service industry would be threatened if parts manufacturers are not provided sufficient information to produce quality aftermarket parts which work with emissions control systems, OBD systems, and computers. They stated that independent service and repair facilities depend on the availability of affordably priced quality aftermarket parts to compete with dealers for service and repair. Without such competition, the associations believe that the only source of parts becomes the manufacturers which then have the ability to increase prices and limit availability. According to the commenters, in Japan, where an independently produced supply of replacement parts does not exist, repair prices are two and one half times more than what the U.S. car owner pays. The commenters believe that a failure to assure that parts producers can design and manufacture aftermarket parts will import the Japanese system to America and have a staggering effect on the ability of American motorists to properly maintain their vehicles.

These commenters also argued that parts producers need access to information used to design and manufacture parts, including functional control strategies and component calibrations, to produce emissions-related components that work within sophisticated emissions and diagnostic systems. The commenters indicated that engine calibration information also is required both to produce certain critical aftermarket parts and to test that the replacement parts will not cause failure of the emissions system or improperly trigger the MIL.

Analysis of Comments: Information used to manufacture and design parts does not constitute information needed to make emission-related diagnosis and repairs as defined in section 202(m)(5). Therefore, such information is not addressed in this rulemaking. The purpose of section 202(m)(5) is to ensure that independent technicians have access to information needed to service and repair vehicles, thereby ensuring consumers with freedom of choice in where to take their vehicles for repairs. Manufacturers are only required to provide information in order for persons to service and repair vehicles. They are not required to provide recalibration information that is not needed to make emissions-related diagnosis and repairs, even if such information may be useful for the manufacture of aftermarket parts. Nothing in the language of the statute itself or in the legislative history indicates that Congress intended section 202(m)(5) to assure access and information for the manufacture of aftermarket parts. On the contrary, the legislative history speaks only of the need to ensure equal access for vehicle *repair* facilities.

It is important to note that Congress limited the manufacturers' information requirement such that trade secrets protected by section 208(c) need not be made available. It is clear from the

comments that much of the information requested for the manufacture of aftermarket parts is in fact information of a more proprietary nature than the information necessary to make diagnoses and repairs. Where information is not needed by repair personnel to repair vehicles and has not been disclosed to dealers, section 202(m)(5) does not require its disclosure.

Aftermarket parts manufacturers have been making such parts for many years, even as cars have become more and more complicated. Though the introduction of new emission requirements, including OBD, will continue the trend of making cars more complex, parts manufacturers' speculation regarding the effects of such requirements on their ability to make aftermarket parts is contradicted by other statements that parts manufacturers will continue to make parts as they have in the past. In any case, parts manufacturers have not shown that Congress intended section 202(m)(5) to require disclosure of information required to make aftermarket parts.

EPA Decision: Information for making emission-related diagnosis and repairs does not include information used to design and manufacture parts.

C. Guidelines

Summary of Proposal: In the NPRM, EPA proposed that ''all information needed to make emission-related repairs'' be made available to the automotive service industry. EPA did not provide guidelines or specify the types of information that this would encompass. In the June 1992 workshop notice, EPA indicated that interested parties would have an opportunity to present ideas regarding specific types of, or guidelines for determining the information that should be encompassed by the phrase ''all information needed to make emission-related repairs.''

Summary of Comments: Several commenters responded that EPA should define or provide guidelines as to the information that must be provided. They asserted that failure to do so could result in manufacturers providing different levels of information due to different interpretations of the phrase ''all information.''

Ford Motor Corporation (Ford) expressed concern that EPA may require more information than is necessary for utilizing the emissions diagnostic system and to perform effective diagnostics and repairs.

Chrysler Motor Corporation (Chrysler) commented that it has and will continue to provide to the aftermarket the following type of service information related to the repair of emission-related failures: (1) diagnostic information relating to I/M exhaust and evaporative test failures; (2) service repair information for emissions components; (3) wiring diagrams; (4) specifications; and, (5) TSBs. Chrysler believes this information meets the requirements of the CAA.

One manufacturer stated that if manufacturers demonstrate that the same information provided to dealers is made available to the aftermarket (excluding recalibration information), they have satisfied the intent of the law.

Aftermarket commenters argued that EPA's regulations must not permit a closed-ended or specifically limited definition of information that would be available to the entire industry. The aftermarket industry asserted it does not have adequate technical information on future vehicle designs and systems to allow for limitations or restrictions through rules or definitions on the information that will be necessary to effectuate adequate repairs. The Automotive Parts and Accessories Association (APAA) commented that rapidly changing vehicle technology would force EPA to revisit the guidelines on a semi-annual or yearly basis to determine if the proper information is being provided.

APAA indicated it might support guidelines that determine the types of information which must be provided to independent technicians. APAA assumed these guidelines would cover items, such as functional control strategies and wave diagrams, which are necessary elements if manufacturers are to provide all information needed for repair of emissions systems. APAA commented that its major concern is that any regulations regarding guidelines should direct that they be as comprehensive as possible and must explicitly state that such guidelines establish a minimum standard for information.

Analysis of Comments: EPA believes that the concerns of manufacturers are unwarranted under the requirements of the final rule. The requirement to submit a certification plan has been deleted. Therefore, concerns regarding delays in the certification process are no longer pertinent.

Ford stated that without guidelines, EPA could require proprietary and confidential information be made available to the public. EPA does not believe this is a problem. Subsection 202(m)(5) specifies that any information provided to authorized dealerships or others engaged in the service, repair or diagnosis of vehicles is not proprietary. EPA is not requiring that undisclosed proprietary emission-related information be made available as part of this rule.

Regarding Chrysler's comment, other types of emission related information, such as data stream and bi-directional control, are not on Chrysler's list and are required as part of this rule. Contrary to Chrysler's assertion, EPA believes, as discussed elsewhere, it has the authority to require the dissemination of such information.

EPA agrees with aftermarket comments that the regulations must be structured so as to carry out Congress' intent that all information needed to make emission-related diagnosis and repairs be provided, excluding trade secrets, to ensure that there are efficient and effective repairs of emission-related problems. However, EPA is not requiring at this time that manufacturers provide information to independent technicians that is not also supplied to authorized dealers, or other persons engaged in the diagnosis, repair, or servicing of motor vehicles or motor vehicle engines. Depending on the manufacturer, such information might include functional control strategies and wave diagrams, as discussed in section H below.

EPA is concerned that the use of specific guidelines may be incorrectly interpreted as a limitation on the emission-related information that is required to be provided. The Agency is also concerned that such guidelines would require continual updating to ensure they reflect rapidly changing vehicle technology. EPA believes this would be a time-consuming and unnecessary process. At this time, EPA generally agrees with the commenter who stated that if manufacturers provide the same emission-related information to dealers and the aftermarket they will meet the requirements of this rule. The evidence presented did not indicate that any manufacturers withhold necessary information (excluding more complex and high level information, like functional control strategies) regarding emision-related diagnosis and repair from their own dealers. If, through review of this program, it becomes apparent to EPA or others that a particular manufacturer is not providing nonproprietary information necessary to make emission-related diagnosis and repair to the service community (including its own dealers), EPA may take action against such manufacturer through these regulations.

EPA Decision: Manufacturers are required to make available to the

aftermarket ''any and all information'' needed to make use of the OBD system and to make emission-related repairs, excluding trade secrets. The scope of information that must be provided includes any direct and indirect service and repair information that a manufacturer provides to its authorized dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Examples of direct information are service manuals; TSBs; training material or information; diagnostic information; wiring diagrams; and any written memoranda or guidance provided to dealers. Examples of indirect information are emission-related reprogramming events; data stream information; and bi-directional control. (Indirect information is discussed below.)

At this time, manufacturers are not required to supply any emission-related information to the aftermarket that they do not make available to their authorized dealerships or other third parties, subject to the requirements regarding specific types of information, like data stream information, that must be provided under these regulations. For example, if a manufacturer does not supply functional control strategies to its dealers, directly or indirectly, it is not required to supply them to the aftermarket service industry.

D. Cost of Service Information

Summary of Proposal: The proposed rule required that emission-related information be made available at a reasonable price (i.e., what would be expected if the suppliers of information were acting as competitors). In determining whether the price of information is reasonable, EPA indicated it would consider all relevant factors, including, but not limited to, the cost to a manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, and the price charged by other manufacturers for similar information.

The proposed regulations further required that when manufacturers provide the same information to independent technicians and dealerships, the price to independent technicians for such information would not exceed the lowest price charged to any of a manufacturer's authorized dealerships.

Summary of Comments: Comments from manufacturers focused primarily on the authority of EPA to regulate the cost of emission-related information, determination of the ''reasonable'' cost of service information, and the proposed requirement that the cost of service information sold by manufacturers to the aftermarket ''shall not exceed the lowest price at which it is provided to any authorized dealerships.''

Analysis of Comments: Section 202(m)(5) of the CAA requires that vehicle manufacturers make emission-related information available. Available is defined as ''that which can be got, had or reached or that one can avail oneself of.''[9] A prerequisite to getting an item is having the ability to afford it. The Agency is concerned that if emission-related service information is priced in a manner that precludes its purchase and subsequent use then it is unavailable as that term is commonly defined. Further, the cost of service information was of concern to Congress as evidenced by the statement of then Senator Gore, the Senator that introduced the ''information availability'' provision of the CAAA.[10]

Thus, cost is an integral part of availability and, therefore, within the purview of the Agency to consider in determining whether manufacturers make information available as required to the aftermarket.

The Agency believes that establishing factors to serve as reference points to evaluate whether the cost of information is reasonable, will serve as guidance for manufacturers, and help reduce the possibility that inappropriate pricing would occur in an effort to prevent the purchase of information and, thereby ensure that information is available at a reasonable cost. Manufacturers commented on several factors they believe should also serve as reference points for evaluating the cost of information. EPA agrees with some of the factors suggested and has incorporated them into the regulations. For a discussion of each factor, see the Response to Comments document.

EPA also believes that the burden of proof to demonstrate that the price of manufacturer service and repair information is unreasonable should be on the purchaser of that information.

As to the ''lowest cost'' requirement, EPA agrees with some of the commenters that such a provision could have unanticipated effects on direct aftermarket sales and on dealerships that distribute information. Therefore, this requirement has been deleted.

EPA Decision: On the basis of the comments and further EPA analysis, emission-related service information is to be made available at a reasonable price. This means the fair market price taking into consideration factors, such as the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to publication of this final rule, volume discounts, and inflation. EPA is not requiring that manufacturers sell information to aftermarket technicians at the lowest price charged to their dealerships.

E. Distribution of Service Information

Summary of Proposal: EPA proposed that emission-related service and repair information, whether distributed by the manufacturer or an intermediary, be reasonably accessible to all persons who service and repair motor vehicles. To qualify as reasonably accessible, the information must be available to independent technicians upon request without substantial delay. Further, manufacturers would be required to utilize reasonable means to make independent technicians aware that the information is available. Also, manufacturers would need to provide intermediaries with emission-related information in a timely manner in order that their products or services be available to independent technicians when needed. In all cases, manufacturers would retain full responsibility for compliance with section 202(m)(5). Failure to an intermediary to properly provide information does not relieve the manufacturer from responsibility to provide the information.

EPA subsequently suggested the use of the NTIS as a clearinghouse for service information. Manufacturers would be required to provide initial service, repair, diagnostic and parts information to the NTIS within thirty days of providing it to their franchised dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Service, repair, diagnostic and parts information, such as TSBs and troubleshooting manuals, issued to dealerships during any subsequent

[9] Webster's New World Dictionary, 3rd ed., p 94, 1988.

[10] The Senator stated that ''when we require [manufacturers] to promptly provide information needed, we recognize that we do not want to require somebody to provide a lot of expensive manuals absolutely for free, but we do not want the kind of charges that make this a profit center. We want them to provide the information which will allow competition in the aftermarket and allow small business operators to get in the repair business. Otherwise, you force vehicle owners to go only to the major automobile manufacturers' places of business.'' 36 *Cong. Rec.* 3272 (1990).

thirty day period would be sent to the NTIS at the end of each such thirty day period.

EPA suggested that each manufacturer provide the required information to the NTIS free of charge pursuant to a copyright release or other agreement. The NTIS would reproduce information in the form in which it was received and distribute it upon request. Manufacturers would receive royalties from the distribution of the information by the NTIS based on prearranged agreements. To determine what information the NTIS has available, purchasers could either access the NTIS' on-line bulletin board or request a printed list.

By using the NTIS as a clearinghouse, several requirements which were proposed to be the responsibility of the manufacturers would be deleted or amended. First, manufacturers would not be responsible for information distributed by intermediaries or other parties. Second, manufacturers would not be required to continually inform the aftermarket about the availability of their service information through advertisements or other efforts. Third, by using the NTIS as a clearinghouse, manufacturers would not be required to submit a detailed certification plan. Fourth, the requirement that manufacturers provide information in a timely manner would be satisfied by providing information to the NTIS on a designated schedule. Last, the requirement that information be provided at a reasonable cost could, at least in part, be addressed by the NTIS' sale of information. Whether the cost requirement would be satisfied would depend on whether and to what extent royalties are paid to manufacturers and the ability of the NTIS to provide its services at an affordable price.

Summary of Comments: EPA received numerous comments, particularly on distribution of information by intermediaries and the use of NTIS as a clearinghouse for information. As to the use of intermediaries to distribute information, a few manufacturers and MVMA commented that it is illogical, unreasonable and unfair to hold manufacturers liable for the failure of intermediaries to disseminate information. They asserted that past experience has shown that independent parties contracted to prepare written service information for manufacturers do not always comply with deadlines established by the manufacturer. They stated that EPA should not hold manufacturers liable for the actions of third parties over which they have no control. One commenter indicated that even though a manufacturer contracts with an intermediary to distribute information and the method of such distribution is satisfactory to EPA, a third party which has no contractual agreement with the manufacturer could repackage and resell the information in a manner that does not meet EPA requirements. Manufacturers suggested that the regulations be amended to hold a manufacturer responsible for an intermediary only when information is provided solely through an intermediary.

General Motors (GM) argued that EPA does not have the authority to require manufacturers to provide information to intermediaries. Chrysler objected to any regulation that would require it to deal directly with entities outside its normal chain of distribution of goods and services. The National Automobile Dealer's Association (NADA) commented that different manufacturers have a substantial investment in a variety of different distribution mechanisms, all of which are well understood by the entire vehicle maintenance industry. So long as necessary information is provided through one or more of these mechanisms, NADA believes a manufacturer's obligation should be satisfied.

Several aftermarket associations commented that manufacturers should be responsible for the distribution of emission-related repair information. Alldata Corporation (Alldata), however, commented that holding manufacturers responsible for the content and accuracy of information would add substantial delays to the distribution process and reduce the accuracy and usefulness of information.

Responses to the use of a clearinghouse to distribute emission-related service information were mixed. However, representatives of manufacturers and aftermarket associations raised several substantial issues regarding the use of a clearinghouse, and EPA's particular plan for using NTIS as a clearinghouse. In addition, information intermediaries and hotline services generally opposed the use of NTIS as a clearinghouse.

Analysis of Comments: EPA recognizes that the effectiveness of information distribution mechanisms may be affected by various factors, including manufacturer size, the amount and format of a manufacturer's service information, established distribution mechanisms, and the demand for information. Based on the differences that may occur as a result of these factors, EPA agrees with the comments that manufacturers should be afforded flexibility in determining the most appropriate method of distributing information.

Therefore, EPA is allowing each manufacturer to fulfill its regulatory responsibility to distribute emission-related service and repair information through the distribution mechanism it determines to be the most efficient and cost-effective. Further, there is no requirement that manufacturers use the same distribution mechanism for dealers and the aftermarket. However, each manufacturer is responsible for up-loading a complete index of required information on NTIS' FedWorld, as discussed above in section III.C. Since EPA believes that FedWorld provides an adequate means of monitoring the information being made available, manufacturers are not required to submit a plan for distributing information as part of their certification requirements.

Regarding use of intermediaries for distribution, EPA's position is that manufacturers are responsible for making sure that information is provided to the aftermarket as required by the regulations. If a manufacturer chooses to allow an intermediary to be its contractor, the manufacturer must ensure that the contractor meets the manufacturer's obligations. Transferring obligations to a third party does not remove a manufacturer's own legal requirements, though manufacturers may require intermediaries to be responsible for any damages a manufacturer incurs as a result of the intermediary's error. EPA agrees with manufacturers that where a manufacturer provides its own information directly to independent technicians, or contracts with a specific intermediary to distribute the manufacturer's information, the manufacturer is not responsible for the availability or accuracy of information provided by any other intermediaries to independent technicians.

EPA is not issuing any regulations specifically requiring manufacturers to provide intermediaries with emission-related information. However, EPA encourages manufacturers to continue providing such intermediaries with information as they have in the past. EPA agrees that manufacturers should not be held responsible for information published by independent intermediaries over which they have no control. However, manufacturers are responsible for the correctness of their own materials, as identified in FedWorld.

Manufacturers could, in the future, meet the distribution requirements by providing the required information in its entirety to a clearinghouse. Since no

such clearinghouse currently exists, this is not a viable option for manufacturers at this time. Whether a clearinghouse is economically and practically feasible in the future will be up to the industry to determine. Although EPA supports the concept of a clearinghouse, EPA has no plans to sponsor a clearinghouse or to be involved in resolving issues necessary to establish a clearinghouse.

For a more detailed review of the comments and EPA's response to these comments, please refer to the Response to Comments document.

EPA Decision: See section III.C. above.

F. Timeliness

Summary of Proposal: In the NPRM, EPA stated that to be effective, information must be provided in a timely manner. The proposed regulations established specific times within which manufacturers would be required to make available enhanced [11] and generic [12] service information and training information. The proposed regulations required enhanced service information to be made available to independent technicians within one month immediately following model introduction. Generic service information would have to be made available within 8 months immediately following model introduction or no later than the release of information to a manufacturer's franchised dealerships. The proposed regulations also required that during the period between model introduction and the time the required information becomes accessible to independent technicians, each manufacturer, through an expeditious means available to its franchised dealers (e.g., hotline, regional service centers), make available to all independent technicians needed emission-related repair and service information.

Summary of Comments: Some manufacturers commented that it is not appropriate for EPA to prescribe a time schedule for the availability of information. They stated that their time schedule for publishing information has never met EPA schedules and they could not estimate how many years would be needed to meet the proposed requirements.

One manufacturer commented that the timing requirements are unnecessarily severe and unneeded. A few manufacturers suggested that instead of specified times, EPA should specify ''without substantial delay.''

Some manufacturers asserted that information should be available when cars are offered for sale (i.e., made available to dealers), not before. These commenters stated that OBD systems will be built to a standardized format and, as a result, it is not necessary to know the specifics of the information beyond that format, unless trying to repair a specific car. They believe the aftermarket doesn't need it earlier to integrate it into their publications, since the majority of customers return exclusively to manufacturer dealers for warranty work. According to these manufacturers, providing the aftermarket with the required information within 3–6 months after vehicle introduction should be sufficient.

Several manufacturers commented that independent technicians generally do not require warranty information since owners will not be reimbursed under a manufacturer's emissions warranties for any non-emergency repair.

The Automotive Warehouse Distributor's Association (AWDA) and APAA commented that the proposed regulations generally establish appropriate times. The Automotive Service Association (ASA) believes that all information should be available at the same time it is provided to franchised dealers. ASA also stated that responses to specific requests should be provided within 24 hours, as a customer's vehicle can't be fixed until the information is retrieved. ASIA stated that this ''same time'' requirement would provide intermediaries with the appropriate leadtime necessary to review, digest, condense, alter, and publish this information for use by the general public and the aftermarket in a timely fashion.

Alldata argued that aftermarket information providers should receive repair information thirty days prior to the dealerships or, as an alternative, at the same time as dealerships.

Analysis of Comments: Manufacturers have argued that since their vehicles seldom have emission-related service performed at an independent service facility during the first two years of customer use (during the 24,000 mile warranty period), the aftermarket service industry does not need service information during that time period. Warranty coverage makes this most economic for customers. However, aftermarket service providers have, at least, a limited need for service information even for new vehicles, since dealer service is not always available when service is needed by the customer, e.g., when a vehicle needs repairs during the evening or weekends. Further, the Act directs that aftermarket service providers are to receive emission-related service information without regard to whether aftermarket technicians are the persons most likely to repair a vehicle during a certain portion of the vehicle's life. There is no reason to restrict a consumer from obtaining aftermarket service even during a warranty period if the consumer determines it is in her/his best interest to do so. However, the limited need of aftermarket service providers for service information on new model vehicles when the vehicles are first introduced should be reflected in the burden placed on manufacturers, for example, in determining whether manufacturers must finalize service information earlier than they would otherwise do so. Manufacturer comments support delaying the availability of emission-related service information to the aftermarket, most often citing the burden on manufacturers as one of the major reasons. Manufacturers make the case that the proposal may cause them to provide information earlier than is their current practice. However, their comments provide only limited information on any adverse impact of supplying the aftermarket with such information in the time frames proposed.

Some suggested that, prior to some date, the independent service provider can obtain any necessary service information through a dealership. These suggestions would allow dealerships to determine whether the independent service provider is provided the required information in a reasonably timely manner. Placing such an intermediary in control of the dissemination of information is not consistent with the Act which designates manufacturers as being responsible for the availability of emission-related service information.

EPA understands that many of the independent service providers have traditionally relied on aftermarket consolidations of service information. One book or set of books will then provide coverage for a number of manufacturer vehicles. Purchasing these consolidated service information books is less expensive and perhaps more convenient than purchasing the more extensive manufacturer service books. However, with consolidation comes some loss in detail and usefulness. Availability of service information to these republishers is, therefore, also an issue.

Given that the majority of aftermarket emission-related repairs of a vehicle

[11] Enhanced service and repair information is specific for an original equipment manufacturer's (OEM) brand of tools and equipment.

[12] Generic service and repair information is not specific for an OEM's brand of tools and equipment.

will not begin until after the two year warranty has expired, there does not seem to be an urgent need of aftermarket republishers to have access to the manufacturer service information abnormally early. Consequently, the aftermarket republishers should be able to continue relying upon their existing mechanisms for use of manufacturer service information or, within legal constraints of copywrite law, etc., make use of the manufacturer service information when it becomes publicly available.

It is reasonable to provide some leadtime after adoption of these regulations to allow each manufacturer the ability to assemble the necessary information and put information dissemination procedures in place. However, since the information to be made available for MYs introduced prior to the finalization of these regulations (beginning with the 1994 MY) has been in the hands of the manufacturer's dealerships for some time, the information is clearly readily available to the manufacturer and, to a certain extent, has already entered the distribution network. Consequently, with regard to generic information, the time necessary to set up a distribution system for models already introduced is not driven by the availability of the information, only by the establishment of the distribution system itself. As described under the distribution section (on what information a manufacturer needs to provide for prior MYs), aside from setting up a distribution system (including the use of FedWorld), a manufacturer need only duplicate the information it has already supplied its dealerships and, in many cases, already made available to the aftermarket industry through distribution channels in place prior to these regulations. Thus, a manufacturer should require no more than 120 days after these rules are promulgated to have in place a distribution system making 1994 and later service information available to the independent service provider.

For vehicle models introduced beginning on or after 120 days following the promulgation of these regulations, manufacturers will have established a distribution system for getting the information into the hands of the aftermarket service provider by the time these vehicles are introduced. Therefore, no additional time is necessary for a manufacturer to make available to the independent service provider the generic information it is otherwise providing to its dealerships. (Timeliness for enhanced indirect information is discussed below in section H).

The subject of timeliness also reflects the need for a manufacturer to respond in a timely fashion to requests for emission-related service information. As discussed above, manufacturers must ensure that once an order is received by its designated distributor, the distributor must send the information within one business day after receiving it. This time frame for filling orders is reasonable. An exception to the one business day shipping requirement is available in those circumstances where orders exceed supply (based on projected demand) and, as a result, distributors need to reproduce a document. Manufacturers will not be required to respond to special, unique requests for service information; for example, manufacturers will not need to search through their shop manual for a specific section or page and fax just that page or section to a customer. Rather, they will be responsible for distributing information in a predetermined form and format, e.g., the same service bulletin sent to their dealership would also be sent to the independent service technician. Since the form and format of the information can be determined ahead of time, the burden on a manufacturer is to have a sufficient quantity of information available to meet demand and then have a mechanism in place to receive and process requests for information. Neither of these tasks require special skills and are akin to phone order merchandise distribution common in the retail sales industry. These other retail sales outlets commonly fill orders within 24 hours. A similarly timely response to requests for emission-related service information should be possible.

EPA Decision: Beginning four months after promulgation of these regulations, manufacturers are to have in place a service information distribution mechanism which will allow service information orders to be processed and mailed out within one business day of receipt of an order. As described above, manufacturers are required to provide more rapid service to their customers, i.e., priority mailing. At that time, manufacturers will be responsible for providing all required direct service information for 1994 and later MY vehicles which have been offered for sale. For vehicle models introduced more than four months after promulgation of these regulations, manufacturers will be responsible for providing direct service information to independent service technicians, facilities and others, at the same time it is made available to dealerships.

G. Media/Format

Summary of Proposal: In the NPRM, EPA established different format requirements for different time periods. These format requirements were based on SAE documents, some of which were not finalized at the time the NPRM was published, e.g., ''Recommended Organization of Service Information'' (J2008).

Summary of Comments: Extensive comments were received on the proposed formats. Some comments objected to any EPA requirements for formats, claiming that EPA lacked authority to require a specific format. Several commenters stated that the regulations would force them to completely rewrite and restructure their service literature, which would be a substantial and unnecessary burden. Some of these comments objected to any reference of SAE's draft recommended practices J2008 and ''Remote Diagnostic/Service Communications'' (J2187). NADA indicated that if SAE should finalize and adopt J2008 and/or J2187 at some later date, it would then be appropriate for EPA to reconsider their incorporation into the OBD regulation. The aftermarket generally supported use of standardized formats, saying that such standardization would help independent technicians locate and use diagnostic information.

Analysis of Comments: EPA believes that a standardized format should make accessing the volumes of available service information easier and enhance the ability of independent technicians to utilize information. EPA believes the benefits of an industry-accepted format will outweigh any initial costs in redesigning service literature. To ensure this goal is achieved, the Agency would like to provide adequate opportunity for the industry to develop a format which it believes most appropriately fulfills the needs of all interested parties. The Agency hopes that the industry will adopt SAE J2008 by mid-1995. However, if the industry is unable to agree on a standardized format, the Agency may develop a format for the industry.

This rule contains no requirements regarding the media or format of emission-related information, including ''Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms'' (J1930) and J2187. EPA believes that further discussions in the industry to develop appropriate formats will be useful prior to final regulations requiring any specific media or format. The Agency does not believe it is necessary at this time to address the comments received

regarding these issues, but will address them if and when it adopts such requirements.

EPA Decision: Due to various factors, SAE did not adopt J2008 in time to be incorporated into this final action. EPA had anticipated that SAE would adopt J2008 by mid-1994. If SAE finally adopts J2008 in a form that meets the needs of EPA, EPA would likely propose to incorporate J2008 into the service information regulations after further notice and comment. If J2008 is not finally adopted by SAE, or if the final version of J2008 does not meet the needs of EPA, EPA may propose to adopt its own format that manufacturers would be required to follow. EPA believes that adoption of an EPA-designed format may be necessary to prevent delays in the conversion of service information to an electronic format.

This rule contains no requirements regarding the media or format of emission-related information, including J1930 and J2187. EPA believes media and format issues should be addressed at the same time J2008 (or an EPA-adopted format) is required. This will allow an opportunity for changes, as may be necessary, to be made in any of these documents, as J2008 is being finalized. EPA may address the media and format requirements of emission-related service information in a future proposed rulemaking.

H. Enhanced Diagnostic Information

EPA Proposal: To eliminate confusion that existed in the industry regarding the definitions of certain key terms (data stream information, functional control strategies, bi-directional control, and indirect information) and whether such information must be provided under section 202(m)(5), EPA held a workshop in July 1993, to provide an opportunity for comment on proposed descriptions and/or definitions for these terms to ensure that there is a uniform understanding throughout the automotive industry as to the information that manufacturers will be required to make available. The definitions proposed by EPA were as follows:

Data stream information are messages transmitted between a network of modules and/or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) connected in parallel with either one or two communication wires. Messages on the communication wires can be broadcast by any module or intelligent sensor. Such information generally consists of messages and parameters originated within the vehicle by a module or intelligent sensors. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration-related information.

Functional control strategies are descriptions of how and when various engine systems operate. Typically, they are written explanations or flow diagrams that describe the interaction of the module and the various sensors and actuators as proscribed by the engine calibration. An example of a functional control strategy would be that for a particular fuel system. For example, the fuel system may not go into closed-loop operation until: (1) The engine coolant temperature has reached 180 °F; (2) the module observes an active oxygen sensor signal; and (3) 30 seconds has elapsed after reaching that temperature.

Bi-directional control is the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. An example of bi-directional control is the ability to increase or decrease the idle speed by using the diagnostic tool to vary the idle by-pass motor. This allows a technician to quickly verify that the idle by-pass motor responds to commands from the module. Bi-directional controls do not create permanent changes to engine or component calibrations.

Indirect information is any information that is not specifically contained in the service literature, but is contained in items such as parts or other equipment provided to franchised dealers (or others).

In addition, the NPRM discussed providing service technicians with the information needed to determine that a component or system is correctly operating. EPA proposed that manufacturers include information on the normal operating conditions for properly functioning emission-related components or systems. EPA requested comment on the need to adopt this requirement as part of these rules, the best way to accomplish this, and any difficulties (for example, significant burden to the manufacturer) that could arise.

Summary of Comments: Manufacturers commented that the release of information needed to perform bi-directional control is restricted since product damage could result if control is improperly applied. GM asserted that if required to release this information, it would need to redesign systems to include safeguards to prevent damage from improper use of control messages, or diagnose components using some other method.

Regarding the definition of data stream information, several manufacturers suggested that EPA's definition be modified, such that data stream information (1) include only emission-related information, (2) include only emission-related diagnostic information rather than information to conduct diagnosis and repair of normal vehicle operation, and (3) not include any recalibration or reprogramming information. GM commented that if data stream information is defined to include reprogramming software, it will be easy for aftermarket performance companies to build equipment to install unauthorized calibrations.

As to functional control strategies, Ford commented that it considers them to be proprietary information, because they are part of the engine calibration. Other manufacturers stated that such strategies are proprietary and they are not provided to dealers. GM asserted that any attempt by EPA to require manufacturers to divulge control strategies would exceed EPA's authority under section 202(m)(5) of the Act. The American Automobile Manufacturer's Association (AAMA) stated that numerous manufacturers already provide functional control strategies to the extent necessary for allowing effective repair of vehicles without divulging proprietary information. AAMA and Ford commented that since there are so many different engine configurations and vehicle models, it would be confusing for independent technicians to try and understand the multitude of control strategies and that this could lead to incorrect diagnosis and repair.

Regarding the proposed definition of indirect information, Ford recommended that it be modified to include only indirect information necessary to make emission-related diagnosis and repair. Other manufacturers commented that EPA's definition of indirect information should be modified to delete the phrase ''contained in items such as parts or other equipment'' and to read as follows: ''Indirect information is any information that is not specifically contained in the service literature, but is provided to franchised dealers (or others) as a requirement for emission-related diagnosis and repair. It shall not include calibration, recalibration or reprogramming related information which is neither visible to the technician nor consciously used in diagnosis and repair of vehicles.''

Saab commented that EPA's definition of indirect information is too broad to protect manufacturers and franchised dealers from unfair competition by aftermarket tool and equipment manufacturers and independent service providers, respectively. Saab does not agree that parts and equipment supplied to dealers contain supplementary information which is necessary to repair the emission control systems of a vehicle.

The aftermarket commenters asserted that functional control strategies, waveforms and bi-directional control are critical in the repair of emission-related problems. The commenters argued that many times there is no cause and effect relationship between a symptom and a failed part. According to the commenters, technicians rely on this type of information or the tools that utilize such information as the best method of pinpointing parts that have either failed or require adjustment. Independent technicians commented that having tools that perform bi-directional control would reduce diagnostic and repair times, as well as repair costs. The commenters asserted that unlike dealers with enhanced tools, independent technicians with generic tools only receive malfunction codes which are insufficient to diagnose the fault.

Analysis of Comments: Regarding the definition of data stream information, EPA agrees that for purposes of this rule, data stream information should include only emission-related information, since this rule is not intended to cover all vehicle operations. However, EPA's definition of emission-related (as discussed above) is broader than that requested by the manufacturers.

EPA also agrees that data stream information does not include recalibration and reprogramming information. However, as discussed below, recalibration and reprogramming information is subject to certain disclosure requirements. Manufacturers are required to provide reprogramming capabilities, but they are not required to make directly available actual calibration information, such as algorithms or values. Data steam information will obviously need to be provided indirectly to the aftermarket (as it is provided to dealers) in order to provide reprogramming capabilities, among other reasons.

If data stream information is made available to dealers, whether directly or indirectly, and is emission-related, then it must be made available to the aftermarket service industry, regardless of whether a manufacturer believes it is of any value to a technician. Data stream information will probably be utilized by the aftermarket diagnostic tool industry to build generic diagnostic tools. If the aftermarket tool manufacturers determine that certain information is of no value, they won't have any incentive to use it. Manufacturers may provide such information to the aftermarket in the same indirect fashion they provide it to their dealers via the sale of tools so long as these tools are available at a reasonable cost, or they may provide it to aftermarket tool companies so that these companies can make tools.

Regarding bi-directional diagnostic control strategies, EPA agrees that safeguards which protect against potential damage or safety problems from bi-directional control are important and encourages all manufacturers to implement them into their diagnostic systems. EPA believes that requiring manufacturers to supply bi-directional control information to the aftermarket, including Equipment and Tool Institute (ETI) members, without adequate safeguards could create liability concerns for manufacturers regarding the safety of consumers and technicians who would be responsible for the diagnosing and repair of vehicles.

The liability issues are a concern because there is no requirement that an ETI member company must add safeguards to the tools that they build. Manufacturers also have no reasonable means by which they can ensure that safeguards would be correctly incorporated into aftermarket tools. EPA believes that manufacturers have an incentive to ensure that safeguards are properly incorporated and are perhaps better equipped to verify the functionality of these safeguards.

Since bi-directional control is an important part of vehicle diagnosis and repair, it is imperative that this capability be made available to the independent service industry as soon as possible. This means providing bi-directional information to ETI members so that they can make generic tools for the aftermarket.

Manufacturers assert that most bi-directional control safeguards exist in manufacturer diagnostic tools rather than in vehicle on-board computers. The manufacturers claim that by 1999, all vehicles will have safeguards designed into the on-board computer, thus eliminating any concerns regarding safety and liability issues that could arise from the use of aftermarket diagnostic tools with bi-directional capability. EPA agrees with the manufacturers that it is preferable to have safeguards in the on-board computer, rather than in the diagnostic tool, especially if there is no requirement that generic tool manufacturers incorporate such safeguards in their tools. However, EPA does not believe it is reasonable or necessary to delay this requirement until 1999. Several manufacturers have indicated that they will have safeguards designed into their vehicles' on-board computers by 1997. EPA believes it is providing sufficient leadtime for other manufacturers to make any hardware changes that may be necessary. Therefore, beginning on January 1, 1997, a manufacturer can only provide bi-directional control to its dealerships if it has provided aftermarket companies with information to make tools that have the same bi-directional capabilities available to dealerships, or provided such capabilities directly to aftermarket technicians through provision of their own tools. Manufacturers will be required to make bi-directional information available for all model years beginning with 1994. However, for model years 1994–1996, where a manufacturer can prove that safeguards for bi-directional controls were only installed in tools, not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls prior to the 1997 model year. However, no such waiver is available for other data stream information. If a manufacturer does not use bi-directional control or has certain bi-directional control capabilities that it does not supply to its dealers, the manufacturer will not be required to provide this capability to the aftermarket.

Regarding GM's comments that release of information needed to perform bi-directional control should be restricted since product damage could result if the control is improperly applied, such concerns should be equally true for providing such information to dealerships. If manufacturers are not concerned regarding possible damage by dealership technicians, they should not be concerned regarding damage from aftermarket technicians.

EPA disagrees with manufacturer comments that ''indirect information'' should not include calibration, recalibration or reprogramming information and that the definition should be modified by deleting the phrase ''contained in items such as parts or other equipment.'' Section 202(m)(5) makes clear that any relevant information that is provided *directly or indirectly* to a dealership cannot be shielded from disclosure under section 208. Even if recalibration related

information is not provided directly to technicians nor consciously used in diagnosis and repair, such information, if contained in or made available through manufacturer tools, is a crucial element in the emission-related diagnosis and repair information provided by that tool. Therefore, it is indirect information which *must* be provided, either directly or indirectly, to the aftermarket, if it is emission-related.

Moreover, manufacturers may use changes to computer calibrations to fix mechanical malfunctions or to revise prior calibrations. In such cases, it is necessary for such information to be known to subsequent repair personnel in order to prevent subsequent repairs from causing increases in emissions.

EPA believes that much of the manufacturer equipment that a dealer uses for emission-related diagnosis and repairs possesses certain capabilities, such as being able to read fault codes, perform reprogramming or allow bi-directional control. The information that allows the manufacturer tools to perform such functions is indirect information that must be made available to the independent service industry.

As to Saab's comment that parts do not contain any supplementary information necessary to make emission-related repairs, EPA agrees. EPA has determined the language in subsection 202(m)(5) does not apply to information used to manufacture parts. Therefore, the references to parts will be removed from the definition.

EPA agrees with the commenters that there would be many functional control strategies with which independent technicians should familiarize themselves, and while this could be overwhelming, there is no evidence that the independent service industry wouldn't be up to the challenge. EPA believes that disclosure of functional control strategies would be beneficial in helping technicians to better understand the interactions of the on-board computer with the numerous sensors and actuators that comprise the varied emission control systems and thereby, help promote better and quicker diagnoses and repair of emission-related problems. However, at this time, EPA is only requiring manufacturers to supply functional control strategies directly to independent technicians if such strategies are supplied directly to their dealerships. To the extent such strategies are incorporated into a manufacturer's enhanced diagnostic tools, they must be made available to the aftermarket either through availability of manufacturer tools (at a reasonable price), or with appropriate agreements to protect proprietary information, through generic tools.

As discussed in the Response to Comments document, EPA does not believe that this information has been shown to be needed for emission-related repairs and diagnosis at this time and release of at least some of this information may raise trade secrets concerns. It is EPA's position that if manufacturers believe this information is necessary to perform emission-related service they will provide this information to their dealerships and independent technicians. EPA will continue to review whether certain types of information should be made available to the repair community even if such information is not currently made available to authorized dealers.

EPA Decision: All emission-related data stream information made available to manufacture franchised dealers (or others in the service industry) will be made available to the aftermarket, either through provision of manufacturer equipment and tools or through information provided to generic equipment and tool manufacturers with appropriate agreements to protect proprietary information. Beginning on January 1,1997, a manufacturer can only provide bi-directional control to its dealerships if it has provided equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or provided such capabilities directly to independent technicians through provision of their own tools. Manufacturers are required to make bi-directional control information available for all model years beginning with model year 1994. However, for model years 1994–1996, where a manufacturer can prove that safeguards for bi-directional controls are only installed in tools not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 model year. However, no such waiver is available for other types of data stream information.

Functional control strategies will not be required to be made available to the aftermarket, except to the extent they are made available to authorized dealerships.

The reference to parts is deleted from the definition of indirect information. The definition of indirect information will now be ''any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others).''

I. Enhanced Diagnostic Tools

Summary of Proposal: In the 1993 workshop notice, EPA indicated that according to section 202(m)(5) of the CAA, emission-related information provided by manufacturers indirectly to franchised dealers must also be provided to any person engaged in the repairing or servicing of motor vehicles. EPA stated that some manufacturers are or will be providing their dealers the ability to diagnose malfunctions and/or reprogram vehicle modules via enhanced diagnostic equipment. This equipment will not allow dealers to view the underlying computer codes, but will allow them to reprogram vehicles and use enhanced diagnostic information using the underlying code.

EPA believes that the enhanced diagnostic equipment provides franchised dealers indirectly with information that is needed to make emission-related diagnosis and repairs. EPA proposed to require that manufacturers offer their enhanced diagnostic equipment for sale to the aftermarket. This would enable manufacturers to comply with the requirements of section 202(m)(5) that information be made available to the aftermarket if it is made available to dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines while simultaneously protecting the proprietary interest of the manufacturers. It would also provide the aftermarket with the same capabilities as dealerships without divulging proprietary engine calibrations or recalibrations.

EPA proposed that manufacturers' enhanced diagnostic equipment be made available to the aftermarket at the same price at which it is sold to authorized dealerships. EPA believed that a reasonable price to charge the aftermarket is the same price at which the equipment is offered to franchised dealerships. Based on previous comments provided to EPA, EPA believed that manufacturers' enhanced diagnostic equipment are sold to dealerships independent of their franchise agreements. Therefore, the cost of such equipment can be readily determined or manufacturers could provide suggestions for determining the price of their equipment. EPA proposed to give manufacturers a one-year leadtime to prepare for aftermarket sales of enhanced equipment. EPA proposed that manufacturers must provide preliminary enhanced data stream information three months preceding model introduction, with final data

stream information to be released three months after model introduction.

Summary of Comments: Some manufacturers argued that EPA lacks the authority to mandate that they provide enhanced equipment or information to the entire vehicle maintenance industry concerning ''special'' or ''enhanced'' data streams or tools. Several manufacturers commented that the statute requires information be made available, not enhanced diagnostic tools. They stated that although such information may be provided by manufacturers to their franchised dealers, it isn't necessary to make use of OBD systems or to effectuate emissions control system diagnostics or repair. The manufacturers and NADA stated that a majority of franchised dealers make substantial monetary investments to purchase and train their technicians to use enhanced diagnostic equipment. They argued that EPA must not promulgate a regulation which would undermine these investments and in doing so place dealers at a competitive disadvantage with other segments of the vehicle maintenance industry.

According to Chrysler, the initiative for the company to invest in creating enhanced equipment is to ensure the economic viability of its dealerships. Without this incentive, Chrysler believes that such equipment will likely not be developed.

Several manufacturers asserted that reprogramming capability and proprietary non-emission-related information are an integral part of their enhanced diagnostic equipment. They argued that the design, development and distribution of a separate tool with only emission-related capabilities would be an unnecessary and costly burden for manufacturers.

They also noted that service information contained in manufacturer tools is similar to that which is contained in its service manuals, TSBs, recall notices, and other information which will be made available to the public through the various mechanisms proposed in the NPRM regarding service information availability.

Ford noted that nearly half of all its dealers do not have its Service Bay Diagnostic System (SBDS). Therefore, Ford believes dealers have no advantage in this area.

Ford expressed several concerns over any regulation that would require their SBDS to be made available to the aftermarket: (1) higher likelihood that improper calibrations could be installed on vehicles since manufacturers have no control over independent facilities; (2) the reprogramming capabilities of this equipment would provide a powerful tool for aftermarket performance companies and competitors to reverse engineer the emissions control system which could result in tampering; (3) unauthorized or incorrect calibrations would increase manufacturer liabilities in failing government in-use compliance programs and customers failing I/M programs; and, (4) providing a tool which has the capability to reprogram the control module may make it impossible for manufacturers to meet EPA's tampering prevention provisions. (These issues are addressed in the recalibration/reprogramming section below.)

Several manufacturers stated that generic scan tools will provide the means by which the aftermarket industry can get very specific support for diagnosis and repair of emission-related systems and components. While Ford indicated it understands the need for generic tools in the aftermarket arena, it expressed concern that they provide adequate and accurate information and repair capabilities. Manufacturers asserted they cannot be held either directly or indirectly liable if such generic tools incorporate diagnostic protocols which could potentially result in misdiagnosis and/or unnecessary repairs. Further, they believe it would not be reasonable to require manufacturers to review and approve aftermarket diagnostic tools. Ford suggested that the manufacturers of aftermarket generic diagnostic tools assume full responsibility for the accuracy and completeness of their equipment and software, and that EPA enforce necessary sanctions if deficiencies are identified which result in improper diagnostics or repairs.

Toyota Motor Corporation (Toyota) commented that manufacturers should sell enhanced diagnostic tools to all persons who want to purchase them. However, Toyota indicated that contrary to EPA's proposal, such tools could not be sold to the aftermarket at the same price they are provided to franchised dealers, since the cost of establishing new trading routes and a handling system would increase the price of equipment to independent technicians. As a result, Toyota commented that if the Agency decides that the selling price from manufacturers to dealers must be the same as that to independent facilities, it would have to greatly increase the price to its franchised dealers.

The Automotive Service Industry Association (ASIA) commented that while EPA's proposal that manufacturers' enhanced diagnostic equipment be made available to the aftermarket at the same price it is made available to franchised dealers has merit, limiting access to such manufacturer equipment alone will prove too costly and cumbersome for small repair facilities. ASIA asserted that under EPA's scenario, a small business currently servicing three lines of motor vehicles would be required to purchase three separate hardware/software systems if that business wishes to continue servicing its current customer base. According to ASIA, the cost of purchasing three individual systems (at a minimum estimated cost of $40,000 per unit) would force that repair facility to either significantly increase prices or limit the types of vehicles serviced.

ASIA stated that this impact runs contrary to the intent of section 202(m)(5) as envisioned by Senator John Chafee, who stated during the floor debate that ''the purpose of the amendment is to make sure the diagnostic equipment, the manuals, the techniques are available to, in effect, the local gas stations so they they will be more convenient for the automobile owner * * *'' Cong. Rec. S3272 (March 27, 1990). ASIA noted that then Senator Gore later added ''we want the [manufacturers] to provide information which will allow competition in the aftermarket and allow small business operators to get in the repair business. Otherwise, you force vehicle owners to go only to the major automobile manufacturers' place of business. Consumers get frustrated; they have long waits; they have to pay high prices.'' Cong. Rec. S3272 (March 27, 1990). Therefore, ASIA asserted that to ensure independent facilities have the ability to service a range of vehicle makes, EPA should require that all diagnostic information provided to manufacturers of tools for vehicle manufacturers should be made available to the aftermarket. In doing so, ASIA believes that EPA would provide small businesses with the option of purchasing individual manufacturer diagnostic tooling systems or a single aftermarket system that possesses diagnostic capabilities for a variety of vehicle models.

One independent technician acknowledged that manufacturers deserve protections that may assist them in securing a return on their investment in equipment. To remedy concerns of the manufacturers, the commenter suggested that the manufacturers make known all of the information that is on the data stream to the aftermarket equipment manufacturers. These manufacturers could, through their own research, determine what diagnostic routines warrant investment to develop

and market. The commenter also expressed concern over the cost of enhanced equipment. According to the commenter, any such equipment that costs more than $3,000 should be considered unavailable to independent technicians.

APAA commented that manufacturers will be correcting emission and driveability problems through the use of reprogramming tools. Without access to generic tools that perform the same function, APAA believes independent technicians will be unable to purchase manufacturer enhanced tools due to their high cost and will be in the unenviable position of being dependent on their biggest competitor, i.e., dealerships, for reprogramming services which are critical to emission repairs. APAA further noted that some manufacturers could not guarantee that their franchised dealers would provide reprogramming services to independent technicians in a timely manner.

One commenter noted that unlike dealers with enhanced tools, independent technicians with generic tools only receive malfunction codes which are insufficient to diagnose a fault. According to the commenter, this increases the time it takes to make a repair and the cost.

Aftermarket commenters indicated that independent technicians need access to diagnostic tools and equipment at the same time such tools and equipment are provided to dealerships.

Analysis of Comments: Contrary to manufacturer assertions, EPA believes it has the authority to require manufacturers to provide their enhanced diagnostic tools, because such tools contain important information that may be necessary for making emission-related repairs. Section 202(m)(5) of the Act is clear that if such information is provided either directly or indirectly to dealers, it is not covered by the confidentiality protection of section 208 and, therefore, must be provided to aftermarket technicians if it is information for making or diagnosing emission-related repairs. There is little question that the information provided by these tools is likely to increase the ability of a technician to diagnose and make appropriate repairs to vehicles and to make such diagnosis and repairs in considerably less time than it would take without such information. The legislative history clearly indicates that availability of diagnositc equipment was considered by Congress. Moreover, the legislative history clearly shows an intent that if dealerships have access to information that would allow relatively quick and low-cost diagnosis and repair of vehicles, then the aftermarket should have access to the same information. Moreover, to the extent these advanced diagnostic tools may contain considerable information for making emission-related diagnoses and repairs that are not contained in written performance manuals and updates, the information contained in these tools is clearly covered by this rule.

Regarding Chrysler's argument that enhanced diagnostic tools have been developed to assist the economic viability of dealerships, it must be noted that a major reason for developing these tools has been to increase the ease and decrease the cost and time of repair for manufacturers' vehicles, which increases customer satisfaction. To the extent the wider availability of this information further increases ease of repair, then customer satisfaction is likely to increase further. Moreover, to the extent manufacturers wish to assist the economic viability of dealerships by preventing access by aftermarket technicians to emission-related information, that is exactly the type of behavior that section 202(m)(5) was designed to prevent.

To the extent manufacturers comment that this regulation will force them to either build different types of enhanced diagnostic equipment or to divulge certain information not otherwise required, EPA believes that manufacturers will have to make cost-related determinations regarding how to meet this requirement. If any costs are necessary to ensure that emission-related information is provided to the aftermarket to the extent it is provided to dealerships, then section 202(m)(5) requires that such costs be incurred. Moreover, Ford's statement that some of its dealers do not have access to its SBDS system, and that therefore the aftermarket should not have access to the information in that system, is not consistent with section 202(m)(5). The fact that Ford dealerships could choose to avail themselves of this information dictates that aftermarket technicians must have such a choice.

In general, statements of manufacturers regarding the complexity of control strategies and diagnostic information support the need for this information to be made available. The aftermarket must have access to this type of information precisely because vehicle repair has become such a complex and intricate procedure. Without such information, aftermarket technicians would be operating under a significant disadvantage compared to dealerships.

Providing such tools to the aftermarket should not unfairly jeopardize the economic viability of dealerships. Dealerships already have access to these tools and to manufacturer training and other opportunities not provided to the aftermarket.

Nevertheless, EPA is not requiring manufacturers to make their enhanced diagnostic equipment available to the aftermarket. The primary reason being that the cost of purchasing such equipment for more than twenty manufacturers would be cost-prohibitive for most, if not all, independent technicians. The total cost would likely make the equipment practically unavailable to independent technicians.

However, manufacturers are required to ensure that the underlying emission-related information contained in their enhanced diagnostic equipment is provided to the aftermarket in a reasonable manner. Manufacturers are, therefore, required either to make their advanced diagnostic tools and equipment available at a reasonable cost to independent technicians or to make available to aftermarket tool and equipment companies any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by independent technicians to diagnose, service and repair emission-related parts, components and systems.

Section 202(m)(5) states that information for making emission-related diagnosis and repair that is made available either directly or indirectly to dealerships must also be made available to the aftermarket. Any such information provided to dealerships is not proprietary as defined in the CAA. Much of the service and repair information made available to dealerships is done so by its incorporation into diagnostic tools and equipment. To ensure that independent technicians have the same or similar capabilities, manufacturers are required to either provide the information necessary to make such tools and equipment to tool and equipment companies or to make manufacturer tools and equipment available at a reasonable cost (i.e., sold competitively in the marketplace). The reasonable cost requirement is necessary to ensure that the tools and equipment are ''available'' to the aftermarket.

EPA is not requiring that information provided indirectly to dealerships be provided directly to aftermarket technicians. Where such information contains proprietary materials, EPA is only requiring that such information be provided to aftermarket technicians in the same manner that it is provided to

dealerships. Manufacturers may require that tool and equipment manufacturers to whom such information is provided agree to ensure that such information remains proprietary.

EPA recognizes that manufacturers cannot exert sufficient control over tool and equipment manufacturers to ensure that generic tools and equipment properly incorporate diagnostic information. Therefore, the Agency will not hold manufacturers responsible for the tools and equipment produced by other companies.

As discussed in the section on reprogramming, manufacturers may sell their own reprogramming tools to independent technicians, rather than having such information provided by aftermarket tool and equipment companies, if the price of such tools is reasonable.

Manufacturers may, if they wish, also sell their enhanced diagnostic equipment and/or provide the information necessary to build reprogramming tools to aftermarket tool and equipment companies. The sale of manufacturer enhanced diagnostic equipment for a reasonable cost would be sufficient to comply with the requirements for enhanced diagnostic information under these regulations.

Vehicle manufacturers are required to make emission-related diagnostic and service information utilized by aftermarket tool and equipment companies available to such companies no later than the date of model introduction. This will allow adequate time for such companies to incorporate the information into generic tools and make it available to independent technicians in a timely manner. Revised information is required to be provided to aftermarket tool and equipment companies as it becomes available.

EPA Decision: Manufacturers are required to make available to aftermarket tool and equipment companies any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by independent technicians to diagnose, service and repair emission-related parts, components and systems.

In the alternative, manufacturers may sell their enhanced diagnostic equipment to aftermarket technicians for a reasonable price. The sale of manufacturer enhanced diagnostic equipment for a reasonable cost would be sufficient to comply with the requirements for enhanced diagnostic information under these regulations.

As to emission-related diagnostic and service information utilized by aftermarket tool and equipment companies that make generic tools which perform the same or similar functions as those provided by manufacturers to their dealerships, the Agency believes that such information should be provided at the time of model introduction. This will allow adequate time for its incorporation into tools and equipment.

J. Recalibration/Reprogramming

Statement of Proposal: EPA proposed that, consistent with the Act, ''all information'' needed to make emission-related repairs be made available to the automotive service industry, including recalibration information. An engine calibration is the set of instructions the computer module uses for operating many of the engine systems (e.g., fuel and ignition). These instructions are made up of preset values and algorithms that are located in a computer chip. Recalibration is the act of revising the preset values and/or algorithms for an existing engine calibration in a particular vehicle model/engine configuration. Reprogramming is the act of installing a ''new'' engine calibration (i.e., a recalibration) into the module of a specific vehicle.

Summary of Comments: Manufacturers asserted several reasons why they should not be required to make available recalibration information or reprogramming capability: (1) Recalibrations are saleable parts and not ''information'' within the meaning of section 202(m)(5) of the CAA; (2) reprogramming is not a repair action; (3) reprogramming is not ''necessary'' information; (4) reprogramming is not ''emission-related''; (5) recalibration and reprogramming information are proprietary information protected under section 208; (6) the CAA does not require manufacturers to make available engine calibration information for aftermarket parts manufacturers to effectively design emission-related parts; (7) providing reprogramming capabilities to independent technicians would impair the manufacturer's ability to maintain tamper resistant systems; (8) independent technicians would be unable to understand the intracacies of each of the different manufacturer systems; and (9) the potential for problems, such as increased emissions, poor vehicle performance, and warranty and recall liability that could result from the release of recalibration information. Manufacturers asserted that aftermarket service providers could take vehicles to franchised dealerships to have them reprogrammed.

In contrast, the automotive aftermarket unanimously cited the need for independent technicians to have the capability to perform reprogramming. They commented that any procedure that has the effect of limiting the ability of independent technicians to make repairs is contrary to the CAA and Congressional intent. They further questioned EPA's authority to allow recalibration information to be within the exclusive province of dealers on the basis that that was not the intent of Congress. According to the commenters, if the aftermarket is not allowed to perform reprogrammings, the aftermarket will gradually be removed from performing emission-related repairs, including driveability repairs.

Some commenters stated that the only useful information to aftermarket parts manufacturers would be access to underlying recalibration information. APAA commented that engine calibration information is required for the effective production and testing of replacement parts. The Specialty Equipment Manufacturer's Association (SEMA) asserted that although aftermarket parts manufacturers would not necessarily need direct access to manufacturer proprietary information, some type of secure access to manipulate calibrations in developing and testing aftermarket parts will be essential to the survival of the independent parts and service industry. They argued that by not allowing such access, EPA would put some people out of business by eliminating the ability to make modifications to vehicles.

Aftermarket comments asserted that the marginal risk of tampering could be addressed by various methods, including restricting how recalibrations are performed (e.g., using a modem link to receive recalibration information) or specifying qualifications which all technicians must meet to obtain recalibration data.

Analysis of Comments: EPA disagrees with the commenters that recalibration information is a part. There are several reasons for the Agency's position on this issue. First, service people do the reprogramming, not parts departments. Second, one doesn't need to order the ''part,'' it is in the diagnostic machine and just needs to be downloaded. Third, there are no parts cost for ''installation,'' only service costs. Fourth, entering a recalibration does not physically change a vehicle, only the data (information) on the computer. Fifth, in their comments, manufacturers refer to recalibrations as ''information.'' [13] Sixth, parts can be sent to a mechanic via, e.g., UPS, as they

[13] For example, Chrysler Corporation Response to EPA Request for Supplemental Comments on OBD Systems, June 28, 1992, and Ford Motor Company Written Comments, July 31, 1992.

are sent to a dealer by a manufacturer, or as a dealer can send to a mechanic. However, reprogramming can only occur at a dealership or other facility which has the necessary equipment to perform a reprogramming event. In addition, the change made to a vehicle by reprogramming is a change to ''data'' within the vehicle. In effect, the tool is communicating with the computer in the vehicle, telling it to do something different. This appears to be information.

Finally, though parties may argue whether the data being downloaded into the vehicle is a ''part'' or ''information'' or both, it is clear to EPA that the current situation, in which dealerships can make manufacturer-suggested repairs to vehicles using data provided by manufacturers to dealerships, but not to independent technicians, is exactly the type of situation that Congress intended to be rectified by section 202(m)(5).

EPA believes that reprogramming is a repair action. The entire purpose of reprogramming vehicle computers is to ''repair'' certain problems discovered in the vehicles. EPA believes that the key issue is whether independent service providers are being prevented from doing what dealerships are allowed to do due, in part, to lack of information. EPA believes that reprogramming events should be considered repairs under the statute, especially since such reprogramming is being done as a result of recommendations offered by a manufacturer in order to change some aspect of the vehicle that the manufacturer believes was initially incorrectly produced.

Both Ford and Chrysler state that reprogramming information is not ''needed'' as that word is used in section 202(m)(5).[14] Yet, even presuming, for the sake of argument, that EPA should only mandate disclosure of emission-related information that is ''necessary,''[15] no manufacturer makes clear how such information is not necessary to accomplish the reprogramming of the vehicle. Whether the vehicle is reprogrammed by a dealer or an aftermarket technician, the repair person must have the information to make the repair. EPA does not believe that the ''instructions'' for making emission-related diagnosis and repairs is limited to ''go see your local dealer.'' The information necessary to make the repair must be in the possession of the aftermarket to the same extent it is in the possession of dealers.

Moreover, as EPA is only requiring information to be produced regarding recalibrations offered by a manufacturer, it is hard to understand how such reprogramming events would not be ''necessary'' events to repair the vehicle. A manufacturer would presumedly not offer such recalibrations unless it found a feature of the vehicle that it felt needed to be changed.

The Agency disagrees with statements that reprogramming is not ''emission-related.'' Though certain reprogramming events may have no emission-related effects, EPA believes that numerous reprogramming events will have such effects. First, the docket indicates that certain calibrations are directly intended to fix problems related to the emissions of the vehicles. Though these calibrations may be covered in a manufacturer's warranty, there is no assurance that a proper recalibration will occur during the warranty period. Thus, providing independent technicians with the ability to provide such reprogramming would not be an unnecessary endeavor.

In addition, recalibrations to fix driveability problems will also have emission-related effects. As discussed elsewhere, ''emission-related'' repairs are not limited to repairs of the emission control system or repairs necessary to make use of the OBD system.

As EPA discusses above in the section on the definition of ''emission-related,'' the correction of driveability problems can often have an emissions impact. This potential for increased emissions is heightened when cumulative recalibrations occur within an engine family. Therefore, EPA is requiring that all reprogramming events that are emission-related, as that term is defined above, including reprogramming actions occurring for primarily reasons of drivability, must be made available to independent technicians.

Contrary to comments made regarding recalibration information being proprietary, the Agency believes that where a manufacturer provides such information to some or all of its dealers, such information cannot be considered proprietary under section 202(m)(5). The Act specifically requires that any information provided directly *or indirectly* to dealerships must also be provided to anyone who services or repairs vehicles.

Contrary to manufacturer arguments that dealership employees don't receive recalibration data because they can't see it due to the form in which it is provided to them, EPA believes that where a manufacturer provides dealerships with machines that hold such information or can disseminate such information and where these machines allow dealerships to use such information to repair vehicles, such information is being provided indirectly to dealerships, and thus must be made available to independent technicians in a similar manner.

In response to Ford's comment that it opposes any requirements which mandate that it make available all detailed emissions recalibrations, EPA is only requiring that reprogramming capability be made available, not direct calibration codes. As discussed below, EPA does believe that the internal computer codes within the vehicle control modules are proprietary, as such material is not released to dealerships. EPA, therefore, is not requiring direct disclosure of the recalibration data itself. EPA does not believe that manufacturers should be forced to provide unprotected proprietary information directly to aftermarket technicians merely because it has provided such material indirectly to its dealers, especially where such information is provided to dealers in a protected fashion, such that even the dealers could not assess the underlying information. Some manufacturers have gone to considerable lengths to prevent direct disclosure of this information even to its dealers; therefore, EPA will not require such information be provided directly to the aftermarket.

Rather, EPA is allowing the manufacturers to indirectly provide this data to independent technicians in the same or similar fashion as they provide this data to dealership technicians by offering independent technicians reprogramming capabilities to the same extent manufacturers offer such capabilities to their own dealers. This will help ensure that independent technicians remain competitive with dealerships as intended by section 202(m)(5).

EPA agrees with comments from the aftermarket that, based on the language of section 202(m)(5) of the CAA and its legislative history, Congress intended independent technicians to have all the information necessary to make emission-related repairs, including reprogramming capabilities, that are available to dealerships or others. Congress wanted to ensure the continuation of a competitive marketplace, thereby providing consumers with an option as to where to have their vehicles serviced. In addition to the reprogramming capability, manufacturers will also be required to publish information as to

[14] One reason they give is that such information is not emission-related. We discuss this issue below.

[15] The term ''needed'' does not modify the clause referring to ''such other information including instructions for making emission related diagnosis and repairs.''

when recalibrations are issued, since such information can impact other repairs. Also, EPA expects that some independent technicians will not want to obtain reprogramming capability, but will want to know when such service is necessary so that they can take vehicles to the dealerships for such service or refer customers to seek dealership service on their own.

EPA also agrees with comments indicating that there are significant practical competitive disadvantages to the aftermarket if only dealers can reprogram and that, in the future, many vehicle functions may be controlled through recalibration data. Also, unless a secure means for the aftermarket to obtain reprogramming is found, a substantial amount of maintenance and repairs could be channeled to dealerships who would have a significant information advantage.

The Agency agrees that manufacturers that do not provide reprogramming capabilities to their dealers through the use of electronically eraseable computer chips and do not provide recalibration information to other parties do not have to provide recalibration information or reprogramming capability to independent technicians.

The Agency agrees with the manufacturers that section 202(m)(5) does not require manufacturers to provide calibration, recalibration or design information to aftermarket parts manufacturers. The purpose of this provision is to ensure that independent technicians have access to information needed to service and repair vehicles, thereby ensuring consumers with freedom of choice in where to take their vehicles for repairs. *See* Statement of Senator Gore, 136 Cong. Rec. S3271–2 (March 27, 1990) (''If we are going to mandate a new onboard diagnostic system, we must give consumers the freedom to choose where they will go to have these systems *maintained and repaired*.'' [emphasis added]) Manufacturers are only required to provide reprogramming capabilities to persons who service and repair vehicles, i.e., independent technicians. They are not required to provide recalibration information to other parties.

EPA disagrees with the assertion from aftermarket commenters that section 202(m)(5) is intended to provide for the release of calibration or parts specification information to parts manufacturers. Nothing in the language of the statute itself or in the legislative history indicates that Congress was interested in assuring access and information for the manufacture of aftermarket parts. On the contrary, the legislative history speaks only of the need to ensure equal access for vehicle *repair* facilities. The language was clearly meant to ensure that such repair facilities have equal information to make emission-related diagnosis and repairs as have the manufacturers' dealerships.

This is why the Congress limited the coverage of section 208(c) (providing that trade secrets need not be made available) to information not provided to dealerships. There is no information indicating that underlying computer data is provided to dealerships. In fact, as discussed above, manufacturers have attempted to protect such information from disclosure. Though the language of section 202(m)(5) does refer to any information provided directly or indirectly to dealers, EPA does not believe that Congress intended to require that information provided to dealers only indirectly, and using secure methods, must be provided directly, without protection, to aftermarket parts dealers. The legislative history clearly shows that Congress had no intention of requiring the release of proprietary information. In fact, the House Report specifically gives as its reason for the trade secrets language the fact that ''the computer software can include very sensitive data.'' House Report at 306. In short, section 202(m)(5) was designed to ensure information already in the public domain was given to all repair providers; it was not designed to expose manufacturers to the divulgence of their most sensitive proprietary information.

Further, EPA has received no information that this information is needed by repair personnel to repair vehicles. There has been no information showing that repair personnel need to see underlying computer codes in order to fix vehicles. This is evidenced by the fact that there have been many comments indicating that service people have no use for such underlying information and would likely not know how to use it if they had access to it.

Aftermarket parts manufacturers commented that engine calibration information is required for the effective production and testing of replacement parts to ensure that they will meet the exacting needs of both current and future engines. Even presuming that this allegation is true, this regulation does not prevent parts manufacturers from obtaining such information. Parts manufacturers can enter into any number of special arrangements with the manufacturers to obtain the desired information. Further, parts manufacturers will be able to make parts in the same manner as they always have.

Parts manufacturers have been making such parts for many years, even as vehicles have become more and more complicated. Though the introduction of OBD will continue the trend of making cars more complex and, therefore, require manufacturers and aftermarket parts manufacturers to meet more exacting standards, it does not require a new regime for providing information for the manufacture of replacement parts. Nor does section 202(m)(5) require such a new regime.

Vehicle manufacturers expend substantial resources to develop these intricate programs. Manufacturers may be justified in their hesitance to allow such information to be freely distributed, especially without proper arrangements. Congress could have extended the reach of section 202(m)(5) to include parts manufacturers. It did not. Given the fact that aftermarket parts manufacturers appear to need information of a more proprietary nature than that of aftermarket repair personnel, it appears that EPA would be going beyond Congressional intent in requiring that such information be provided.

Moreover, SEMA states that the aftermarket industry needs underlying recalibration information to be capable of modifying existing programs on vehicle computer chips. It is just these changes to computer calibrations that trouble manufacturers and also trouble EPA. Where a single entity, the manufacturer, is responsible for programming and updating the vehicle computer, it is relatively easy to determine which computer calibration is on, or should be on, a vehicle. Manufacturers go through a rigorous mandatory certification process to assure EPA of emission compliance of their various calibrations over the useful life of their vehicles. When various part manufacturers are changing calibrations to meet the needs of their parts, then it is more difficult to determine what the proper calibration of the vehicle should be. Moreover, if a subsequent repair person repairs the same vehicle using the instructions generally appropriate for such a vehicle, such a subsequent repair may result in unintended consequences that could impair the emissions (or drivability) performance of the vehicle, especially if the new aftermarket calibration is not made obvious to the subsequent repair person. Also, such aftermarket recalibrations may prevent the manufacturer from instituting later recalibrations on the vehicle, because the newest manufacturer recalibration may be inconsistent with the aftermarket part. Finally, such aftermarket recalibrations

could possibly constitute tampering, depending on the emissions result of the recalibration. (This is also true for manufacturer recalibrations; however, if manufacturers are the only parties issuing recalibrations, such problems are easier to enforce.) This is not to say that EPA intends on preventing such aftermarket recalibrations or even manufacturer recalibrations. However, if EPA's concerns regarding the emissions result of such recalibrations increase as it receives further data on the subject, EPA may determine that certain steps must be taken (possibly in the form of a mandatory certification program) to ensure that recalibrations are consistent with the Act and to preserve emission performance of vehicles.

One of the more frequently cited comments by the manufacturers was that reprogramming should be restricted to dealerships for reasons of security. However, EPA received no evidence that tampering is necessarily less likely to occur if reprogramming is limited to dealership employees, which according to NADA constitute more than one million individuals (including one-third of all technicians) at over 23,000 dealerships nationwide.

The Agency believes that if the appropriate security measures are instituted for reprogramming, the risk of tampering would be virtually the same for independent technicians and dealership employees.

EPA questions manufacturer comments to the effect that they can ensure the security of recalibration information as long as it is provided only to dealerships. The manufacturers failed to provide any data from prior actions against dealerships to substantiate the assertion that manufacturers can prevent their dealerships from engaging in undesired activities. Also, EPA is not forbidding manufacturers from using contractual and other arrangements to protect against inappropriate use of the reprogramming equipment.

EPA is encouraged that the aftermarket industry recognizes that as a result of providing independent technicians with reprogramming capabilities there is some concern over the potential for tampering. EPA also appreciates the many suggestions made by the aftermarket to reduce the potential for tampering. However, EPA believes that manufacturers should be allowed to develop and implement the systems which they believe are most secure, such as encryption systems, taking into consideration the amount of reprogramming they perform and available technology. If EPA subsequently determines that security and tampering concerns develop into a problem due to the release of this information, EPA may require other measures to limit tampering and to prevent emissions increases.

EPA disagrees with comments regarding the inability of independent technicians to correctly perform reprogramming. First, the new electronic systems are too complex for independent or any other technicians to indiscriminately alter. Second, based on EPA observations, reprogramming according to manufacturer instructions is not a difficult task. Procedures could be easily detailed in manufacturer repair manuals as they typically are for other repairs. Therefore, any training need to perform reprogramming should be minimal. If manufacturers believe that extra training is necessary prior to technicians performing reprogramming, then they should make available whatever training materials they believe are necessary to ensure that independent technicians can properly perform reprogramming.

EPA believes that manufacturer concerns over warranty and recall responsibilities for vehicles that might be recalibrated improperly by independent technicians are unfounded. Manufacturers will be in control of the process by which reprogramming is provided. In addition, as discussed earlier, the task of reprogramming is not difficult.

EPA believes that any increasing danger of undetectable tampering would be more a result of the proliferation of reprogrammable computer chips than it is a result of who repairs vehicles. The proliferation of reprogrammable computer chips is in the control of the manufacturers who can elect not to use reprogramable chips or who can provide many other safeguards short of a permanent bar against reprogramming by aftermarket technicians. This possibility of increased tampering may also provide an incentive for manufacturers to minimize the amount of manufacturer-ordered reprogramming that occurs.

In addition, EPA never indicated that manufacturers would be responsible for reimbursing owners or independent technicians for reprogramming performed outside a dealership. EPA also has a difficult time understanding how allowing independent technicians to perform reprogramming recommended by the manufacturer would be a disincentive for owners to seek future emission-related repairs, since almost all manufacturer commenters indicated that such repairs occur during the warranty period and are, therefore, likely to be performed by dealerships.

EPA believes that GM's comments mis-state the competitiveness concerns of a level playing field expressed by Congress. With the advent of eraseable computer chips, dealers can perform reprogramming in minutes, while independent technicians, if forced to return a vehicle or its module to a dealer for reprogramming, would be at a significant time and cost disadvantage. According to one manufacturer, it is difficult to predict how long an independent technician would have to wait at a dealership to have a reprogramming event performed on a vehicle brought in by the independent technician. The manufacturer indicated that an independent technician might have to wait four to five days.

EPA agrees with the aftermarket commenters that forcing independent technicians to return computers to dealers for reprogramming requires excessive manpower, would result in loss of income due to delays, is onerous and unnecessary. In addition, the Agency believes that requiring independent technicians to do so does not constitute access to repair information as conceived by Congress in section 202(m)(5) of the CAA.

EPA agrees with the example provided by an aftermarket commenter regarding one of the differences to independent technicians as to the difference between replaceable computer chips and eraseable computer chips and any requirement that independent technicians return an electronic control module (ECM) to a dealer for reprogramming. Where an independent facility buys a computer chip from a dealer, the vehicle remains operable while the repair facility searches for the part, orders the part, and transports the part. However, if an independent facility would have to remove the computer from a vehicle and take it to an authorized dealer to have it reprogrammed, the affected vehicle is not operable. Even ignoring the potential for lack of cooperation by a dealership to provide reprogramming, the cost to independent technicians and the inconvenience to their customers could be substantial.

There is also concern, as expressed by ETI and others about the damage that could result from transporting exposed electronic parts, which are very sensitive to static electricity, physical damage, and fluids, including water. As ETI noted, a computer module that starts out needing only a reprogramming service may need replacement simply because it was transported to a dealer and damaged along the way.

EPA Decision: EPA has determined that recalibrations are information covered under section 202(m)(5) if they are provided to dealerships to reprogram vehicles. EPA recognizes that this information is not visible to the dealerships and is provided for the purpose of allowing dealers to perform reprogramming. EPA believes that allowing manufacturers to provide similar reprogramming capabilities to independent technicians (and not the recalibrations themselves) comports with the language and intent of section 202(m)(5).

Effective December 1, 1997, manufacturers are required to:

(1) make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997, by manufacturers and made available to dealerships for MYs 1994 through 1997; and

(2) for reprogramming events that are issued on or after December 1, 1997, make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) issued by manufacturers for 1994 and later MY vehicles at the same time they are made available to dealerships.

For each MY, reprogramming need not be provided for recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may request a waiver from the reprogramming requirements for model years 1994 through 1996.

EPA is providing manufacturers until December 1, 1997, to adopt and implement security measures, such as encryption or other measures, that address tampering concerns and concerns regarding proprietary information. This leadtime will also allow manufacturers to work out logistical issues related to making reprogramming available to the potentially large numbers of independent facilities that may be interested in receiving this capability. Though EPA is allowing security measures to be implemented by manufacturers, such measures are not being required by these regulations. EPA believes that manufacturers are best able to determine the extent to which the release of this information will endanger the proprietary nature of the underlying information and/or potentially lead to tampering.

Any method adopted by a manufacturer by which reprogramming will be made available to independent technicians cannot impose a significant burden on independent technicians beyond that experienced by dealerships. For example, manufacturers can sell reprogramming tools directly to independent technicians or enter into agreements with aftermarket tool companies whereby the manufacturers provide the tool companies with the information necessary to build reprogramming tools. In conjunction with one of these options, manufacturers could transmit reprogramming events directly to independent technicians by modem from a main frame or provide them with CD ROMs. The use of a main frame to make reprogramming available would enable manufacturers to monitor certain data, such as who is performing reprogramming and the type of reprogramming that is being requested. In formulating its method of making reprogramming available to independent technicians, a manufacturer may request to meet with EPA to discuss whether the method comports with the requirements of this rule. In the context of avoiding a significant burden on independent technicians, EPA notes that a manufacturer reprogramming-only tool should be compatible with generic portable computers (PCs), or other technology in widespread use in the future, so that independent technicians are not required to purchase numerous types of PCs to access each manufacturer's reprogramming tools.

EPA is concerned that there may be a risk of increased tampering with the OBD system once it is integrated with the I/M test. However, EPA believes that the manufacturers have sufficient incentives to adopt measures that maximize security and protect the OBD system from tampering. At this time, therefore, EPA is not requiring that manufacturers adopt security measures. If there is evidence of tampering that can't be prevented through EPA's enforcement authority, EPA may find it necessary to promulgate more stringent regulations to ensure that the integrity of OBD systems is maintained. Such regulations could include various options, such as mandatory aftermarket parts certification, banning eraseable computer chips, or security measures.

K. Regulatory Flexibility Analysis

Summary of Proposal: The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Analysis. EPA has determined that the regulations finalized today will not have a significant impact on a substantial number of small entities. This regulation will primarily affect manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

Summary of Comments: Chrysler commented that EPA's conclusion that an RIA is not required is fatally flawed. Chrysler asserted that the proposed regulations will impact over twenty thousand small businesses, i.e., dealers, through major effects on their future business and profitability. Chrysler stated that dealerships carry costs and overhead which are not faced by aftermarket repair shops. Chrysler believes that any regulation which diminishes the ability of dealerships to effectively compete, by lessening their ability to meet costs imposed by the nature of the business, clearly constitutes a significant impact on those businesses, required to be assessed by the Administrator by law.

NADA also commented that EPA's regulatory impact analysis appears to have failed to take into account the significant potential impact its proposed regulations will have on franchised dealership service operations. NADA asserted that several provisions in the proposed rule will result in potentially costly anti-competitive impacts on dealerships. NADA stated its member dealerships are very concerned that the EPA proposal will serve to undermine the franchise relationship that exists between dealers and manufacturers. The proposal as written threatens the huge investments NADA dealerships have made in equipment, technician training, and information systems by putting dealers at a competitive disadvantage with those segments of the vehicle maintenance industry who have not made similar investments. As required by the Regulatory Flexibility Act, NADA argued it is incumbent upon EPA to consider these impacts during the development of its final OBD rule. NADA submitted that this is of particular importance considering the currently dire economic condition of a

large number of franchised dealerships across the country.

Analysis of Comments: This rulemaking directly affects only vehicle manufacturers, which are not small businesses. Therefore, no regulatory flexibility analysis is necessary. The secondary effects that these regulations may have on particular smaller businesses (i.e., dealerships), which would not be increases in burden, but loss of sole access to information, should be minor. Moreover, these regulations generally maintains the status quo that currently exists between dealerships and independent technicians. Today's regulations should not greatly affect dealerships or independent technicians, since the vast majority of the emission-related information required by this rule has, according to commenters, long been provided voluntarily by the manufacturers. In its comments submitted August 13, 1993, Association of International Automobile Manufacturers, Inc. (AIAM), for example, stated that in spite of the fact that there have been no requirements mandating the availability of service information, nearly all manufacturers have made information readily available. According to AIAM, the aftermarket asserts such information is not available, because they are unwilling to pay the fair cost of the information.

Other small businesses (i.e., independent technicians) are also not directly regulated by this rulemaking. Moreover, according to the statements of many commenters, any secondary effects from these regulations are likely to be minor, as much of the information required to be made available under this rulemaking is, according to the commenters, already available to the aftermarket.

Aftermarket parts manufacturers, whose products are not covered by the information availability requirements of section 202(m)(5), will be in the same position following the effective date of this rule as they were before the effective date. They will be able to design, develop and manufacture parts as before or they can enter into agreements with the manufacturers to purchase design specifications.

EPA Decision: A regulatory flexibility analysis is not required, since there is no significant impact on affected entities.

V. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis. EPA has determined that the regulations finalized today will not have a significant impact on a substantial number of small entities. This regulation will also positively affect independent repair shops and mechanics. The standardization requirements contained in these regulations will enhance the ability of independent mechanics to diagnosis and repair malfunctions.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* I certify that this regulation does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

D. Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this direct final rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919) 541–5742 and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. File information can be obtained from the ''READ.ME'' file. To download a file, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 Eastern Time, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at

(919) 541–5384 in Research Triangle Park, North Carolina, during normal business hours Eastern Time.

E. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060–0104.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., S.W. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

F. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

VI. Authority

Statutory authority for the proposed emission standards is provided by sections 202(a), 202(m), 208(c), 301(a), and 307(d) of the Clean Air Act, as amended, 42 U.S.C. 7521(a), 7521(m), 7542(c), 7601(a), and 7607(d).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR chapter I is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
* * * * *	
86.094–38	2060–0104
* * * * *	

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

3. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

4. Section 86.094–2 is amended by adding definitions for ''Bi-directional control'', ''Data stream information'', ''Enhanced service and repair information'', ''Generic service and repair information,'' ''Indirect information'', and ''Intermediary'', in alphabetical order, to read as follows:

§ 86.094–2 Definitions.

* * * * *

Bi-directional control means the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

Data stream information means information (i.e., messages and parameters) originated within the vehicle by a module or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or two communication wires. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration related information.

* * * * *

Enhanced service and repair information means information which is specific for an original equipment manufacturer's brand of tools and equipment.

* * * * *

Generic service and repair information means information which is not specific for an original equipment manufacturer's brand of tools and equipment.

* * * * *

Indirect information means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others).

Intermediary means any individual or entity, other than an original equipment manufacturer, which provides service or equipment to automotive technicians.

* * * * *

5. A new § 86.094–38 is added to read as follows:

§ 86.094–38 Maintenance instructions.

(a)–(f) [Reserved]

(g) Emission control diagnostic service information:

(1) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including

instructions for making emission-related diagnosis and repairs, including, but not limited to, service manuals, technical service bulletins, recall service information, data stream information, bi-directional control information, and training information, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(2) Emission-related information includes, but is not limited to:

(i) Information regarding any system, component or part of a vehicle that controls emissions and any system, components and/or parts associated with the powertrain system, including, but not limited to, the fuel system and ignition system;

(ii) Information for any system, component, or part that is likely to impact emissions, such as transmission systems; and

(iii) Any other information specified by the Administrator to be relevant for the diagnosis and repair of an emission failure found through the Inspection and Maintenance program, after such finding has been communicated to the affected manufacturer(s).

(3) All information required to be made available by this section shall be made available to persons referred to in this section at a fair and reasonable price, as determined by the Administrator. In reaching a decision, the Administrator shall consider all relevant factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to the effective date of this section, volume discounts, and inflation.

(4) Any information which is not provided at a fair and reasonable price shall be considered unavailable.

(5) By December 7, 1995, each manufacturer shall provide in a manner specified in paragraph (g)(9) of this section an index of the information required to be made available by this section for 1994 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraph (g)(10) of this section. This index shall:

(i) Be updated on the first and third Monday of each month;

(ii) Provide titles that either adequately describes the contents of the document to which it refers or provides a brief description of the information contained in that document; and

(iii) Provide the cost of information and where it can be obtained.

(6) For vehicle models introduced more than four months after the effective date of this section, manufacturers shall make the information required under this section available to persons specified in paragraph (g)(1) of this section at the same time it is made available to dealerships, except as otherwise specified in this section.

(7) Each manufacturer shall maintain the index of information specified in paragraph (g)(5) of this section on FedWorld or other database designated by the Administrator. Manufacturers shall inform persons specified in paragraph (g)(1) of this section about the availability of the index in a manner prescribed by the Administrator.

(8) Each manufacturer shall be responsible for paying its pro rata share of any costs associated with establishing and maintaining the index of emission-related service and repair information provided for in paragraphs (g)(5) and (g)(7) of this section.

(9) Manufacturers or their designated distributors must mail requested information within one business day of receiving an order, and shall provide overnight delivery if the ordering party requests it and assumes the cost of delivery.

(10) All emission-related data stream information made available to manufacturers' franchised dealerships (or others in the service industry) shall be made available to the persons indicated in paragraph (g)(1) of this section either through provision of manufacturer equipment and tools or through provision of such information to equipment and tool manufacturers.

(11) Effective January 1,1997, a manufacturer shall only provide bi-directional control to its franchised dealerships if it provides equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or if it provides such capabilities directly to persons specified in paragraph (g)(1) of this section by offering for sale at a reasonable cost through manufacturer tools.

(12) Manufacturers shall make data stream information and bi-directional control information available for all model years beginning with model year 1994 as specified in paragraphs (g)(10) and (g)(11) of this section. If a manufacturer can demonstrate, to the satisfaction of the Administrator, that safeguards for bi-directional controls are only installed in tools, not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 model year.

(13) Effective December 1, 1997, manufacturers shall make available in the manner described in paragraph (g)(16) of this section to persons specified in paragraph (g)(1) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997 by manufacturers and that were made available to any manufacturer dealerships for model years 1994 through 1997; and manufacturers shall make available to persons indicated in paragraph (g)(1) of this section in the manner described in paragraph (g)(16) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that are issued by manufacturers on or after December 1, 1997, for 1994 and later model years at the same time they are made available to dealerships.

(14) For all vehicles, reprogramming need not be provided for any recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

(15) If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may receive a waiver from the requirements of paragraph (g)(13) of this section for model years 1994 through 1996.

(16) Manufacturers shall either offer for sale at a competitive market price a reprogramming tool that interfaces with a substantial majority of generic portable computers or make available to aftermarket tool and equipment companies information that would enable them to manufacture such a tool. Any method adopted by a manufacturer by which reprogramming is made available to persons specified in paragraph (g)(1) of this section shall not impose a significant burden on such

providers beyond that experienced by dealerships.

(17) Manufacturers shall be responsible for ensuring that persons specified in paragraph (g)(1) of this section shall have access to reprogramming services at a reasonable cost and in a timely manner.

(18) Manufacturers shall provide persons specified in paragraph (g)(1) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued.

(19) Manufacturers shall either make available to aftermarket tool and equipment companies no later than the date of model introduction any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by persons specified in paragraph (g)(1) of this section to diagnose, service and repair emission-related parts, components and systems or manufacturers may sell their own diagnostic tools and equipment to persons specified in paragraph (g)(1) of this section if the price of such tools is reasonable.

(20) A manufacturer is subject to a penalty of up to $25,000 per day per violation for failure to make available the information required by this section.

[FR Doc. 95–18867 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 9F3818/R2153; FRL–4970–3]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) for seed treatment in or on the raw agricultural commodities barley grain, forage, hay, and straw at 0.05, 0.10, 0.10, 0.10 parts per million (ppm), respectively; oat grain, forage, hay, and straw at 0.05, 0.10, 0.10, and 0.10 ppm, respectively; and wheat grain, forage, hay, and straw at 0.05, 0.10, 0.10, 0.10 ppm, respectively. Miles, Inc. (formerly Mobay Corp., Agricultural Chemicals Division, now Bayer Corp.) submitted a petition pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective August 9, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9F3818/R2153], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. 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 any 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 document number [PP 9F3818/R2153]. 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: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6226; e-mail: welch.connie@.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 15, 1995 (60 FR 31465), which announced that Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division, now Bayer Corp.), P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 9F3818 to EPA requesting that the Administrator, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), establish a tolerance for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) for seed treatment in or on the raw agricultural commodities barley grain, forage, hay, and straw at 0.05, 0.10, 0.10, 0.10 ppm, respectively; oat grain, forage, hay, and straw at 0.05, 0.10, 0.10, and 0.10 ppm, respectively; and wheat grain, forage, hay, and straw at 0.05, 0.10, 0.10, and 0.10 ppm, respectively.

There were no comments received in response to the notice of filing.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 34.8 milligrams per kilogram of body weight per day (mg/kg bw/day) (400 ppm) and a lowest-effect-level (LEL) of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm), and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

2. A 90-day dog feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

3. A 1-year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and an LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1-year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

4. A 2-year rat chronic feeding study defined, a NOEL of 7.4 mg/kg bw/day (100 ppm) and a LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight

depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, and 1,000 ppm).

5. A rat oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical, and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

6. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption. A developmental NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day were based on increased postimplantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

7. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and an LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver. A developmental NOEL of 10 mg/kg bw/day and an LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

8. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and a LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bw/day, the highest dose tested (HDT).

9. A two-generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and a LEL of 50 mg/kg bw/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) were based on neonatal birth weight depression.

10. An Ames mutagenesis study in *Salmonella* that showed no mutagenicity with or without metabolic activation.

11. A micronucleus mutagenesis assay study in mice that showed no genotoxicity.

12. A sister chromatid exchange mutagenesis study using CHO cells that was negative at dose levels 4 to 30 *u*g/mL without activation or 15 to 120 *u*g/mL with activation.

13. An unscheduled DNA synthesis (UDS) study that was negative for UDS in rat hepatocytes.

Additionally, a mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the Maximum Tolerated Dose (MTD) was not reached in this study, the study was classified as supplementary. A followup mouse study at higher doses (0, 500, 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and followup studies, together with supplementary data submitted by Miles, Inc., were classified as core minimum.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's ''Guidelines for Carcinogen Risk Assessment'' published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible carcinogen (Group C) rather than a probable carcinogen (Group B) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the HDT, and the structural correlation with at least six other related triazole pesticides that produce liver tumors.

The Reference Dose (RfD) is established at 0.01 mg/kg of body weight (bwt)/day, based on a no-observed-effect level (NOEL) of 1.00 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is based on a 1-year dog feeding study that demonstrated lenticular and corneal opacity and hepatic toxicity as an endpoint effect. A chronic exposure analysis was performed using tolerance level residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. The Theoretical Maximum Residue Contribution (TMRC) from the current action is estimated at 0.000078 mg/kg bwt/day and utilizes 0.78% of the RfD for the general population of the 48 States. The TMRC for the most highly exposed subgroup, nonnursing infants (less than 1 year old), is estimated at 0.000097 mg/kg/day and utilizes less than 1% of the RfD.

The nature of the residue in barley, oats, and wheat is adequately understood. An adequate analytical method using high-performance liquid chromatography is available for enforcement purposes.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Tolerances for tebuconazole in or on animal commodities are not currently required.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance 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 to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed 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 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, [PP 9F3818/R2153] (including 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 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 Hwy., Arlington, VA.

Written objections and hearing requests, identified by the document control number, [PP 9F3818/R2153], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

A copy of electronic objections and hearing requests may be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, 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, October 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 28, 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. In § 180.474, by revising the table therein, to read as follows:

§ 180.474 Tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol); tolerances for residues.

* * * * *

Commodity	Parts per million
Bananas	0.05
Barley, forage	0.10
Barley, grain	0.05
Barley, hay	0.10
Barley, straw	0.10
Oat, forage	0.10
Oat, grain	0.05
Oat, hay	0.10
Oat, straw	0.10
Peanuts	0.1
Peanut, hulls	4.0
Wheat, forage	0.10
Wheat, grain	0.05
Wheat, hay	0.10
Wheat, straw	0.10

[FR Doc. 95–19528 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0F3876/R2155; FRL–4967–8]

RIN 2070–AB78

Myclobutanil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide myclobutanil and a metabolite in or on the raw agricultural commodities almond nutmeat at 0.1 part per million (ppm) and almond hulls at 2.0 ppm, and increases the tolerances established for milk to 0.2 ppm and meat to 0.1 ppm, meat byproducts (except liver) to 0.2 ppm and liver to 1.0 ppm for cattle, goats, hogs, horses, and sheep. Rohm & Haas Co. requested in a petition submitted pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) the regulation to establish a maximum permissible level for residues of myclobutanil on almond nuts and almond hulls. EPA initiated the increased tolerances for milk, meat, meat byproducts, and liver based on the additional residues in or on almond nuts and almond hulls.

EFFECTIVE DATE: This regulation became effective on July 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0F3876/R2155], may be submitted to: Hearing

Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. 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 Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the 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, [PP 0F3876/R2155]. 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: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 16, 1991 (56 FR 1631), which announced that the Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted pesticide petition (PP) 0F3876 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), establish tolerances for the combined residues of the fungicide myclobutanil, [*alpha*-butyl-*alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile], and both the free and bound forms of its metabolite, *alpha*-(3-hydroxybutyl)-*alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile, in or on the raw agricultural commodities almond nuts at 0.1 ppm and almond hulls at 2.0 ppm.

There were no comments received in response to the notice of filing of the petition.

The data submitted in support of the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the tolerances include the following:

1. A 1-year dog feeding study using doses of 0, 10, 100, 400, and 1,600 ppm (equivalent to doses of 0, 0.34, 3.09, 14.28, and 54.22 milligrams/kilogram (mg/kg) body weight (bwt)/day in males and 0, 0.40, 3.83, 15.68, and 58.20 mg/kg bwt/day in females). The no-observed-effect (NOEL) is 100 ppm (3.09 mg/kg/day for males and 3.83 mg/kg/day for females) based upon hepatocellular hypertrophy, increases in liver weights, ''ballooned'' hepatocytes, and increases in alkaline phosphatase, SGPT and GGT, and possible slight hematological effects. The lowest-observed-effect level (LOEL) is 400 ppm (14.28 mg/kg/day for males and 15.68 mg/kg/day for females).

2. A 2-year chronic feeding/carcinogenicity study in rats using dietary concentrations of 0, 50, 200, and 800 ppm (equivalent to doses of 0, 2.49, 9.84 and 39.21 mg/kg bwt/day in males and 0, 3.23, 12.86, and 52.34 mg/kg bwt/day in females). The NOEL for chronic effects other than carcinogenicity is 2.49 mg/kg/day, and the LOEL is 9.84 mg/kg/day based on testicular atrophy in males. No other significant effects were observed in either sex at the stated dose levels over a 2-year period. In addition, no carcinogenic effects were observed in either sex at any of the dose levels tested. Based on the toxicological findings, the maximum tolerated dose (MTD) selected for testing (based on the 90-day feeding study) was not high enough to fully characterize the compound's carcinogenic potential.

The study was repeated at dose levels of 0 and 2,500 ppm (125 mg/kg/day) in the diet, which approaches the MTD, in order to characterize the carcinogenic potential. At 2,500 ppm, the observed effects included: decreases in absolute and relative testes weights, increases in the incidences of centrilobular to midzonal hepatocellular enlargement and vacuolation in the liver of both sexes, increases in bilateral aspermatogenesis in the testes, increases in the incidence of hypospermia and cellular debris in the epididymides, and increased incidence of arteritis/periarteritis in the testes. In this study, a NOEL could not be established because there were effects at the only dose level tested. Myclobutanil was not oncogenic when tested under the conditions of the study.

3. A 2-year carcinogenicity study in mice using dietary concentrations of 0, 20, 100, and 500 ppm (equivalent to 0, 2.7, 13.7, and 70.2 mg/kg/day in males and 0, 3.2, 16.5 and, 85.2 mg/kg/day in females). The NOEL for chronic effects other than carcinogenicity was 20 ppm (2.7 mg/kg/day in males and 3.2 mg/kg/day in females). The LOEL was 100 ppm (13.7 mg/kg/day in males and 16.5 mg/kg/day in females) based on a slight increase in liver mixed-function oxidase (MFO). Microscopic changes in the liver were evident in both sexes at 500 ppm (70.2 mg/kg/day in males and 85.2 mg/kg/day in females). There were no carcinogenic effects in either sex at any dose level tested. The highest selected dose was satisfactory for evaluating carcinogenic potential in male mice, but was lower than the MTD in females.

The above study was reevaluated since the increase in the MFO at 3 months in females was not considered to be significant enough to establish an LOEL. The LOEL was raised to 500 ppm (70.2 mg/kg/day for males and 85.2 mg/kg/day for females) based on increases in MFO in both sexes, increases in SGPT values in females and in absolute and relative liver weights in both sexes at 3 months, increased incidences and severity of centrilobular hepatocytic hypertrophy, Kupffer cell pigmentation, periportal punctate vacuolation and individual hepatocellular necrosis in males, and increased incidences of focal hepatocellular alteration and multifocal hepatocellular vacuolation in both sexes. The NOEL has been raised to 100 ppm (13.7 mg/kg/day for males and 16.5 mg/kg/day for females).

An 18-month study was conducted with female mice using a dose level of 2,000 ppm, which approaches the MTD, to evaluate the carcinogenic potential in female mice. In this study, a NOEL could not be established because there were effects at the only dose level tested. These effects included: decreases in body weight and body weight gain, increases in liver weights, hepatocellular hypertrophy, hepatocellular vacuolation, necrosis of single hypertrophied hepatocytes, yellow-brown pigment in the Kupffer cells and cytoplasmic eosinophilia and hypertrophy of the cells of the zona

fasciculata area of the adrenal cortex. Myclobutanil was not oncogenic when tested under the conditions of the study.

4. A rabbit developmental toxicity study at dosages of 0, 20, 60, and 200 mg/kg/day administered by oral gavage. The LOEL for maternal toxicity was 200 mg/kg/day, and the maternal toxicity NOEL was 60 mg/kg/day based on reduced body weight and body weight gain during the dosing period, clinical signs of toxicity, and possibly abortions. THE LOEL for developmental toxicity is 200 mg/kg/day and NOEL for developmental toxicity is 60 mg/kg/day based on increases in resorptions, decreases in litter size, and a decrease in the viability index.

5. A developmental toxicity study on rats treated with dosages of 0, 31.26, 93.77, 312.58 and 468.87 mg/kg/day. The maternal toxicity LOEL was 312.6 mg/kg/day and maternal toxicity NOEL was 93.8 mg/kg/day based on clinical signs of toxicity. The developmental toxicity LOEL was 312.6 mg/kg/day and the developmental toxicity NOEL was 93.8 mg/kg/day based on increased incidences of 14th rudimentary and 7th cervical ribs.

6. A two-generation rat reproduction study with dosage rates of 0, 50, 200, and 1,000 ppm (equivalent to 0, 2.5, 10 and 50 mg/kg/day). The parental (systemic) toxicity LOEL was 200 ppm (10 mg/kg/day) and the parental (systemic) toxicity NOEL was 50 ppm (2.5 mg/kg/day) based on hepatocellular hypertrophy and increases in liver weights. The reproductive toxicity LOEL was 1,000 ppm (50 mg/kg/day) and reproductive toxicity NOEL was 200 ppm (10 mg/kg/day) based on an increased incidence in the number of stillborns and atrophy of the testes and prostate. The developmental toxicity LOEL was 1,000 ppm (50 mg/kg/day) and the developmental toxicity NOEL was 200 ppm (10 mg/kg/day) based on a decrease in pup body weight gain during lactation.

7. A reverse mutation assay (Ames), point mutation in CHO/HGPRT cells, in vitro and in vivo (mouse) cytogenetic assays, unscheduled DNA synthesis and a dominant-lethal study in rats, all of which were negative for mutagenic effects.

The Reference Dose (RfD) based on the 2-year rat chronic feeding study (NOEL of 2.49 mg/kg bwt/day) and using a hundredfold uncertainty factor, is calculated to be 0.025 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from previously established tolerances and tolerances established here is 0.004153 mg/kg bwt/day for the general population and utilizes 16% of the RfD. The percentage of the RfD for the most highly exposed subgroup, nonnursing infants (less than 1 year old), is 98%. The TMRC was calculated based on the assumption that myclobutanil occurs at the maximum legal limit in all of the dietary commodities for which tolerances are proposed. Even with this probable large overestimate of exposure/risk, the TMRC is below the RfD for the population as a whole and for each of the 22 subgroups considered. Dietary risk from exposure to myclobutanil on almond nuts and hulls, including increases in the meat and milk tolerances because almond hulls are a feed item, contributes 7% of the RfD for the U.S. population and 40% of the RfD for the nonnursing infants less than l-year old. Considering that the risk estimates are based on tolerance levels, the actual risk is probably lower.

The nature of the residues is adequately understood and adequate analytical methods, gas liquid chromatography using nitrogen/phosphorus and electron-capture detectors, are available for enforcement. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703)-305-5937.

There are currently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below. By way of public reminder, this notice also reiterates the registrant's responsibility under section 6(a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by these pesticides.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed 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 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 issues(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 [PP 0F3876/R2155] (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 Rm. 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written objections and hearing requests, identified by the document control number [PP 0F3876/R2155], 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 objection 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, October 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 27, 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. In § 180.443, by amending paragraphs (a), (b), and (c) by revising the tables therein, to read as follows:

§ 180.443 Myclobutanil; tolerances for residues,

(a) * * *

Commodity	Parts per million
Almond hulls	2.0
Almond nutmeat	0.1
Apples	0.5
Cherries (sweet and sour)	5.0
Cotton seed	0.02
Grapes	1.0
Stone fruits (except cherries)	2.0

(b) * * *

Commodity	Parts per million
Milk	0.2

(c) * * *

Commodity	Parts per million
Cattle, fat	0.05
Cattle, liver	1.0
Cattle, meat	0.1
Cattle, mbyp (except liver)	0.2
Eggs	0.02
Goats, fat	0.05
Goats, liver	1.0
Goats, meat	0.1
Goats, mbyp (except liver)	0.2
Hogs, fat	0.05
Hogs, liver	1.0
Hogs, meat	0.1
Hogs, mbyp (except liver)	0.2
Horses, fat	0.05
Horses, liver	1.0
Horses, meat	0.1
Horses, mbyp (except liver)	0.2
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, mbyp	0.02
Sheep, fat	0.05
Sheep, liver	1.0
Sheep, meat	0.1
Sheep, mbyp (except liver)	0.2

[FR Doc. 95–19530 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 185

[OPP–300391A; FRL–4967–5]

RIN 2070–AB78

Clethodim; Pesticide Tolerance and Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an import tolerance and a food additive regulation, respectively, for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes and the food additive commodities potato flakes and granules. EPA is issuing this rule on its own initiative pursuant to a project to harmonize certain tolerances and food additive regulations with those established by the Canadian government.

EFFECTIVE DATE: This regulation becomes effective August 9, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300391A], 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-300391A]. 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: Joanne Miller, Product Manager (PM) 23, 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)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 23, 1995 (60 FR 32643), EPA issued a proposed rule giving notice that on its own inititative and pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a, it was issuing a proposal to amend 40 CFR 180.458 by establishing an import tolerance for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes at 0.5 part per million (ppm); and to add new § 185.1075 (40 CFR 185.1075) by establishing a food additive regulation for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the food additive commodity potato granules and potato flakes at 1 part per million (ppm). Clethodim residues on potatoes grown in Canada and imported into the United States have been identified as a Canadian-United States Trade Agreement (CUSTA) irritant. EPA has reviewed Canadian crop field trial residue data and determined that they are adequate to support an import tolerance.

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 will protect the public health. Therefore, the tolerance and food additive regulation 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 [OPP-300391A] (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-300391A], 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 180 and 185

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

Dated: July 27, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 185 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. By amending § 180.458 in the table therein by adding and alphabetically inserting the commodity potatoes, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Potatoes	0.5
* * * * *	

PART 185—[AMENDED]

2. In part 185:

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

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

b. By adding new § 185.1075, to read as follows:

§ 185.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one).

Food additive tolerances are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following processed foods:

Food	Parts per million
Potato flakes[1]	1.0
Potato granules[1]	1.0

[1]There are no U.S. registrations as of August 9, 1995.

[FR Doc. 95–19529 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 11

Removal of Committee Management

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule; removal of interim rule.

SUMMARY: The Department of Health and Human Services is amending the Code of Federal Regulations (CFR) by removing unnecessary and obsolete regulations. In accordance with the President's regulatory reinvention initiative the Department has determined that the regulations are no longer needed.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen W. Washington, Department Committee Management Officer, at (202) 690–8113.

SUPPLEMENTARY INFORMATION: In a memorandum dated March 4, 1995, subject ''Regulatory Reinvention Initiative'' the President directed heads of departments and agencies to focus on four steps which are an integral part of the ongoing Regulatory Reform Initiative. The Department has reviewed this regulation and identified it for removal by this document as obsolete and unnecessary. The regulation being removed is no longer necessary to administer the program.

Assessment of Direct Effect

The Department has determined that removal of the regulations will have no substantial direct effect.

List of Subjects in 45 CFR Part 11

Committee management.

Accordingly, under the authority of 5 U.S.C. Sec. 301, subtitle A of title 45 of the Code of Federal Regulations is amended by removing part 11.

Dated: August 3, 1995.

Eugene Kinlow,

Deputy Assistant Secretary for Personnel Administration.

[FR Doc. 95–19643 Filed 8–8–95; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

45 CFR Part 1355

RIN 0979–AB58

Title IV–B and Title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption

AGENCY: Administration on Children, Youth and Families (ACYF) Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is adding a financial data element to the Appendices of the regulation for data collection for foster care and adoption. In addition, we are adding the Office of Management and Budget's (OMB) control number for the data collection section of the regulation. All States that administer State plans under title IV–B and IV–E of the Social Security Act are subject to this addition to the Appendices of the regulation.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel H. Lewis, Deputy Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families, (202) 205–8618.

SUPPLEMENTARY INFORMATION:

I. Background

The Administration on Children, Youth and Families published a final rule on December 22, 1993 (58 FR 67912) that implements the requirements of section 479 of the Social Security Act. This section requires the Secretary to publish regulations that implement a system for the collection of adoption and foster care data in the United States. All States that administer State plans under titles IV–B and IV–E of the Society Security Act are subject to this regulation.

II. General

This regulation, 45 CFR part 1355, generally known as the Adoption and Foster Care Analysis and Reporting System (AFCARS), is designed to collect uniform, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement and care. The collection of adoption and foster care data is mandated by section 479 of the Social Security Act. In order to adequately meet the intent of the law and the requirements of this regulation, the States' data collection systems for AFCARS must be computerized.

The Department of Health and Human Services (DHHS) will use this information to respond to Congressional requests for current data on children in foster care or who have been adopted, and to respond to questions and requests from other Departments and agencies, including the General Accounting Office, the Office of Management and Budget (OMB), the DHHS Office of Inspector General, national advocacy organizations, States and other interested organizations.

III. Program Description

Title IV–B, Subpart 1, of the Social Security Act (the Act), the Child Welfare Services program, is a formula grant program. Each State receives grants during the year representing its allotment. The grants provide States with Federal support for a wide variety of State child welfare services including: Preplacement preventive services to strengthen families and avoid placement of children; services to prevent abuse and neglect; foster care and adoption services; and certain protections for children in foster care. Title IV–B, Subpart 2, Family Preservation and Support Services, is an entitlement program which encourages and enables each State to develop and establish or expand, and to operate a program of family preservation services and community based family support services. Funds under both subparts of title IV–B can be used to provide services regardless of the income of the families and children who are in need of such services.

Title IV–E of the Act is an entitlement program which authorizes Federal financial participation (FFP) in the costs of State foster care maintenance and adoption assistance payments. Federal matching of State foster care maintenance payments is available for children in foster care who meet certain eligibility criteria that are based, in part, on the child's eligibility under the Aid to Families With Dependent Children (AFDC) program. The adotpion assistance program under title IV–E is designed to assist States in placing ''special needs'' children with adoptive families through the provision of an adoption assistance payment. In order to be eligible for this program, a child must be eligible for AFDC, title IV–E foster care or Supplemental Security Income for the Blind and Disabled (SSI) and must meet the statutory definition of ''a child with special needs'' according to section 473(c) of the Act. Title IV–E of the Act is the major single source of Federal support for foster care and adoption assistance payments. However, over half the funds for adoption and foster care and half the children are supported by State and local governments and private sector.

According to State agency information gathered by the American Public Welfare Association (APWA) under the Voluntary Cooperative Information System (VICS), there were approximately 444,000 children in foster care on the last day of 1993.

In 1990, the most recent year for which data have been analyzed, approximately 407,000 children were in foster care. Of these children, approximately 69,000 had a plan for adoption and approximately 20,000 had parental rights terminated or relinquished and were waiting for adoptive homes.

IV. Legislation Establishing New Data Collection Requirements

Section 9943 of the Omnibus Budget Reconciliation Act (OBRA) of 1986 (Pub. L. 99–509) amended title IV–E of the Social Security Act by adding section 479. This section directs the Secretary to promulgate regulations for the implementation of a system to collect data relating to adoption and foster care in the United States. On December 22, 1993, the Department published the AFCARS final rule which requires that State agencies administering or supervising the administration of titles IV–B and IV–E of the Act implement data collection systems and report semi-annually on data elements set forth in the final rule.

Page 67917 of the preamble to the AFCARS final rule, announced the Department's intention to add a foster care financial data element to the appendices of the AFCARS regulation. This data element will indicate the total monthly amount of foster care benefit paid on behalf of each child in foster care. At that time the Department urged interested parties to comment on this intention so that expressed concerns and comments could be taken into account in the development of the data element. Two letters (both from State agencies) were received in response to the final rule's request for comments on this matter.

States should begin submitting the monthly foster care payment information with their submittal for the fourth AFCARS reporting period, April 1, 1996–September 30, 1996.

V. Discussion of Comments and the Development's Response Part 1355—General

Section 1355.40 Foster care and adoption data collection. The letters from the State agencies related primarily to the usefulness of the financial information and how States are to report it.

Comment: One comment was that the request for such information appears duplicative in light of the information submitted by the States in accordance with the ACYF–PI–92–11, issued on August 21, 1992.

Response: Although the data is similar, the Program Instruction requires States submittal of quarterly financial data with a submitted monthly average number of children for the quarter. The AFCARS financial data element will, for the first time, allow for the analysis of a payment per child in foster care, unlike the current average dollars per child based on an average monthly number of children. The result is the opportunity to develop demographic profiles of children and the specific payments each receives. This information can result in more comprehensive cost projections for children meeting particular demographic profiles during their foster care episodes.

Comment: Given that AFCARS' reporting frequency is semi-annual, how would monthly amounts be reflected?

Response: Monthly amounts would be reflected in the most recent full monthly payment made on behalf of the child during the report period.

Comment: Why is this information necessary on a per child basis, since the information can be calculated using the Federal Medical Assistance Percentage (FMAP) rate?

Response: The information is being requested on title IV–E and non IV–E children; therefore the FMAP is not always applicable. The information on a per child basis can be useful in a number of ways, such as:

- Examining costs per placement setting type; and
- Examining costs per child based on a child's demographic profile, more specifically, number of disabilities versus costs, age vs. costs, etc.

The understanding of costs as identified above are necessary for accurate cost projections.

Comment: Did you intend that this question would include the administrative and training dollars expended?

Response: No, only the maintenance dollars.

Comment: Is the data necessary for non-title IV–E children?

Response: Yes, all children as defined by the AFCARS reporting population.

Comment: For which classes of title IV–E children will the information be required?

Response: The information is required for all children in foster care (title IV–

E and non IV–E) which meet the AFCARS reporting population definition.

Purpose of the Amendment to § 1355.40

Page 67924 of the preamble of the AFCARS final rule in the ''Paperwork Reduction Act'' section, identifies the need for and approval of a control number by OMB. Paragraphs (a) and (b) of 45 CFR 1355.40 of the regulation, contain information collection requirements for which an OMB approval number is required. In addition, OMB requires the approval number to be displayed in the regulation. OMB approved and assigned a number to the information collection requirements in § 1355.40 on August 22, 1994. This amendment adds that number at the end of the section.

VI. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule which adds a financial data element to the appendices and additionally publishes the required OMB control number is consistent with these priorities and principles. As assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule, with a ''significant economic impact on a substantial number of small entities'' an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of this rule is on the States which are not ''small entities'' within the meaning of the Act. For this reason, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. The addition of a financial data element in several of the Appendices and the OMB control number will not make an appreciable change in the burden to the States. Therefore no submission to OMB is required.

List of Subjects in 45 CFR CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions, Grant Programs—Social Programs.

(Catalog of Federal Domestic Assistance Program Nos. 93.658, Foster Care Maintenance, 93.659, Adoption Assistance and 93.645, Child Welfare Services-State Grants)

Dated: July 18, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR part 1355 is amended as follows:

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 1302.

2. Section 1355.40 is amended by adding the OMB Control Number at the end of the section to read as follows:

§ 1355.40 Foster care and adoption data collection.

* * * * *

(Information collection requirements contained in paragraphs (a) and (b) of this section were approved on August 22, 1994, by the Office of Management and Budget under Control Number 0980–0267).

Appendix A—[Amended]

3. Appendix A to Part 1355, Sections I and II are amended by adding elements XII to each section to read as follows:

Section I—Foster Care Data Elements

* * * * *

XIII. Amount of the monthly foster care payment (regardless of sources).

_____.

* * * * *

Section II—Definition of and Instructions for Foster Care Data Elements

* * * * *

XII. Amount of the monthly foster care payment (regardless of sources)—Enter the monthly payment paid on behalf of the child regardless of source (i.e., Federal, State, county, municipality, tribal, and private payments). If title IV–E is paid on behalf of the child the amount indicated should be the total computable amount. If the payment made on behalf of the child is not the same each month, indicate the amount of the last full monthly payment made during the reporting period. If no monthly payment has been made during the period, enter all zeros.

Appendix C—[Amended]

4. In Appendix C to part 1355, under Section number 4., paragraph (3) is revised to read as follows:

4. Personal Computer to Personal Computer * * *

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 150 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

* * * * *

Appendix D—[Amended]

5. In Appendix D to part 1355, Section A, Foster Care, subsection 1., is amended by revising paragraph a. and adding to paragraph c. the following elements at the end of the table and revising the number of ''Total Characters'' to read as follows:

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 66 data elements.

* * * * *

c. * * *

Element No.	Appendix A data element	Data element description	No. of numeric characters
*	*	*	*
66	XII	Amount of monthly foster care payment (regardless of source).	5
Total characters			150

* * * * *

Appendix E—[Amended]

6. In Appendix E to part 1355, in Section A., subsection 3., paragraph b.(2) is amended by adding the following elements to the end of the table to read as follows:

3. Missing Data Standards

* * * * *

b. * * *

(2) Less Than Ten Percent Missing Data

* * *

Element No.	Element description
*	*
66	Amount of monthly foster care payment (regardless of source).

* * * * *

[FR Doc. 95–19679 Filed 8–8–95; 8:45 am]

BILLING CODE 4184–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853 and 1870

[NASA FAR Supplement Directive 89–19]

RIN 2700–AB84

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters, such as the NASA FAR Supplement rewrite and reassignment of duties in the Office of Procurement.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 512–1800. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Rewrite of NASA FAR Supplement

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making other changes in order to reduce and simplify the regulation. This rule is part of the effort to simplify NASA's regulations.

Summary of Changes

Part 1801—Federal Acquisition Regulations System—Unnecessary words and sections in subparts 1801.1 to 1801.4 are eliminated. Section 1831.101 on deviations from cost principles is moved to 1804.471(c)

Part 1810—Specifications, Standards, and Other Purchase Descriptions—Unnecessary words and duplicative policy are removed.

Part 1814—Sealed Bidding—Unnecessary words, sentences and section are eliminated.

Subpart 1815.1—General Requirements for Negotiation—Subpart is eliminated because it is unnecessary guidance.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations—Unnecessary paragraphs, sentence and words are eliminated.

Subpart 1815.5—Unsolicited Proposals—Section 1815.502 is revised to emphasize that NASA encourages unsolicited proposals that are unique and innovative. Sections 1815.503, 1815.504–70, and 1815.506 are revised to remove unnecessary words.

Subpart 1815.6—Source Selection—Unnecessary paragraphs, sentence and words are eliminated.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes—Unnecessary words are eliminated.

Part 1827—Patents, Data, and Copyrights—Unnecessary words are removed.

Part 1833—Protests, Disputes, and Appeals—Paragraphs 1833.104(a) and (d) are revised in order to correct references to FAR sections.

Part 1835—Research and Development Contracting—Unnecessary words are removed. The following paragraphs and sections are removed because they are covered elsewhere: 1835.003(b) (covered by FAR 35.003(b)), 1835.003–70 (covered by 1835.070(a) and 1852.235–70), 1835.003–71(a) (covered by 1827.373(b)), 1835.003–71(b) (covered by 1835.070(c)), and 1835.071 (covered by 1846.270(a)).

Part 1837—Service Contracting—Section 1837.000 is eliminated because it is unnecessary.

Part 1839—Acquisition of Information Resources—Unnecessary words are removed. Revises thresholds based on current delegations from GSA.

Part 1846—Quality Assurance—Unnecessary words are removed. Section 1846.670–2(a) and paragraph (a) of the clause at 1852.246–72 are revised to clarify that the clause applies only to deliveries to the Government.

Part 1849—Termination—Dollar thresholds in 1849.111–71 are revised in order to eliminate the requirement for a Board to review and approve a Termination Contracting Officer's actions involving amounts up to $1 million and, under complete terminations, fee up to $100,000. 1849.102–70, 1849.111–72, and 1849.111–74 are clarified. In order to conform to FAR 49.110(a), detailed instructions in 1849.603–70(d)(1) and (2) are replaced with references to FAR 15.808(a).

Part 1852—Solicitation Provisions and Contract Clauses—A clause is revised as discussed under part 1846.

Part 1853—Forms—Unnecessary words in 1853.101, 1853.103, 1853.104, and 1853.105 are eliminated. The requirement in 1853.105 to obtain approval from NASA Headquarters prior to using computer generated forms is eliminated. Sections 1853.204, 1853.216–70 and 1853.242–70 through 1853.242–72 are revised to eliminate redundant words. A reference in 1853.249(b) is corrected.

Subpart 1870.1—NASA Acquisition of Investigations System—Unnecessary words are removed.

Subpart 1870.2—NASA Research Announcement System—Unnecessary words are removed. In paragraph 16 about canceling NRA's, the reference to the Commerce Business Daily (CBD) is removed because the CBD does not publish cancellation notices.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853 and 1870

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853 and 1870 are amended as follows.

1. The authority citation for 48 CFR parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1801.000 is revised to read as follows:

1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement.

Subpart 1801.1—Purpose, Authority, Issuance

1801.101 [Removed]

3. Section 1801.101 is removed.

4. Paragraphs (a) and (b) of section 1801.102 are revised to read as follows:

1801.102 Authority.

* * * * *

(a) The National Aeronautics and Space Act of 1958 (Pub. L. 85–568; 42 U.S.C. 2451 et seq.).

(b) 10 U.S.C. chapter 137.

* * * * *

5. Paragraph (a)(3) of section 1801.104–1 is revised to read as follows:

1801.104–1 Publication and code arrangement.

(a) * * *

(3) A separate loose-leaf edition.

* * * * *

6. Section 1801.104–2 is revised to read as follows:

1801.104–2 Arrangement of regulations.

(a) Unless otherwise stated, cross references are to parts or subdivisions of the regulations in this chapter.

(b) The regulations in this chapter may be referred to as the NASA FAR Supplement or the NFS.

(c) A NFS ''version'' is the basic loose-leaf edition NFS with all NFS Directive (NFSD) change pages filed up to and including the NFSD number that corresponds to the ''version'' number. For example, for the 1989 edition of the NFS, Version 89.3 consists of pages from NFSD 89–0 (basic NFS), with change pages filed from NFSD's 89–1, 89–2, and 89–3.

7. Section 1801.104–3 is revised to read as follows:

1801.104–3 Copies.

Subscriptions to the following publications may be obtained by writing to Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, or by calling (202) 512–1800. Telephone orders may be charged to Visa, Mastercard, or a GPO Deposit Account. A subscription consists of the basic edition, plus all changes issued for an indefinite period. The prices and periods of subscriptions are set by GPO.

NASA FAR SUPPLEMENT (NFS)
GPO Subscription (Subscript.) Stock No. 933–003–00000–1

FEDERAL ACQUISITION REGULATION (FAR)
GPO Subscript. Stock No. 922–006–00000–8 (Note: The FAR is not a NASA publication.)

Public libraries that possess title 48, Code of Federal Regulations (CFR) are also a source of information, but this source is updated only once each year.

8. Section 1801.104–370 is revised to read as follows:

1801.104–370 Internal dissemination.

The Office of Procurement, NASA Headquarters (Code HK), distributes the Federal Acquisition Regulation (FAR), Federal Acquisition Regulation Circulars (FAC), NASA FAR Supplement (NFS), NFS Directives (NFSD), Procurement Notices (PN), and Procurement Information Circulars (PIC) directly to NASA Headquarters offices and to installation distribution points. Mrs. Cynthia O'Bryant (202–358–1248) is the contact point for Headquarters personnel and the installation distribution points. NASA center personnel may be placed on the distribution list or may obtain extra copies by contacting the designated distribution point for their installation. (Do not order these documents on a NASA Form 2 from the Goddard Space Flight Center.)

9. Section 1801.105 is revised to read as follows:

1801.105 OMB approval under the Paperwork Reduction Act.

(a) *NASA FAR Supplement requirements.* The following OMB control numbers apply:

NASA FAR Supplement segment	OMB control No.
1815.406–70(b)(5)(iii)	2700–0082
1815.608–72	2700–0080
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1843	2700–0054
NF 533	2700–0003
NF 667	2700–0004
NF 1018	2700–0017

(b) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (a) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700–0086 (small purchases), 2700–0087 (solicitations that may result in bids or proposals not exceeding $500,000), 2700–0085 (solicitations that may result in bids or proposals exceeding $500,000), 2700–0088 (contracts not exceeding $500,000), and 2700–0089 (contracts not exceeding $500,000). These OMB control numbers, as applicable, shall be displayed in the upper right hand corner of the cover page of each solicitation/contract. Overprinting is authorized by 1853.104.

10. Subpart 1801.2 is revised to read as follows:

Subpart	1801.2 Administration
1801.270	Amendment of regulation.
1801.270–1	Revisions.
1801.270–2	Procurement notices.
1801.270–3	Effective date.
1801.270–4	Numbering.
1801.271	NASA procedures for FAR and NFS changes.
1801.272	Procurement information circulars.

Subpart 1801.2—Administration

1801.270 Amendment of regulation.

1801.270–1 Revisions.

The regulations in this chapter are amended by publishing amendments in the Federal Register and by issuing NFSD's containing loose-leaf replacement pages revising various segments of it (also see 1801.270–2). Each replacement page bears the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

1801.270–2 Procurement notices.

(a) The regulations in this chapter are amended by publishing amendments in the Federal Register and by issuing Procurement Notices (PN's) when it is necessary or advisable to promulgate as rapidly as possible selected material revising this regulation in advance of an NFSD.

(b) Unless otherwise indicated, each PN remains in effect until the effective date of the subsequent NFSD incorporating the PN or until specifically canceled.

1801.270–3 Effective date.

(a) Compliance with a revision to the regulations in this chapter shall be in accordance with the NFSD or PN containing the revision. Procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses.

(b) Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the procurement.

1801.270–4 Numbering.

NFSD's and PN's are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NASA FAR Supplement.

1801.271 NASA procedures for FAR and NFS changes.

(a) Informal suggestions for improving the regulations in this chapter, including correction of errors, should be directed to the Contract Management Division (Code HK).

(b)(1) Formal requests for changes to the FAR or the NFS should be written and contain,

(i) A description of the problem the suggested revision is designed to cure,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to the Associate Administrator for Procurement (Code HK). Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

1801.272 Procurement Information Circulars.

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. The Contract Management Division (Code HK) is responsible for issuing PIC's.

(b) PIC's are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year. To ensure periodic review, PIC's normally will automatically expire on December 31 of the year of issuance.

Subpart 1801.3—Agency Acquisition Regulations

11. Paragraphs (b) introductory text, (b)(1) introductory text, and (b)(2)(i) of section 1801.301 are revised to read as follows:

1801.301 Policy.

* * * * *

(b) All procurement policies, regulations, procedures, and forms requiring publication for public comment in accordance with 41 U.S.C. 418b. This statute requires publication where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors.

(1) The statute does not define ''significant effect beyond the internal operating procedures'' or ''significant cost or administrative impact.'' Examples of policies or procedures that fall in either of these categories are given in paragraphs (b)(1) (i) through (iv) of this section.

* * * * *

(2) * * *

(i) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

* * * * *

12. Section 1801.303 is revised to read as follows:

1801.303 Publication and codification.

Part, subpart, and section numbers 70 through 89 are reserved for NASA FAR Supplement use.

Subpart 1801.4—Deviation from the FAR

13. Section 1801.400 is revised to read as follows:

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the NASA FAR Supplement and the FAR.

1801.401, 1801.402, 1801.403, 1801.404, 1801.405, 1801.470 [Removed]

14. Sections 1801.401, 1801.402, 1801.403, 1801.404, 1801.405, and 1801.470 are removed.

1801.471 [Amended]

15. and 16. In section 1801.471, paragraphs (a) and (b)(2) are revised and paragraph (c) is added to read as follows:

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the FAR or the regulations in this chapter shall be:

(1) Submitted to the Director, Program Operations Division, Office of Procurement, NASA Headquarters (Code HS); and

(2) Signed by the procurement officer.

(b) * * *

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

* * * * *

(c) Requests for individual deviations from FAR cost principles under FAR 31.101 should provide the following information:

(1) The name and phone number of the contracting officer;

(2) A copy of the contractor's request for cost allowance;

(3) The rationale for granting the deviation and supporting information, including the benefit to the Government;

(4) The dollar amount involved; and

(5) Any other information considered relevant to the request.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1803.104–11 [Amended]

17. In paragraphs (b) and (c) of section 1803.104–11, ''(Attn: Code HP)'' is revised to read ''(Attn: Code HS)''.

1803.303 [Amended]

18. In paragraph (a) introductory text of section 1803.303, ''(Code HP)'' is revised to read ''(Code HS)''.

19. In paragraph (c) of section 1803.303, ''(Code HP)'' is revised to read ''(Code HS)'', and ''Code HP'' is revised to read ''Code HS''.

1803.806 [Amended]

20. In section 1803.806, ''(Code HP)'' is revised to read ''(Code HK)''.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1808.6—Acquisition from Federal Prison Industries, Inc.

1808.605 [Amended]

21. In paragraph (c) of section 1808.605, ''(Code HP)'' is revised to read ''(Code HS)''.

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

1809.104–70 [Removed]

22. Section 1809.104–70 is removed.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.404 [Amended]

23. In paragraphs (a) and (c) of section 1809.404, ''Code HP'' is revised to read ''Code HS'' in each occurrence.

1809.405 [Amended]

24. In section 1809.405, ''(Code HP)'' is revised to read ''(Code HS)''.

1809.405–1 [Amended]

25. In paragraph (b) of section 1809.405–1, ''(Code HP)'' is revised to read ''(Code HS)''.

1809.405–2 [Amended]

26. In section 1809.405–2, ''(Code HP)'' is revised to read ''(Code HS)''.

1809.406–3 [Amended]

27. In section 1809.406–3, ''(Code HP)'' is revised to read ''(Code HS)''.

1809.407–3 [Amended]

28. In section 1809.407–3, ''(Code HP)'' is revised to read ''(Code HS)''.

1809.408 [Amended]

29. In paragraph (d) of section 1809.408, ''(Attn: Code HP)'' is revised to read ''(Attn: Code HS)''.

30. In paragraph (e) of section 1809.408, ''(Code HP)'' is revised to read ''(Code HS)''.

1809.470–1 [Amended]

31. In the introductory text of section 1809.470–1, ''(Code HP)'' is revised to read ''(Code HS)''.

1809.470–3 [Amended]

32. In section 1809.470–3, ''(Code HP)'' is revised to read ''(Code HS)''.

33. Part 1810 is revised to read as follows:

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1810.001 Definitions.
1810.002 Policy.
1810.002–70 NASA policy.
1810.002–71 Performance-based contracting.
1810.004 Selecting specifications or descriptions for use.
1810.004–70 Additional requirements.
1810.004–71 Brand-name-or-equal purchase description.
1810.007 Deviations.
1810.008 Identification and availability of specifications.
1810.008–70 Brand-name-or-equal awards.
1810.011 Solicitation provisions and contract clauses.
1810.011–70 NASA solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

1810.001 Definitions.

Brand-name product means a commercial product described by brand name and make or model number or other nomenclature by which it is offered for sale to the public by the manufacturer, producer, or distributor.

1810.002 Policy.

Implementation of the Metric Conversion Act of 1975, as amended, and FAR 10.002(c), shall be in accordance with the policy section of NMI 8010.2, Use of the Metric System of Measurements in NASA Programs.

1810.002–70 NASA policy.

Whenever a specification is deemed inadequate, the contracting officer shall initiate action to recommend that the activity responsible for the specification amend or revise it to obviate the necessity for repeated departures from the specification.

1810.002–71 Performance-based contracting.

Use of performance-based specifications, where feasible, is the preferred method for establishing contract requirements. Requiring activities shall, to the maximum extent practicable, use performance-based specifications, purchase descriptions and statements of work to give contractors freedom to innovate and economize, and to hold contractors accountable for the end results.

1810.004 Selecting specifications or descriptions for use.

(a) As required by FAR 10.004(e), contracts will include appropriate preservation, packaging, packing, and marking requirements. The services of packaging technicians shall be used to—

(1) Develop preservation, packaging, packing, and marking requirements; and

(2) Assist in evaluating contractors' packaging, packing, and marking cost estimates or charges.

(b) Unrealistic preservation, packaging, packing, and marking requirements should be reported and changes recommended to the activity originating the requirement and to the contracting officer.

1810.004–70 Additional requirements.

Many specifications cover several grades or types and provide for options in methods of inspection. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection on which offers are to be based.

1810.004–71 Brand-name-or-equal purchase description.

(a) Purchase descriptions containing references to one or more brand-name products followed by ''or equal'' may be used only when authorized by FAR 10.004(b)(3) and in accordance with this part 1810 (see 1810.008–70, 1810.011, and 1852.210–70).

(b) ''Or equal'' should not be added if it is determined under paragraph (a) of this section that only a particular product meets the essential requirements of the Government (e.g., when the required supplies can be obtained only from one source (see FAR 6.302–1)).

(c) To the extent feasible, all acceptable brand-name products should be referenced. If ''brand-name-or-equal'' is used, offerors must be given the opportunity to offer products other than those referenced by brand name if those products will meet the needs of the Government in essentially the same manner.

(d) ''Brand-name-or-equal'' purchase descriptions should set forth the salient physical, functional, or other characteristics essential to the needs of the Government. Purchase descriptions should contain the following characteristics, in addition to those at FAR 10.004(b)(1), to the extent available, and include other information necessary to describe the item:

(1) Complete common generic identification of the item.

(2) Model, make, or catalog number for each brand-name product, and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand-name product referenced (and address if company is not well known).

(e) When it is needed to describe the item required, a commercial catalog

description, or pertinent extracts, may be used if the description is identified in the solicitation as being that of the manufacturer, producer, or distributor. The contracting officer shall ensure that a copy of any catalog referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) Offerors offering brand-name products shall not be required to furnish samples; however, solicitations may require the submission of samples from offerors proposing ''or equal'' products.

(g) Proposals offering products differing from brand-name products referenced in a ''brand-name-or-equal'' purchase description shall be considered for award if the contracting officer determines under the provision at 1852.210–70 that the offered products meet the salient characteristics required by the solicitation. Offers shall not be rejected because of minor differences in design, construction, or features that do not affect the suitability of the products for their intended use.

(h) Except as provided in paragraph (i)(1) of this section, when a ''brand-name-or-equal'' purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the offeror:

Offering:

_____

Manufacturer's Name

_____

Brand No.

(i)(1) Where components of an end item are described in the solicitation by a ''brand-name-or-equal'' purchase description and the contracting officer determines that applying the provision at 1852.210–70 to them would be impracticable, the requirements of paragraph (h) of this section shall not apply. In such cases, if the provision is included in the solicitation for other reasons, a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal does not apply to the following components:

(List the components to which the provision does not apply.)

(2) If the contracting officer determines that the provision at 1852.210–70 should apply only to certain components, the requirements of paragraph (h) of this section shall apply to them, and a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal applies to the following components:

(List the components to which the provision applies.)

(j) The policies and procedures prescribed in paragraphs (a) through (i) of this section apply to sealed-bid and negotiated procurements. If use of the provision is not practicable (as may be the case, for example, in exigency purchases), suppliers shall be informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that they are equal in all significant and material respects to the products referenced.

1810.007 Deviations.

If an exception or deviation from a Federal or military specification is required—

(a) The contracting officer shall, before issuing the solicitation, submit a fully documented and justified request for the deviation to the procurement officer; and

(b) The procurement officer shall comply with FAR 10.007(a).

1810.008 Identification and availability of specifications.

Each solicitation shall include the applicable specifications, standards, plans, drawings, and other pertinent documents, or shall state where they can be obtained or examined.

1810.008–70 Brand-name-or-equal awards.

Award documents shall identify or incorporate by reference an identification of the specific products the contractor is to furnish. This identification shall include any brand name and make or model number, descriptive material, and any modifications of brand-name products specified in the solicitation. Included in this requirement are those instances in which (a) the description of the end item contains ''brand-name-or-equal'' purchase descriptions of components or of accessories related to the end item and (b) the solicitation includes the provision at 1852.210–70 as applicable to such components or accessories (see 1810.004–70(i)).

1810.011 Solicitation provisions and contract clauses.

1810.011–70 NASA solicitation provisions and contract clauses.

(a) When a ''brand-name-or-equal'' purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.210–70, Brand Name or Equal.

(b) The contracting officer shall insert the provision at 1852.210–71, Descriptive Literature for Used Material, in solicitations containing FAR provision 52.210–6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property. Insert the information needed to make a determination that the items to be furnished can reasonably be expected to conform to the requirements of the solicitation.

(c) The contracting officer may insert a clause substantially as stated in 1852.210–72, Supplies and/or Services to be Furnished, in all solicitations and contracts to indicate the items to be delivered. Insert the item number, description of the supplies (see FAR 2.101 for definition) and/or services to be furnished, quantities to be furnished, unit and unit price (if applicable), and total dollar amount. The column headings may be modified for what is being acquired and the type of contract.

(d) The contracting officer shall insert a clause substantially as stated at 1852.210–75, Packaging and Marking, in solicitations and contracts where the packaging and marking requirements of NASA Handbook (NHB) 6000.1 and/or MIL–STD–2073–1 and MIL–STD–2073–2 are appropriate. Insert the applicable information for the particular procurement. Substitute Alternate I for paragraphs (a), (b), (c), and (d) of the basic clause if commercial packing and marking practices are to be used. Add Alternate II if space flight item(s) are to be delivered.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1812.3—Priorities and Allocations

1812.302 [Amended]

34. In section 1812.302(a), the phrase ''Headquarters Acquisition Liaison Division, Code HP'' is revised to read ''Headquarters Program Operations Division, Code HS''.

1812.303–70 [Amended]

35. In paragraph (e) of section 1812.303–70, the phrase ''The Headquarters Acquisition Liaison Division (Code HP)'' is revised to read ''The Headquarters Program Operations Division (Code HS)'', and at the end of the paragraph, ''Code HP'' is revised to read ''Code HS''.

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

1814.201–2 [Removed]

36. Section 1814.201–2 is removed.

37. and 38. In section 1814.201–5, paragraph (a) is revised, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b) to read as follows:

1814.201–5 Part IV—Representations and instructions.

Section M—Evaluation factors for award.

(a) The contracting officer shall state if award is to be made in the aggregate (all-or-none basis) or by specified groups of items.

(b) * * *

1814.201–670 [Amended]

39. In section 1814.201–670, paragraph (b), a period is added after ''1814.201–5(a)'', and the phrase ''and (b) and FAR 52.214–10 and 52.215–16.'' is removed.

40. In section 1814.201–670, paragraph (c), the last sentence is removed.

41. Paragraph (d) of section 1814.201–670 is revised to read as follows:

1814.201–670 NASA solicitation provisions.

* * * * *

(d) If a pre-bid conference is planned, the contracting officer shall insert the provision at 1852.215–77, Preproposal/Prebid Conference. See 1815.407–70(f).

Subpart 1814.4—Opening of Bids and Award of Contract

42. Section 1814.404–1 is revised to read as follows:

1814.404–1 Cancellation of invitations after opening.

(a) The authority to make the determination at FAR 14.404–1(c) is delegated to the contracting officer, except as provided in paragraph (b)(2) of this section.

(b) A determination under FAR 14.404–1(c)(6) or (7) that includes an authorization to complete the acquisition through negotiation (see FAR 14.404–1(e)(1)) shall be approved by the procurement officer, who shall obtain the advice of the Chief Counsel before making this determination.

1814.404–170 [Removed]

43. Section 1814.404–170 is removed.

44. Paragraph (a) of section 1814.406–3 is revised to read as follows:

1814.406–3 Other mistakes disclosed before award.

(a) The Associate Administrator for Procurement is authorized to permit the correction of bids under FAR 14.406–3(a) and (b) and the award of a contract under FAR 14.406–3(d). Procurement officers are authorized to permit withdrawal of bids when the conditions in FAR 14.406–3(c) are met.

* * * * *

45. In paragraph (b) of section 1814.406–3 the comma after the word ''and'' is removed and the phrase ''as an alternative,'' is removed.

1814.406–4 [Amended]

46. In the introductory text of section 1814.406–4, the phrase ''installation's Office of'' is removed and paragraph (c) of section 1814.406–4 is removed.

47. Paragraph (a) of section 1814.407–1 is revised to read as follows:

1814.407–1 General.

(a) A notice of award as a specific document is used when the contracting officer needs to inform a responsible bidder that its offer was determined to be the most advantageous to the Government (considering only price and price-related factors) and that the formal award will be made upon satisfaction of specified pre-performance conditions.

* * * * *

1814.407–1 [Amended]

48. In paragraph (b) of section 1814.407–1, in the first sentence, the phrase ''in sealed bidding'' is removed.

49. In paragraph (c) of section 1814.407–1, in the first sentence, the phrase ''in sealed bidding'' is removed, and in the third sentence, the phrase '' for use in sealed bidding'' is removed.

50. In paragraph (d) of section 1814.407–1, in the first sentence, the phrase ''in sealed bidding'' is removed.

51. In paragraph (e) of section 1814.407–1, in the second sentence, the phrase ''a reasonable date certain,'' is removed.

52. In section 1814.407–1, paragraph (f) is revised to read as follows:

1814.407–1 General.

* * * * *

(f) The notice of award can be issued by any formal written means such as a letter, telegram or electronic means. The notice should be substantially the same as the following format.

FORMAT * * *

* * * * *

53. In section 1814.407–1, under NOTES at the end of FORMAT, in paragraph (g), the phrase ''a reasonable date certain,'' is removed.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.1 [Removed]

54. Subpart 1815.1 is removed.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

55. Section 1815.405–1 is revised to read as follows:

1815.405–1 General.

(a) Solicitations for information or planning purposes are particularly useful when a procurement can be properly negotiated only after potential offerors have had an opportunity to become familiar with a large quantity of data, or when it would be desirable to have industry participation in formulating and reviewing complex specifications or requirements.

(b) Solicitations for information or planning purposes may not be used as a means for prequalifying offerors.

(c) Requirements for automatic data processing equipment or support services to perform specified operations or achieve certain results may be suitable for advance review and comment by the private sector when diverse approaches to accomplishing mission objectives may be feasible. The material made available in advance may vary from a comprehensive draft of a proposed requirement to a partial draft; e.g., statement of work and/or specifications or reports.

1815.405–70 [Removed]

56. Section 1815.405–70 is removed.

1815.405–71 [Amended]

57. In section 1815.405–71, paragraph (b) introductory text, the first sentence is removed.

58. In section 1815.406, paragraph (b) is revised to read as follows:

1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) * * *

(b) When advisable, particularly in the case of research and development, proposals shall be requested in two parts:

(1) An unpriced technical proposal, and

(2) A cost proposal cross-referenced to the technical proposal (see 1815.406–70).

* * * * *

59. In section 1815.406–5, paragraph (b)(1) is removed, the existing paragraphs (b)(2) through (b)(8) are redesignated as paragraphs (b)(1) through (b)(7), and paragraph (b)(8) is added to read as follows:

1815.406–5 Part IV—Representations and instructions.

* * * * *

(b) * * *

(8) See 1846.470.

60. The introductory text of section 1815.412 is revised to read as follows:

1815.412 Late proposals and modifications.

For broad agency announcements listed in 1835.016 and SBIR Phase I and Phase II solicitations—

* * * * *

Subpart 1815.5—Unsolicited Proposals

1815.502 [Amended]

61. In section 1815.502, the phrase ''of unsolicited proposals'' is revised to read ''of unique and innovative unsolicited proposals''.

1815.503 [Amended]

62. In section 1815.503, paragraph (a), the last sentence is removed.

63. In section 1815.503, paragraph (b), in the first sentence the phrase ''to agencies in addition to NASA,'' is revised to read ''to other agencies or to JPL in addition to NASA,'' and in the last sentence, the phrase ''to another agency for action'' is revised to read ''to another agency or JPL for action''.

64. In paragraph (c) of section 1815.503, the first sentence is removed.

1815.504–70 [Amended]

65. In section 1815.504–70, ''(Code HP)'' is revised to read ''(Code HK)'', the phrase ''The Headquarters Office of Small and Disadvantaged Business Utilization (Code K)'' is revised to read ''The Headquarters Office of Procurement (Code HK)'', and the last sentence is removed.

1815.506 [Amended]

66. In section 1815.506, paragraph (a)(3) is removed.

Subpart 1815.6—Source selection

67. Section 1815.611 is revised to read as follows:

1815.611 Best and final offers.

For competitive procurements of $25 million or more, approval of the Associate Administrator for Procurement (Code HS) is required before reopening discussions and requesting additional best and final offers. For competitive procurements with values less than $25 million, approval of the Procurement Officer is required.

1815.613–71 [Amended]

68. In section 1815.613–71, paragraph (a) designation and heading is removed and paragraph (b) is removed.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Matters

69. In section 1815.1003–2, paragraph (a) introductory text is revised to read as follows:

1815.1003–2 Policy.

(a) NASA shall debrief an unsuccessful competitor in accordance with FAR 15.1003. Debriefings shall be consistent with—

* * * * *

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.406–13 [Amended]

70. In section 1822.406–13, ''(Attn: Code HP)'' is revised to read ''(Attn: Code HK)'', and the phrase ''The Acquisition Liaison Division (Code HP)'' is revised to read ''The Contract Management Division (Code HK)''.

Subpart 1822.8—Equal Employment Opportunity

1822.804–2 [Amended]

71. In section 1822.804–2, ''(Code HP)'' is revised to read ''(Code HK)''.

1822.807 [Amended]

72. In section 1822.807, the phrase ''the Headquarters Acquisition Liaison Division (Code HP)'' is revised to read ''the Headquarters Contract Management Division (Code HK)''.

PART 1825—FOREIGN ACQUISITION

Subpart 1825.72—Limitation on Strategic Defense Initiative (SDI) Contracting

1825.7200 [Amended]

73. In section 1825.7200, the phrase ''the Acquisition Liaison Division (HP)'' is revised to read ''the Program Operations Division (HS)''.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Subpart 1827.3—Patent Rights Under Government Contracts

1827.372 [Amended]

74. In paragraph (a)(2) of section 1827.372, the phrase ''The objectives of NASA policy with'' is revised to read ''The objectives with'' and the phrase ''to provide their widest'' is revised to read ''to provide widest''.

75. In paragraph (a)(3) of section 1827.372, the phrase ''the objectives of NASA policy with'' is revised to read ''the objectives with'', and the phrase ''used in a manner to promote'' is revised to read ''used to promote''.

76. In paragraph (b)(1) of section 1827.372, the phrase ''will be served by this action.'' is revised to read ''will be served.'' and the phrase ''request for such waiver'' is revised to read ''request for waiver''.

77. In paragraph (i)(1) of section 1827.372, the phrase ''structure of which the contractor is a part, and includes'' is revised to read ''structure, and includes''.

78. In paragraph (i)(2) of section 1827.372, the citation ''14 CFR part 1245, subpart 2, Licensing of NASA Inventions'' is revised to read ''37 CFR part 404, Licensing Government Owned Inventions'', and the citation ''14 CFR 1245.211'' is revised to read ''37 CFR 404.10''.

1827.373 [Amended]

79. In paragraph (a)(1) to section 1827.373, the phrase ''exceptions set forth in paragraph'' is revised to read ''exceptions in paragraph''

80. In paragraph (b) introductory text of section 1827.373, the phrase ''in any NASA contract (and solicitation therefor) with'' is revised to read ''in all NASA solicitations and contracts with''.

81. In paragraph (c) introductory text of section 1827.373, the phrase ''under the circumstances set forth in paragraphs (c)(1) through (3) of this section'' is revised to read ''under the following circumstances:''.

82. In paragraph (c)(1) of section 1827.373, the phrase ''For the purpose of this paragraph (c)(1)'' is revised to read ''For this purpose''.

83. In paragraph (c)(2) of section 1827.373, the phrase ''agency for which the contract is to be placed does'' is revised to read ''agency does''.

84. In paragraph (d) of section 1827.373, the phrase ''to advise prospective contractors'' is revised to read ''to advise offerors''.

85. Paragraph (f) of section 1827.373 is removed and paragraph (g) is redesignated as paragraph (f) and amended by adding a period after the word ''organization'' and removing the phrase ''but the matter is uncertain at the time of solicitation (e.g, the procurement is not a set-aside and is not sole source to a large business).''

1827.374–1 [Amended]

86. In paragraphs (a) and (b) of section 1827.374–1, the phrase ''In any NASA contract'' is revised to read ''In any contract''.

87. In paragraph (c) of section 1827.374–1, the phrase ''subpart 1, shall apply'' is revised to read ''subpart 1, apply'' and the phrase ''under any NASA contract'' is revised to read ''under any contract''.

88. In section 1827.374–1, paragraph (f) is revised to read as follows:

1827.374–1 General.

* * * * *

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.372(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization, and in accordance with FAR 27.304–1(f) for subject inventions made and reported under any contract with a small business firm or a nonprofit organization. The contractor's right to appeal a determination to revoke or modify any such license shall be in accordance with 37 CFR part 404, Licensing of Government Owned Inventions.

* * * * *

89. In paragraph (g) to section 1827.374–1, the phrase ''under any NASA contract'' is revised to read ''under any contract''.

1827.374–3 [Amended]

90. In paragraph (a) of section 1827.374–3, the phrase ''If a NASA contract'' is revised to read ''If a contract''.

1827.375–1 [Amended]

91. In paragraph (b)(1) of section 1827.375–1, the phrase ''for the NASA installation'' is revised to read ''for the installation'' and the phrase ''made by use of the clause'' is revised to read ''made in the clause''.

92. In paragraph (b)(2)(ii) of section 1827.375–1, the word ''NASA'' is removed.

93. In paragraph (b)(4) of section 1827.375–1, the phrase ''at the request of the contractor or on their own initiative,'' is removed.

1827.375–2 [Amended]

94. In paragraphs (a)(1) introductory text and (a)(2) of section 1827.375–2, the word ''NASA'' is removed.

1827.375–3 [Amended]

95. In paragraph (a) introductory text of section 1827.375–3, the phrase ''review, as necessary, the'' is revised to read ''review the'' and the word ''their'' is removed.

96. In paragraph (e)(3) of section 1827.375–3, the phrase ''obligations imposed upon the contractor by'' is removed.

97. In paragraph (f) of section 1827.375–3, the word ''ordinarily'' is removed.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 [Amended]

98. In paragraph (e)(1) of section 1827.404, the phrase ''accordance with NASA policy'' is revised to read ''accordance with policy''.

99. In paragraph (e)(3) of section 1827.404, the word ''itself'' is removed.

100. In paragraph (g) of section 1827.404, the phrase ''correct, or adding or correcting, any'' is revised to read ''correct any''.

1827.405 [Amended]

101. In paragraph (a)(1) of section 1827.405, the phrase ''the NASA contracting officer or the NASA contract'' is revised to read ''the contracting officer or the contract''.

102. In paragraph (a)(3) of section 1827.405, the word ''NASA'' is removed.

1827.406 [Amended]

103. In paragraph (a) of section 1827.406, the phrase ''for most needs'' is removed.

104. In paragraph (b)(1) introductory text of section 1827.406, the phrase ''that may be'' is removed, and the word ''NASA'' is removed.

105. In paragraph (b)(1)(i) of section 1827.406, the word ''overall'' is removed.

106. In paragraph (b)(1)(ii) of section 1827.406, the phrase ''of the contract work'' is revised to read ''of the contract''.

107. In paragraph (b)(1)(iii) of section 1827.406, the word ''work'' is removed.

108. In paragraph (b)(1)(v) of section 1827.406, the phrase ''of the contract'' is removed.

109. In paragraph (b)(2) of section 1827.406, the word ''entire'' is removed, the phrase ''under the contract'' is removed, and the phrase ''ensure appropriate distribution of the required reports'' is revised to read ''ensure distribution of the reports''.

1827.409 [Amended]

110. In paragraph (a) of section 1827.409, the last sentence is removed.

111. In paragraph (b) of section 1827.409, the phrase ''in the notice'' is removed, and the word ''installation'' is removed.

112. In paragraphs (e), (f), and (g) of section 1827.409, the word ''as'' is removed.

113. In paragraph (h) of section 1827.409, the phrase ''the clause at'' is removed.

114. In paragraph (i) of section 1827.409, the word ''at'' is removed.

Subpart 1827.6—Foreign License and Technical Assistance Agreements

1827.670–1 [Amended]

115. In section 1827.670–1, the phrase ''by the NASA contracting officer'' is revised to read ''by the contracting officer''.

PART 1829—TAXES

Subpart 1829.2—Federal Excise Taxes

1829.203 [Amended]

116. In paragraph (a) of section 1829.203, the phrase ''the Acquisition Liaison Division (Code HP)'' is revised to read ''the Contract Management Division (Code HK)''.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—[Removed]

117. Subpart 1831.1 is removed.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.103 [Amended]

118. In paragraph (c) of section 1833.103, the phrase ''the Acquisition Liaison Division (Code HP)'' is revised to read ''the Program Operations Division (Code HS)''.

119. In section 1833.104 paragraph (a) is revised to read as follows:

1833.104 Protests to GAO.

(a) *General procedures.* (1) NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part.

(2) The notices required by FAR 33.104(a)(2) shall be made by the contracting officer.

(3) Upon receiving any communication from a protester or the GAO regarding a protest, the cognizant procurement officer shall immediately contact Code HS for guidance. Conversely, upon Headquarters receipt of notice from GAO of the filing of a protest, Code HS shall immediately notify the cognizant procurement officer. This is usually done via telephone and constitutes the official notice to the installation that a protest has been filed.

(4) Within 3 work days of being notified, the contracting officer shall forward to Headquarters (Code HS) a copy of the procurement file including all documents referred to in FAR 33.104(a)(3)(ii) (A) through (G) and any others requested by Code HS. The contracting officer's statement (FAR 33.104(a)(3)(ii)(H)) shall be forwarded

no later than ten work days after the contracting officer has been notified. The contracting officer's statement shall receive the concurrence of the installation Chief Counsel. If more time is needed, requests for extension may be made by telephone to Headquarters, Code HS.

(5) When the GAO elects to use its express option procedure, the contracting officer's statement shall be forwarded to Code HS within six work days after the contracting officer has been notified. If that is not possible, a report to Code HS shall be made by telephone.

(6) In consultation with the Office of General Counsel, Headquarters (Code HS) shall provide the information required by FAR 33.104(a) to the GAO.

* * * * *

120. In paragraph (b)(1) of section 1833.104, ''(Code HP)'' is revised to read ''(Code HS)'' and ''Code HP'' is revised to read ''Code HS''.

121. In paragraphs (c) (1) and (2) of section 1833.104, ''(Code HP)'' is revised to read ''(Code HS)'' and ''Code HP'' is revised to read ''Code HS''.

122. In section 1833.104, the first sentence of paragraph (d) is revised to read as follows, and in the last sentence, ''(Code HP)'' is revised to read ''(Code HS)'':

''If the protester in its protest statement or later in the process requests documents, the contracting officer shall forward them to Code HS with the documents required by FAR 33.104(a)(3), within three work days of receipt of the request.''

123. In paragraph (e) of section 1833.104, ''Code HP'' is revised to read ''Code HS''.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.003 [Amended]

124. In section 1835.003, paragraph (b) is removed and the existing paragraph (c) is redesignated as paragraph (b), and in the newly designated paragraph (b), the phrase ''for NASA policy'' is revised to read ''for policy''.

1835.003–70, 1835.003–71 [Removed]

125. Sections 1835.003–70 and 1835.003–71 are removed.

1835.015 [Amended]

126. In section 1835.015, paragraph (b), the phrase ''For NASA policy'' is revised to read ''For policy''.

127. Section 1835.016–70 is revised to read as follows:

1835.016–70 NASA Research Announcements.

(a) *Scope.* This subsection 1835.016–70 prescribes regulations and procedures for the use of a NASA Research Announcement (NRA), a form of broad agency announcement (see FAR 6.102(d)(2)). An NRA is used to announce research interests and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest to NASA. The NRA is intended to be used for those research procurements for which it would be impossible to draft an adequate RFP in sufficient detail without restraining the technical response and thus hindering the competition of ideas. An NRA shall not be used in place of an RFP when the procurement requirement is narrowly defined and it is necessary to use a detailed description or specification.

(b) *Issuance.* (1) Each NRA shall be assigned a unique number in accordance with 1804.7102–1.

(2) NRAs may remain open for proposal submission for a maximum of one year. They may not be amended or modified once issued, but may be reissued by assigning a new number and resynopsizing. (See also paragraph (g) of this section.) NRAs should remain open for at least 90 days.

(3) Before issuance, each field-generated NRA shall be concurred in by the procurement officer and approved by the installation's director or a designee, who shall serve as or designate a selecting official. Before issuance, each Headquarters-generated NRA shall be concurred in by General Counsel (Code GK) and the Director, Headquarters Acquisition Division (Code HW) and approved by the cognizant Program Associate Administrator or a designee, who shall serve as or designate a selecting official. If a Headquarters-generated NRA may result in awards by a NASA field installation, the concurrence of that installation's procurement officer may be sought in place of or in addition to Code HW's concurrence.

(4) The contracting officer shall assure that the NRA is synopsized in the Commerce Business Daily (CBD). The synopsis required by FAR 35.016(c) satisfies the synopsis requirement at FAR 5.201; the synopsis contemplated by FAR 5.205 is not required. The synopsis shall be brief and provide the address for obtaining a copy of the NRA. The technical part of the synopsis is to describe an area of interest and should not exceed 50 words.

(5) The NRA shall be prepared, printed, and distributed by or under the direction of the selecting official. Distribution shall not begin until the concurrence of the procurement officer has been obtained and the contracting officer has confirmed that the synopsis requirements have been met. The NRA shall be distributed to each office responsible for receipt of unsolicited proposals and to the Office of Procurement (Code HS).

(c) *Content.* The NRA shall consist of the following items in the order shown. This entire package shall be provided in response to requests.

(1) *Cover.* The cover shall display:

(i) ''OMB Approval Number 2700–0087'' in the upper right corner.

(ii) Title (centered, in uppercase).

(iii) ''NASA Research Announcement Soliciting Research Proposals for the Period Ending _____ '' (centered, on three lines, two inches below the title; insert closing date).

(iv) NRA number (centered, two inches below closing date).

(v) Official address for office issuing NRA (centered, at bottom of cover).

(2) *Summary and Supplemental Information.*

(i) The Summary and Supplemental Information shall not exceed two pages and shall include:

(A) Title (centered, in uppercase).

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals. When proposals received during this period may be grouped for evaluation at separate times, the introductory paragraphs shall indicate when evaluations are planned and shall include the following remark:

> A proposal that is scientifically and programmatically meritorious, but that cannot be accepted during its initial review under an NRA because of funding uncertainties, may be included in subsequent reviews unless the offeror requests otherwise.

(C) NRA number.

(D) Address for submitting proposals, including ''ATTN: NRA _____.'' (Insert NRA number.)

(E) Copies required.

(F) Selecting official's title.

(G) Name, address, and telephone number for additional technical information.

(H) Name and telephone number of contracting office point of contact for administrative and contractual information.

(I) Additional instructions supplementing the Instructions for Responding to NASA Research

Announcements for Solicited Research Proposals (see subpart 1870.2). Such information shall be kept to the minimum necessary and shall cite specific ''Instructions'' paragraphs supplemented.

(J) When awards will be chargeable to funds of the new fiscal year and the NRA is to be issued before funds are available, the NRA shall contain a statement as follows:

Funds are not presently available for awards under this NRA. The Government's obligation to make awards is contingent upon the availability of appropriated funds from which payment can be made and the receipt of proposals that NASA determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(iii) The Summary and Supplemental Information may indicate that proposals submitted under an earlier NRA and held for subsequent reviews will be considered and need not be resubmitted. The earlier NRA shall be identified by number in the following statement:

Proposals for which no selection decision was made under NRA _____ and held for subsequent reviews will be considered under this NRA and need not be resubmitted. (Insert NRA number).

(3) *Technical Description.* The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest. Specifications containing detailed statements of work should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) *Instructions for Responding to NASA Research Announcements.* The NRA shall contain instructions in accordance with 1870.203.

(d) *Unsolicited proposals.* (1) Unsolicited proposals for new efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.506(b).

(2) Unsolicited proposals for renewal of ongoing efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.505–70.

(3) A broad agency announcement is not an ''acquisition requirement'' as the term is used in FAR 15.507(a)(2).

(e) *Receipt of proposals, evaluation, and selection.* (1) Proposals shall be protected as provided in 1815.508–70 and 1815.509–70.

(2) Evaluation, selection, and award may occur during or after the period established for receipt of proposals. Late proposals and modifications shall be treated in accordance with 1815.412 (a) and (b).

(3) When more than one time is established in the NRA for evaluating proposals, proposals received prior to the time established will be considered as part of the initial group to be evaluated. Subsequent groups of proposals to be evaluated shall be formed from those proposals received after the time established for the earlier evaluation groups and prior to the time established for a subsequent group, along with those proposals, if any, held over under paragraph (e)(8) of this section.

(4) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve (i) evaluation, outside NASA, by a discipline specialist in the area of the proposal, (ii) evaluation by an in-house specialist, or (iii) both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in FAR 15.413–2(f) and NFS 1815.413 and 1815.413–2. In particular, the selecting official shall ensure compliance with FAR 15.413–2(f)(5) regarding the designation of outside evaluators and avoidance of conflicts of interest. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror, regarding the proposal, only for the purpose of clarification, as defined in FAR 15.601, or in order to understand the meaning of some aspect of the proposal that is not clear, or in order to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(5) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(6) Part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought if (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, they may be described to the contracting officer under paragraph (e)(10)(ii) of this section, or the selecting official may request revisions from the offeror. The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.610(d)(2)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(7) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(8) A proposal that is scientifically and programmatically meritorious, but that is not selected during its initial review under an NRA, may be included in subsequent reviews unless the offeror requests otherwise. If the proposal is not to be held over for subsequent reviews, the offeror shall be notified that the proposal was not selected for award.

(9) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under 1815.1003, with the participation of a contracting officer.

(10) The selecting official shall forward to the contracting officer—

(i) The results of the technical evaluation, including the total number of proposals received under the NRA by the time of selection, the selection statement, and the proposal(s) selected for funding;

(ii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iii) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(iv) A procurement request;

(v) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewers' comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs; and

(vi) A copy of the selected proposal as originally submitted, any revisions, and any correspondence from the successful offeror.

(11) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted.

(12) The selecting official may notify each offeror whose proposal was selected for negotiation.

(i) The notification shall state that—

(A) The proposal has been selected for negotiation;

(B) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(C) Any costs incurred by the offeror in anticipation of an award are at the offeror's risk.

(ii) The notification may identify which award instrument has been recommended.

(f) *Award.* If a contract is selected as the award instrument (see FAR 35.003(a) and 1835.003(a)), the contracting officer shall—

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated; and the estimated award date, level of effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms;

(4) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9, as applicable;

(5) Award a contract by transmitting written notice of the award; and

(6) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards.

(g) *Cancellation of an NRA.* When program changes, program funding, or any other reasons require cancellation of an NRA, the office issuing the NRA shall notify potential offerors by using the mailing list for the NRA.

1835.070 [Amended]

128. In paragraph (b) to section 1835.070, the word ''either'' is removed.

1835.071 [Removed]

129. Section 1835.071 is removed.

PART 1837—SERVICE CONTRACTING

1837.000 [Removed]

130. Section 1837.000 is removed.

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

131. In section 1839.7001, in paragraph (a), ''2410.1E'' is revised to read ''2410.1'', and paragraph (b) is revised to read as follows:

1839.7001 Policy.

(a) * * *

(b) The Designated Senior Official (DSO), the Chief Information Officer (Code A), has responsibility and accountability for interpreting, applying, and overseeing the implementation of the Federal Information Resources Management Regulations (FIRMR) (41 CFR chapter 201) within NASA.

132. In section 1839.7003–1, paragraphs (a)(2) and (c) are revised to read as follows:

1839.7003–1 Responsibility.

* * * * *

(a) * * *

(2) Timely submission of APRs to Headquarters Code JTD in accordance with 1839.7003–5.

* * * * *

(c) The Senior Installation IRM Official (SIIO) is responsible for formally concurring on all APRs.

133. In section 1839.7003–2, paragraph (b) introductory text is revised to read as follows:

1839.7003–2 FIRMR applicability and procurement authority certification.

* * * * *

(a) * * *

(b) Determine if the agency has authority to acquire the FIP resources by virtue of a specific agency or regulatory delegation, or if a specific acquisition delegation must be obtained. This requires comparing the total estimated dollar value of all the FIP resources to be acquired to the criteria and thresholds specified in FIRMR 41 CFR 201–20.305. NASA may contract for FIP resources without obtaining a specific acquisition delegation when the total dollar value of FIP resources, including all optional quantities and periods over the life of the contract, does not exceed the authority delegated from GSA; except that the dollar value for a specific make and model specification or for requirements available from only one responsible source may not exceed the authority delegated from GSA.

* * * * *

134. In section 1839.7003–2, paragraphs (b)(1) through (b)(4) are removed and paragraphs (b)(5) through (b)(7) are redesignated as paragraphs (b)(1) through (b)(3).

135. In the certification format of the newly designated paragraph (b)(1) to section 1839.7003–2, ''NHB 2410.1E'' is revised to read ''NHB 2410.1''. 136. In section 1839.7003–3, paragraph (e) is revised to read as follows:

1839.7003–3 GSA nonmandatory MAS contracts.

* * * * *

(e) Use the competitive threshold authority delegated from GSA for obtaining a DPA when use of a GSA nonmandatory MAS contract is a competitive procedure relative to FAR part 6. Use the noncompetitive threshold authority delegated from GSA when use of a GSA nonmandatory MAS contract is a noncompetitive procedure relative to FAR part 6.

* * * * *

137. In section 1839.7003–4, paragraph (a) introductory text is revised to read as follows:

1839.7003–4 APR format.

(a) (FIRMR) 41 CFR 201–20.305–3 requires NASA to prepare APRs as indicated by instructions in the FIRMR Bulletin series. APRs under the Trail Boss Program will be submitted in the format provided in FIRMR Bulletin C–7, entitled ''Trail Boss Program,'' as modified by Enclosure C–5B of NHB 2410.1. APRs for all other FIP resources, will be submitted in the format provided in FIRMR Bulletin C–5, entitled ''Instructions for Preparing an Agency Procurement Request (APR),'' as modified by Enclosure C–4B of NHB 2410.1.

* * * * *

138. In section 1839.7003–4, paragraphs (a)(1) through (a)(5) are removed, paragraph (b) is redesignated as paragraph (c), and paragraph (a)(6) is redesignated as paragraph (b).

139. Section 1839.7003–5 is revised to read as follows:

1839.7003–5 APR submission.

(a) The contracting officer shall forward the original of the APR submittal (the APR and all required documentation) to Headquarters Code JTD, with a transmittal letter (see NHB 2410.1, Enclosures C–4A and C–5A) signed by the procurement officer. Include a 5¼″ or 3½″ diskette, formatted for use on a DOS 3.3, or higher compatible, personal computer, that contains a WordPerfect 5.0 or 5.1 or ASCII format of the APR.

(b) APR's should be submitted as soon as, but not before, the FRDD and other documentation (waivers, JOFOCs, procurement plans, or ASM minutes, as appropriate) have been completed and approved in final form within the Agency.

140. In section 1839.7003–6, paragraphs (b) and (c) are revised to read as follows:

1839.7003–6 DPA amendments.

(a) * * *

(b) Amendments to a previously submitted or approved specific acquisition DPA should follow the same procedures and employ the same format as that required by the current FIRMR and (NFS) 48 CFR part 1839. For such an APR, see NHB 2410.1, Enclosure C–3, paragraph 2. The existing documentation supporting the acquisition should be reviewed and certified by the procurement officer as to its timeliness. If this documentation is either not current or affected by the amendment, the documentation shall be revised. If an original document was submitted or requested by Headquarters or GSA, its revision shall be resubmitted with the APR.

(c) The following are reasons for submitting an APR to seek an amended DPA:

(1) A substantive revision in the technical requirements.

(2) A change in acquisition strategy.

(3) Slippages in the planned contract award date that exceed 12 months. (Slippages less than 12 months should be identified to GSA during routine status reporting.)

(4) A change in contract life.

(5) A change in the position title or organizational identity of the official authorized to conduct the acquisition.

(6) An increase in anticipated contract costs.

* * * * *

1839.7004 [Amended]

141. In section 1839.7004, ''NHB 2410.1E'' is revised to read ''NHB 2410.1''.

142. In section 1839.7006, the last sentence in paragraph (a) is revised to read as follows:

1839.7006 DPA transmittal.

(a) * * * Delegation of regulatory and specific agency procurement authority will be handled as directed by the Chief Information Officer.

143. In paragraph (b) to section 1839.7006, ''Code J'' is revised to read ''Code A''.

144. In section 1839.7006, paragraph (d) is removed, paragraphs (e) through (g) are redesignated as paragraph (d) through (f), and the newly designated paragraphs (d) and (e) are revised to read as follows:

1839.7006 DPA transmittal.

* * * * *

(d) Pre-award and post-award reports include 6–Month Status Reports and Contract Award Reports.

(1) GSA requires a 6–Month Status Report on all specific acquisition DPA's for which a contract or modification has not been awarded. The contracting officer shall submit status reports to Code JT not later than May 15 and November 15 of each year. The contents of these reports are specified in the DPA.

(2) GSA requires a Contract Award Report within 30 days after award of a contract or modification issued pursuant to a specific acquisition DPA. The contracting officer shall submit Contract Award Reports to Code JT not later than 25 days after the award of a contract or modification.

(e) Code JTD requires an Annual Status Report on all extant contracts with specific acquisition DPA's. The contracting officer shall submit an Annual Status Report to Code JT not later than November 15 of each year. The reports are in lieu of (and not in addition to) GSA's annual reporting requirement.

* * * * *

PART 1842—CONTRACT ADMINISTRATION

1842.101 [Amended]

145. In section 1842.101, ''Acquisition Liaison Division (Code HP)'' is revised to read ''Analysis Division (Code HC)''.

PART 1846—QUALITY ASSURANCE

146. In section 1846.470–1, the last sentence is revised to read as follows:

1846.470–1 Solicitation provision.

* * * Fee associated with a Q/PI plan shall not be considered an amount over the total fee negotiated for the contract and shall not, when combined with fee considerations, exceed the limitations prescribed in FAR 15.903(d)(1).

1846.470–2 [Amended]

147. In paragraph (b) to section 1846.470–2, the phrase ''and in contracts resulting therefrom.'' is revised to read ''and in resulting contracts.''

148. In section 1846.670–1, paragraphs (a), (b)(1), and (c) are revised to read as follows:

1846.670–1 General.

(a) This subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and suppliers' commercial shipping/packing lists used to evidence Government procurement quality assurance (PQA).

(b) * * *

(1) Shipments by subcontractors not made to the Government;

* * * * *

(c) To preclude delays in shipments or payments and avoid multiple corrections, contractors are encouraged to consult the Government representative regarding implementation of this subpart.

149. In section 1846.670–2, paragraph (a)(4) is removed, and paragraph (a)(3) is revised to read as follows:

1846.670–2 Applicability.

(a) * * *

(1) * * *

(2) * * *

(3) Contracts for which the end item is a technical or scientific report.

* * * * *

150. In section 1846.670–4, paragraph (c) is revised to read as follows:

1846.670–4 Application.

(a) ***

(b) ***

(c) The DD Form 250 may be used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or when the purchasing, requisitioning, or ordering document provides for inspection and/or acceptance.

151. Section 1846.670–5 is revised to read as follows:

1846.670–5 Forms.

(a) Contractors may obtain from the contracting office at no cost MIRR forms required on Government contracts.

(b) Contractors may print forms, provided

(1) Their format and dimensions are identical to the MIRR forms printed by the Government and

(2) The forms provide for 78 characters per printed image horizontally and 62 lines vertically border-to-border for the DD Form 250 and 61 lines vertically border-to-border for the DD Form 250c.

152. In section 1846.671, paragraph (a) is revised to read as follows:

1846.671 Procurement quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall indicate performance of required PQA actions at subcontract level. The following entries shall be made on the document/packing list:

Required PQA of items has been performed.
Date: (Signature of Authorized Government Representative) (Typed Name and Office)

* * * * *

153. In paragraph (a)(1) to section 1846.672–1, the date ''67AUG07'' is removed, and paragraph (a)(4) is revised to read as follows:

1846.672–1 Preparation instructions.

* * * * *

(a) * * *

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

* * * * *

154. In section 1846.672–1, paragraphs (b), (c), (d)(1) and (d)(1)(ii) are revised to read as follows:

(b) *Classified information.* Classified information shall not appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1—PROC. INSTRUMENT IDEN. (CONTRACT).*

(1) Enter the contract number as contained in the contractual document, including any call/order number.

(2) Enter the name of the contracting office immediately below the contract number. This requirement may be satisfied by including the prefix in the contract number to identify the contracting office.

(d) *Block 2—SHIPMENT NO.*

(1) The shipment number is a three-alpha-character prefix and a four-character numeric or alpha-numeric serial number.

(i) * * *

(ii) The first shipment under a prime contract from each ''shipped from'' address shall be numbered 0001; subsequent shipments under that prime contract shall be consecutively numbered.

* * * * *

1846.672–1 [Amended]

155. In section 1846.672–1, paragraphs (g)(1) and (h)(1) are revised to read as follows:

(g) *Block 5—DISCOUNT TERMS.* * * *

(1) The contractor may enter the discount terms on all copies of the MIRR.

(2) * * *

(h) *Block 6—INVOICE.* * * *

(1) The contractor may enter the invoice number and date on all copies of the MIRR.

* * * * *

156. In paragraph (r)(1)(i) to section 1846.672–1, the phrase ''or 'Vacuum Tube' '' is removed.

157. In paragraph (r)(2) introductory text to section 1846.672–1, the phrase ''enter such data only once,'' is revised to read ''enter data only once,''.

158. In paragraph (r)(2)(ii) to section 1846.672–1, the phrase ''shipment may be made without it at the direction of the contracting officer.'' is revised to read ''shipment may be made at the direction of the contracting officer.''

159. In paragraph (w) introductory text to section 1846.672–1, the last sentence is revised to read as follows:

(w) *Block 21—PROCUREMENT QUALITY ASSURANCE.* * * * Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

* * * * *

160. The introductory text to section 1846.672–3 is revised to read as follows:

1846.672–3 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

* * * * *

161. Section 1846.672–5 is revised to read as follows:

1846.672–5 Packing-list instructions.

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked ''PACKING LIST''.

162. Paragraphs (b) and (c) to section 1846.703–70 are revised to read as follows:

1846.703–70 Additional criteria.

* * * * *

(a) * * *

(b) The warranty as a deterrent against the furnishing of defective or nonconforming supplies.

(c) Whether the contractor's quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective quality program.

* * * * *

PART 1849—TERMINATION OF CONTRACTS

163. In section 1849.102–70, paragraph (a) is revised to read as follows:

1849.102–70 Prior clearance of significant contract terminations.

(a) Any information on contract termination involving a reduction in employment of 100 or more contractor employees must have prior NASA Headquarters clearance before it is released. Release of information to Congress or the public is the responsibility of the NASA Headquarters Office of Legislative Affairs (Code LB). A reduction of fewer than 100 may be significant and, if so, should be similarly cleared.

164. In paragraph (b) introductory text to section 1849.102–70, the phrase ''the Office of Legislative Affairs, NASA Headquarters (Code LB)'' is revised to read ''Code LB''.

165. In paragraph (c) to section 1849.102–70, the phrase ''the Office of Legislative Affairs, NASA Headquarters, (Code LB)'' is revised to read ''Code LB''.

166. In paragraph (d) to section 1849.102–70, the phrase ''The Office of Legislative Affairs, NASA Headquarters, (Code LB)'' is revised to read ''Code LB''.

1849.111–71 [Amended]

167. In section 1849.111–71, paragraph (a)(1), the dollar amount ''$100,000'' is revised to read ''$1,000,000'' and in paragraph (a)(2)(i), the dollar amount ''$50,000'' is revised to read ''$100,000''.

1849.111–72 [Amended]

168. In section 1849.111–72, the word ''judge'' is revised to read ''review''.

1849.111–74 [Amended]

169. In section 1849.111–74, the phrase ''of an upper-tier'' is revised to read ''of a lower tier'', and in the last sentence, the phrase ''may be used only for specified contracts and'' is removed and the word ''immediate'' is revised to read ''first tier''.

170. In section 1849.603–70, paragraph (d) introductory text and paragraphs (d)(1) and (d)(2) are revised to read as follows:

1849.603–70 Termination contracting officer's settlement memorandum.

* * * * *

(d) *Settlement summary.* The TCO shall address the settlements reached on the following items:

(1) *Contractor's cost.* See FAR 15.808(a) for format.

(2) *Profit/Fee.* See FAR 15.808(a)(10).

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.227–70 [Amended]

171. In section 1852.227–70, the date of the clause ''APR 1988'' is revised to read ''(JULY 1995)''.

172. In paragraph (d)(2) of the clause at section 1852.227–70, the citation ''14 CFR part 1245, subpart 2, Licensing of NASA Inventions'' is revised to read ''37 CFR part 404, Licensing of Government Owned Inventions.''

173. In paragraph (d)(3) of the clause at section 1852.227–70, remove the comma after the word ''appeal'' and the phrase ''in accordance with 14 CFR 1245.211,'' is revised to read ''to the Administrator''.

174. In the clause heading to section 1852.246–72, the date ''(OCT 1988)'' is revised to read ''(JUNE 1995)'' and paragraph (a) to the clause is revised to read as follows:

1852.246–72 Material inspection and receiving report.

* * * * *

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in ____ [Insert number of copies, including original] copies, an original and ____ copies [Insert number of copies].

* * * * *

PART 1853—FORMS

175. In section 1853.101 the first sentence is revised to read as follows:

1853.101 Requirements for use of forms.

The requirements for use of the forms in this part are contained in parts 1801 through 1851 of this chapter, where the subject matter applicable to each form is addressed. * * *

176. In section 1853.103 the first sentence is revised to read as follows and ''Acquisition Liaison Division, Code HP'' is revised to read ''Contract Management Division, Code HK''.

1853.103 Exceptions.

Alteration of any form prescribed by the regulations in this chapter is prohibited unless prior approval has been obtained from the NASA Forms Officer (Code JTD) (through the Installation Forms Manager), who will coordinate the request with the Office of Procurement, Code H. * * *

177. In section 1853.104, the first sentence is revised to read as follows:

1853.104 Overprinting.

Forms may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any other way. * * *

178. Section 1853.105 is revised to read as follows:

1853.105 Computer generation.

Forms prescribed by the regulations in this chapter may be adapted for computer preparation providing there is no change to the name, content, or sequence of the data elements, and the form carries the form number and edition date.

1853.108 [Amended]

179. In section 1853.108, ''the Acquisition Liaison Division, Code HP'' is revised to read ''the Contract Management Division, Code HK''.

180. Section 1853.204–70 is revised to read as follows:

1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 531, 533M, 533P, 533Q, 667, 1098, 1356, 1611, 1612; DD Form 1593; FBI Form FD–258; and SF 85P).

(a) The following forms shall be used as prescribed at 1804.671–4:

(1) NASA Form 507, Individual Procurement Action Report (New Awards).

(2) NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.

(3) NASA Form 507B, Individual Procurement Action Report Supplement B.

(4) NASA Form 507G, Individual Procurement Action Report (Grants/Orders).

(5) NASA Form 507M, Individual Procurement Action Report (Modifications).

(b) *NASA Form 531, Name Check Request.* NASA Form 531, prescribed in 1804.470 and 1852.204–76, shall be used for National Agency Check (NAC) investigations.

(c) The following forms shall be used as prescribed at 1804.675:

(1) NASA Form 533M, Monthly Contractor Financial Management Report.

(2) NASA Form 533P, Monthly Contractor Financial Management Performance Analysis Report.

(3) NASA Form 533Q, Quarterly Contractor Financial Management Report.

(d) *NASA Form 667, Report on NASA Subcontracts.* NASA Form 667, prescribed at 1804.672, shall be used by contractors to submit information to NASA on each subcontract or subcontract modification over $25,000.

(e) *NASA Form 1098, Checklist for Contract Award File Content.* NASA Form 1098, prescribed at 1804.803–71, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval. In Item 19 (Jul 90 edition), line out the entry ''D&F: Other Than Full and Open Competition in the Public Interest (FAR/NFS 6.302–7),'' and write in ''JOFOC (FAR/NFS 6.3).''

(f) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NASA Form 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(g) *NASA Form 1611, Contract Completion Statement.* As prescribed at 1804.804–2 and 1804.804–5, NASA Form 1611 shall be used for closeout of all contracts above the small purchase threshold.

(h) The following forms shall be used as prescribed at 1804.804–5:

(1) NASA Form 1612, Contract Closeout Checklist.

(2) DOD Form 1593, Contract Administration Completion Record.

181. Section 1853.216–70 is revised to read as follows:

1853.216–70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, 781).

The following forms shall be used as prescribed at 1816.370:

(a) NASA Form 778, Contractor's Release.

(b) NASA Form 779, Assignee's Release.

(c) NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.

(d) NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

182. In section 1853.242–70, the section heading is revised and paragraph (g) is added to read as follows:

1853.242–70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433) and service request (NASA Form 1434).

* * * * *

(g) *NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.* NASA Form 1434, prescribed at 1842.202–70(e)(1), shall be used to request contract administration and audit services incident to preaward of a contract but exclusive of preaward surveys.

1853.242–71 [Removed]

183. Section 1853.242–71 is removed.

1853.242–72 [Redesignated as Section 1853.242–71]

184. Section 1853.242–72 is redesignated as section 1853.242–71.

185. In section 1853.249, paragraph (b) is revised to read as follows:

1853.249 Termination of contracts (NASA Forms 1412, 1413).

* * * * *

(b) *NASA Form 1413, Termination Docket Checklist.* NASA Form 1413, prescribed at 1849.105–70, shall be used to ensure adequacy of termination records.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Subpart 1870.1—[Amended]

186. Section 1870.000 and subpart 1870.1 are revised to read as follows:

1870.000 Scope of part.

This part contains NASA-unique regulations which—

(a) Constitute a system of regulations such that presentation in a unified format is essential;

(b) Relate to numerous FAR subparts;

(c) Have, as a whole, no clearly identifiable FAR counterpart; and

(d) May include non-regulatory material necessary to complete coverage of the instant subject.

Subpart 1870.1—NASA Acquisition of Investigations System

1870.101 System content.

(a) The regulations governing the NASA Acquisition of Investigations set forth the system in a single document, covering the roles of individuals with procurement and programmatic responsibilities both within NASA and the private sector. Therefore, the regulation provides guidance to all NASA personnel engaged in the solicitation, evaluation and selection of investigations. It emphasizes the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation. It provides for uniform procedures and equitable treatment in the evaluation and selection of investigators and acquisition of investigative equipment consistent with the FAR and NFS.

(b) The system regulation contains policy and procedures applicable to the solicitation of investigations with ''Announcements of Opportunity,'' a form of broad agency announcement authorized at FAR 6.102(d)(2)(i).

1870.102 NASA acquisition of investigations.

(a) The NASA Acquisition of Investigations System is prescribed by Appendix I to this section 1870.102.

(b) NASA may reprint this Appendix I as a separate Handbook for sale and/or distribution provided the following two conditions are met:

(1) With the exception of availability and distribution information, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.102.

(2) The following information shall be included as a part of the prefatory material in the NASA Handbook:

Important Notice

This Handbook is a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.102) Section 1870.102, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.102, Appendix I without issuing a new edition of this Handbook. Any such changes will be published in the **Federal Register**; however, it is anticipated that such changes will be rare, unless mandated by statute or unusual circumstances. In the event of apparent conflict between this Handbook and the NFS, the NFS shall govern.

APPENDIX I TO 1870.102—GUIDELINES FOR ACQUISITION OF INVESTIGATIONS

Preface

NASA has always provided opportunities for qualified people in NASA, other Government agencies, colleges and universities, private industry, and foreign countries to participate in developing and carrying out its responsibilities in aeronautical and space activities. NASA has treated itself as a part of the scientific and technical community and has encouraged this community to bring to bear its expertise in developing investigatory objectives, selecting the investigations to carry out, participating in the resulting missions, analyzing the data obtained, and publishing the results.

The acquisition of investigations process covered by this Handbook allows the continuation of our successful cooperative endeavors with the scientific, technological, and applications user communities and provides standards requiring greater attention to the planning and management of investigations. Also, this Handbook emphasizes the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation.

Guidelines for Acquisition of Investigations

Contents

Chap. 1 The Investigation Acquisition System
100 General
101 Key Features of the System
102 Management Responsibilities
Chap. 2 Applicability of the Process
200 General
201 Criteria for Determining Applicability
202 Programs and Activities Where Use May be Considered
203 Specific Approval Required
Chap. 3 The Announcement of Opportunity
300 General
301 Need for Preparatory Effort
302 Responsibilities
303 Proposal Opportunity Period
304 Guidelines for Announcement of Opportunity
305 Announcement of Opportunity Soliciting Foreign Participation
306 Guidelines for Proposal Preparation
Chap. 4 Evaluation of Proposals
400 General
401 Criteria for Evaluation
402 Methods of Evaluation
403 Advisory Subcommittee Evaluation Process
404 Contractor Evaluation Process
405 Government Evaluation Process
406 Cost, Engineering, Integration, and Management Evaluation
407 Program Office Evaluation
408 Steering Committee Review
409 Principles to Apply
Chap. 5 The Selection Process
500 General
501 Decisions to Be Made
502 The Selection Statement
503 Notification of Proposers
504 Debriefing
Chap. 6 Payload Formulation
600 Payload Formulation
Chap. 7 Procurement and Other Considerations
700 Early Involvement Essential
701 Negotiation, Discussions, and Contract Award
702 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement (NFS)
703 Other Administrative and Functional Requirements

Appendices

Appendix A to Appendix I—Format of Announcement of Opportunity
Appendix B to Appendix I—General Instructions and Provisions
Appendix C to Appendix I—Guidelines for Proposal Preparation
Appendix D to Appendix I—Glossary of Terms and Abbreviations Associated with Investigations

Chapter 1—The Investigation Acquisition System

100 General

The best space research results when space research investigators participate in the selection of investigations. The investigation acquisition system encourages the participation of investigators and the selection of investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate from the acquisition process, but requiring the same management and discipline to assure compliance with statutory requirements and considerations of equity. ''NASA Acquisition of Investigations'' is the name under which

this system is incorporated into the NASA FAR Supplement.

101 Key Features of the System

1. Use of the system commences with a Program Associate Administrator's determination that the investigation acquisition process is appropriate for a program. An Announcement of Opportunity (AO) is disseminated to the interested community. This solicitation does not specify the investigations to be proposed but solicits investigative ideas which contribute to broad objectives. In order to determine which of the proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the fields represented by the proposals. Care should be taken to avoid conflicts of interest. These evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee serving as staff to the Program Associate Administrator (Program AA) reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed.

The Program AA selects the proposals that will participate in the program. Once selected, an investigator is assigned appropriate responsibilities relating to the investigation through a contract with the institution. For foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

2. The AO process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case:

a. The AO shall be signed by the Program AA and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

b. An evaluation team shall be formed including recognized peers of the investigators.

c. A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

d. A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the AO, cost, and schedule constraints.

e. A steering committee appointed by the appropriate Program AA shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in this Handbook, and make selection recommendations.

f. Selections shall be made by the Program AA.

3. Payloads will be formulated consisting of investigations selected through the AO process and/or other authorized methods.

4. When the need is determined by the Program AA, payload specialists will be selected in accordance with NMI 7100.16, Payload Specialists for Space Transportation Systems (STS) Missions.

102 Management Responsibilities

1. Program AA are responsible for overseeing the process and for making key decisions essential to the process including:

a. Determination to use the investigation acquisition system.

b. Appointment of the steering committee members.

c. Designation of a staff to assure uniformity in the issuance of the AO and conformity with the required procedures in the evaluation and selection.

d. Reuse, to the maximum extent practicable, of space hardware and support equipment.

e. Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

f. Issuance of the AO.

g. Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

h. Assure consideration is given to minorities in the establishment of peer groups, distribution of the AO and in the selection of investigations.

i. Provide a framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

2. The Program AA should call upon any required experts throughout the process. The remaining chapters of this Handbook will discuss the exercise of the foregoing responsibilities in greater detail.

Chapter 2—Applicability of the Process

200 General

The system used for acquisition of investigations is separate from the agency procedures for procurement of known requirements. A decision to use this special acquisition process will be based on a determination that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other documentation should discuss the proposed mode of investigations selection.

201 Criteria for Determining Applicability

1. The decision to utilize the investigations acquisition process as an alternative to the normal planning and acquisition process can only be made after consideration of the conditions which are requisite to its use. All of the following conditions should exist before deciding that the system is applicable:

a. NASA has a general objective which can be furthered through novel experimental approaches. To develop such approaches, NASA wishes to draw upon the broadest reservoir of ideas that can be made available.

b. Choices must be made among competing ideas in expanding knowledge.

c. Individual participation of an investigator is essential to exploitation of the opportunity.

2. The investigations acquisition process shall not be used when any of the following characteristics are present:

a. The requiring office can define a requirement sufficiently to allow for normal procurement.

b. The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

c. It is not possible or considered essential to the program to follow the steps of the investigations acquisition process.

202 Programs and Activities Where Use May be Considered

1. General—The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it has been used successfully in several types of opportunity. A discussion of several types of programs, the opportunities they offer, and comment on the suitability of the special process follows.

2. Exploration and Space Research Flights

a. Examples—Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

b. Types of Opportunity

(1) A common and sought after opportunity is to participate as a Principal Investigator (PI) responsible for conceiving and conducting a space investigation. This may involve a major piece of instrumentation. In the case of a ''facility'' or ''multiuser'' payload, each PI's responsibilities would ordinarily involve a relatively minor portion of the total instrument.

(2) There may also be an opportunity to serve on a PI's team as a member or Co-Investigator.

(3) A type of opportunity that generally involves the use of data from another investigator's instrument is that of guest investigator or guest observer. Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.

(4) A team may be formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

c. Selection and Acquisition Procedures—The investigation acquisition process may be applicable to all of these types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities.

3. Minor Missions

a. Examples—Research aircraft, sounding rockets, balloons, and minor missions are

generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

b. Types of Opportunity

(1) PIs responsible for investigation.

(2) Data use or analysis.

c. Selection and Acquisition Process—Opportunities for participation on minor missions are generally suitable for normal procurement procedures. The use of a general announcement announcing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Procurement procedures as contained in NASA FAR Supplement shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

4. Operational and Operational Prototype Spacecraft

a. Examples—GOES, TIROS.

b. Selection and Acquisition Process—The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the special process is not required.

5. Reimbursable Missions

a. Examples—INTELSAT, SATCOM, WESTAR, MARISAT.

b. Selection and Acquisition Process—Payload determination and delivery are the responsibility of the user organization. NASA's role is essentially to provide launch services. No special process is required.

6. Supporting Research and Technology (SR&T)

a. Examples—Studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

b. Selection and Acquisition Process—Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal procurement procedures should be utilized to satisfy these requirements. A general announcement of area of interest could be made when greater participation is deemed advisable. Proposals can be solicited or unsolicited and can be entertained within the context of the normal procurement procedure.

203 Specific Approval Required

The Program AA responsible for the program is responsible for determining whether or not to use the special investigations acquisition process. Normally on major projects, or when a project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

Chapter 3—The Announcement of Opportunity

300 General

The AO is characterized by its generality. However, it is essential that the AO contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the AO will depend on the objective. In all cases, judgment is of paramount importance, since the purpose is to get adequate information to assess the relevance, merit, cost, and management without overburdening the proposer.

301 Need for Preparatory Effort

1. When the use of the AO process is contemplated, there is need to consult with appropriate Headquarters offices and the Project Installation responsible for the project prior to release of the AO.

2. In addition, the need to meet legal requirements in the acquisition processes will require early external Program Office involvement to:

a. Synopsize the AO in the Commerce Business Daily prior to the time of release.

b. Determine if there is instrumentation or support equipment available which may be appropriate to the AO with all necessary background data considered essential for use by a proposer.

c. Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the AO.

d. Assure mandatory provisions are contained in the AO.

3. Other methods of dissemination of the AO may also be used, such as the use of press releases, etc. When possible, the AO should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

302 Responsibilities

1. The Program Office originator is responsible for the content of the AO and coordination with concerned Headquarters offices and field installations. All personnel involved in the evaluation of proposals are responsible for familiarizing themselves and complying with this Handbook and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

2. The Program Office is also responsible for coordinating the AO with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Procurement prior to issuance. Attention is directed to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

3. Concurrence of the Office of Procurement is required before issuance of an AO.

303 Proposal Opportunity Period

1. The AO is considered the primary method of soliciting investigations. As such, it is necessary that the process accommodate the continuous opportunities afforded by the Shuttle/Spacelab flights. Thus, the following methods may be utilized, individually or in combination, to enable an AO and resultant proposals to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

a. The AO may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

b. The AO may be issued establishing a single proposal submission date. However, the AO could provide that NASA amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired within the AO objectives.

c. The AO may provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the AO, and payload funding and availability.

2. Generally, a core payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended AOs. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original AO but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

3. Any proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see paragraph 403), for possible later sponsorship until no longer

feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified.

4. If the intent is to hold proposals for possible later consideration, as discussed in subparagraph 3, the AO should specifically indicate this intent and the procedure to be used. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

304 Guidelines for Announcement of Opportunity

1. The preparation of the AO should be a multi-functional effort. It involves program and project management and usually involves other offices of NASA.

2. The AO should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each AO will be identified as (Program Office) originated and numbered consecutively each calendar year, e.g., OA–1–95, OA–2–95; OLMSA–1–95; OSS–1–95; etc. The required format and detailed instructions regarding the contents of the AO are contained in Appendix A.

3. The General Instructions and Provisions (Appendix B) are necessary to accommodate the unique aspects of the AO process. Therefore, they must be appended to each AO.

4. At the time of issuance, copies of the AO must be furnished to the Office of Procurement and to the Office of General Counsel.

5. Proposers should be informed of significant departures from scheduled dates for activities related in the AO.

305 Announcement of Opportunity Soliciting Foreign Participation

Proposals for participation by individuals outside the U.S. should be submitted in the same format (excluding cost plans) as U.S. proposals; they should be typewritten and be in English; the proposals should be reviewed and endorsed by the appropriate foreign governmental agency. If letters of ''Notice of Intent'' are required, the AO should indicate that they be sent to NASA's International Affairs Division, Office of External Relations. Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guidelines applicable to foreign proposers are contained in the Management Plan Section of Appendix C (see Section II) and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

306 Guidelines for Proposal Preparation

While not all of the guidelines outlined in Appendix C will be applicable in response to every AO, the investigator should be informed of the relevant information required. The proposal may be submitted on a form supplied by the Program Office. However, the proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section as described in Appendix C.

Chapter 4—Evaluation of Proposals

400 General

The evaluation process assures consideration of the aspects of each proposal and constitutes progressive sorting of the proposals. A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in paragraph 402. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the AO objectives. Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the Project Office at the installation responsible for the project. Final reviews are performed by the Program Office and the Steering Committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the announced objectives within programmatic constraints. The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan has been found helpful to the evaluators, program management officials, and the selection official. The evaluation plan should be developed before issuance of the AO. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each AO. A fuller discussion of the evaluation and selection process is included in the following paragraphs.

401 Criteria for Evaluation

1. Each AO must indicate those criteria which the evaluators will apply in evaluating a proposal. The relative importance of each criterion must also be stated. This information will allow investigators to make informed judgments in formulating proposals that best meet the stated objectives.

2. Following is a list of general evaluation criteria appropriate for inclusion in most AOs:

a. The scientific, applications, and/or technological merit of the investigation.

b. The relevance of the proposed investigation to the AO's stated scientific, applications, and/or technological objectives.

c. The competence and experience of the investigator and any investigative team.

d. Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

e. The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

In addition to or in lieu of the criteria listed herein, additional criteria may be utilized. In all cases, the evaluation criteria must be germane to the accomplishment of the stated objectives.

3. Cost and management aspects will be considered in all selections.

4. Once the AO is issued, it is essential that the evaluation criteria be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the AO will be amended, and all known recipients will be informed of the change and given an adequate opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

402 Methods of Evaluation

Alternative methods are available to initiate the evaluation of proposals received in response to an AO. These are referred to as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed to categorize the proposals. The various approaches, described in detail in paragraph 403. Following categorization, those proposals still in consideration will be processed to the selection official as prescribed hereafter.

403 Advisory Subcommittee Evaluation Process

1. Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. It is of prime importance that the appointment of members to the subcommittee be weighed carefully as these individuals may exercise significant influence on the selection of investigations and hence achievement of program goals and objectives.

2. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals. One or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the AO's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

a. The subcommittee normally should be established on an ad hoc basis.

b. Qualifications and acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations are not sufficient qualifications.

c. The executive secretary of the subcommittee must be a full-time NASA employee.

d. Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

e. Care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases

and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

f. The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee.

3. It may not be possible to select a subcommittee fully satisfying all of the conditions described in subparagraph 2. It is not the purpose of these guidelines to establish provisions for making trade-offs, where necessary, among the above criteria. This is properly the responsibility of the nominating and appointing officials. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

4. Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, ''Establishment, Operation, and Duration of NASA Advisory Committees.'' The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

5. It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process, even where several or all of the members have served previously. This briefing of subcommittee members should include:

a. Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

b. Review of the program goals, AO objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

c. Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

d. Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific and/or technical merit in accordance with the evaluation criteria.

e. Instruction for documentation of deliberations and categorizations of the subcommittee.

f. Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the current ''Standards of Conduct for NASA Employees'', NHB 1900.1, or ''Standards of Conduct for NASA Special Government Employees'', NHB 1900.2, as appropriate, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

g. Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requestor demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

6. The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

a. Category I—Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the AO's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

b. Category II—Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

c. Category III—Scientifically or technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

d. Category IV—Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

7. A record of the deliberations of the subcommittee should be prepared by the assigned executive secretary and should be signed by the Chairperson. The minutes should contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

404 Contractor Evaluation Process

1. The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an AO requires the approval of the Program AA. Prior to the use of this method, discussion should be held with the Office of Procurement.

2. It is NASA policy to avoid situations in the procurement process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

a. Is given an unfair competitive advantage over other companies with respect to future NASA business;

b. Is placed in a position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

c. Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

3. To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will be incorporated into the contract:

a. No employee of the contractor will be permitted to propose in response to the AO;

b. The ''Limitation on Future Contracting'' clause contained in NASA FAR Supplement 1852.209–71 and the conditions set forth in NASA FAR Supplement 1815.413–2 Alternate II (c) and (d) will be included in all such contracts; and

c. Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

4. The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

5. The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the contractor in relation to the panels will be as follows:

a. The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

b. These panels will be composed of scientists and specialists qualified to evaluate the proposals;

c. The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

d. The contractor will report each panel's membership to NASA for approval; and

e. The contractor must make all the necessary arrangements with the panel members.

6. The evaluation support by the contractor's panels of experts will be accomplished as follows:

a. The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria in the AO and will record their strengths and weaknesses.

b. The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon request, the contractor shall provide all such records to NASA;

c. The chairperson of each panel shall certify that the evaluation report correctly represents the findings of the review panel; and

d. A final report will be submitted as provided in the contract.

7. A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in paragraph 403, ''Advisory Subcommittee Evaluation Process.'' A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

405 Government Evaluation Process

1. The Program AA may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

2. Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the AO evaluation criteria. It is important that a subcommittee's evaluation not be influenced by others either within or outside of NASA.

3. The subcommittee members will not contact the proposers for additional information.

4. The subcommittee members will classify the proposals in accordance with the four categories indicated in paragraph 403. Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

406 Engineering, Integration, and Management Evaluation

1. The subcommittee responsible for categorization of each proposal in terms of its scientific, applications, or technical merit should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

2. This information should be provided at the discretion of the Headquarters Program Office by the Project Office at the installation. This information can be in general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

3. Following categorization, the Project Office shall evaluate proposals in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center.

4. In assessing proposed costs, the evaluation must consider:

a. The investigation objective.

b. Comparable, similar or related investigations.

c. Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

d. Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

5. The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

6. Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the interfaces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

a. Whether the instrument requires further definition;

b. Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

c. Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

d. Whether integration of the instrument is feasible.

7. In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: workload—present and future related to capacity and capability; past experience; management approach and organization; e.g.:

a. With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

b. A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

c. The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

407 Program Office Evaluation

1. A Program Office responsible for the project or program at Headquarters will receive the evaluation of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations should facilitate sound selection decisions by the Program AA. Three sets of recommendations result from the Program Office evaluation:

a. Optimum payload or program of investigations, or options for alternative payloads or programs.

b. Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

c. Upon consideration of the guidelines contained in paragraph 501-lc, recommending responsibility for instrument development.

2. The Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an

appropriate probability of technical success within the estimated probable cost. The Headquarters program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

3. It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development. Tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

a. The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

b. The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

c. The investigative area is critical to the program and competitive approaches need to be developed further to allow selection of the optimum course.

4. Based on evaluation of these considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program AA responsible for selection:

a. The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

b. The expected costs required to develop instrumentation to the point of ''demonstrated capability.''

c. The risk involved in added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

d. Identification of opportunities, if any, for inclusion of such investigations in later missions.

5. In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a final commitment to the investigation.

6. As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acquisition determination are discussed in paragraph 501-lc.

7. The range of options for responsibility for the instrumentation consists of:

a. Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to provide the instrumentation for integration.

b. Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(1) Provision of instrument specifications.

(2) Approval of specifications.

(3) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for the investigation.

(4) Participation in design reviews and other appropriate reviews.

(5) Review and concurrence in changes resulting from design reviews.

(6) Participation in configuration control board actions.

(7) Advice in definition of test program.

(8) Review and approval of test program and changes thereto.

(9) Participation in conduct of the test program.

(10) Participation in calibration of instrument.

(11) Participation in final inspection and acceptance of the instrument.

(12) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(13) Participation in the development and support of the operations plan.

(14) Analysis and interpretation of data.

8. The Principal Investigator should as a minimum:

a. Approve the instrument specification.

b. Advise the project manager in development and fabrication.

c. Participate in final calibration.

d. Develop and support the operations plan.

e. Analyze and interpret the data.

9. The Project Installation is responsible for implementing the program or project and should make recommendations concerning the role for the Principal Investigators. The Program AA will determine the role, acting upon the advice of the Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an appeal to the Program AA and the right to withdraw from participation.

10. The Program Office should make a presentation to the Steering Committee with supporting documentation on the decisions to be made by the responsible Program AA.

408 Steering Committee Review

1. The most important role of the Steering Committee is to provide a substantive review of a potential payload or program of investigations and to recommend a selection to the Program AA. The Steering Committee applies the collective experience of representatives from the program and discipline communities and offers a forum for discussing the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the process. The Steering Committee is responsible for assuring adherence to required procedures. Lastly, it is the forum where discipline objectives are weighed against program objectives and constraints.

2. The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

a. Review compliance with procedures governing application of the AO process.

b. Ensure that adequate documentation has been made of the steps in the evaluation process.

c. Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program AA.

3. The purpose in exercising the first of these responsibilities is to ensure equity and consistency in the application of the process. The Steering Committee is intended to provide the necessary reviews and coordination inherent in conventional acquisition practices.

4. The second and third responsibilities of the Steering Committee are technical. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office for completeness and appropriateness before forwarding to the Program AA. Most important in this review are:

a. Degree to which results of evaluations and recommendations follow logically from the criteria in the AO.

b. Consistency with objectives and policies generally beyond the scope of Project/Program Offices.

c. Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

d. Sufficiency of reasons stated for determining responsibilities for instrument development.

e. Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

f. Sufficiency of reasons for classifying proposed investigations in their respective categories.

g. Fair treatment of all proposals.

5. The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

409 Principles to Apply

1. Paragraph 408 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several

evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this Chapter as a guide.

2. Significant deviations from the provisions of this Handbook must be fully documented and be approved by the Program AA after concurrence by the Office of General Counsel and Office of Procurement.

Chapter 5—The Selection Process

500 General

The Program AA is responsible for selecting investigations for contract negotiation. This decision culminates the evaluations and processes that can be summarized as follows:

Evaluation stage	Principal emphasis	Results
Contractor (when authorized)	Summary evaluation (strengths and weaknesses.	Report to Subcommittee.
Subcommittee	Science and technological relevance, value, and feasibility.	Categorization of individual proposals.
Project Office	Engineering/cost/integration/management assessment.	Reports to Subcommittee and Program Office.
Program Office	Consistency with announcement and program objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee	Logic of proposed selections and compliance with proper procedures.	Recommendations to Program Associate Administrator.

501 Decisions To Be Made

1. The selection decisions by the Program AA constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the AO's objectives, and their consonance with budget constraints. The selection official may develop additional data to make the following decisions:

a. Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(1) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(2) Assurance that the evaluation criteria were applied consistently to all proposed investigations.

(3) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(4) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

b. Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

c. Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source or whether the requirement should be competitive procured. The following guidelines apply:

(1) The hardware required should be subjected to competitive solicitation where it is clear that the capability is not sufficiently unique to justify sole source procurement.

(2) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution, (a) when the fabricator's proposal contains technical data that are not available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal; (b) when the fabricator offers unique capabilities that are not available from another source; (c) when the selection official determines that the proposed hardware contributes so significantly to the value of the investigator's proposal as to be an integral part of it.

(3) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

(4) If a NASA employee submits a proposal as a principal investigator, any requirement for hardware necessary to perform the investigation must either be competed by the installation procurement office or a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NFS.

d. Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(1) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(2) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(3) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

e. Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

2. In the process of making the above determinations described in subparagraph 1, the Program AA may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, the Program AA may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program AA's decision.

502 The Selection Statement

Upon completion of deliberations, the responsible Program AA shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

1. The general and specific evaluation criteria and relative importance used for the selection.

2. The categorizations provided by the subcommittee and the rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

3. A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a joinder with other investigators.

4. The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

5. An indication of the plan and acquisition using the regular procurement processes, if the Principal Investigator is not to acquire the hardware.

6. A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

7. A statement indicating use of Government-owned space flight hardware and/or support equipment.

503 Notification of Proposers

1. It is essential that investigators whose proposals have no reasonable chance for selection be so apprised as soon as practicable. The responsible Program Office will, upon such determination, notify investigators of that fact with the major reason(s) why the proposals were so

considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing. The letter should point out that such a debriefing would be available only after completion of the selection process and would otherwise be conducted in accordance with the NASA FAR Supplement. (See paragraph 504.)

2. Letters of notification will be sent to those Principal Investigators selected to participate. This letter should not commit the agency to more than negotiations for the selected investigation, but it should indicate the decision made and contain:

a. A concise description of the Principal Investigator's investigation as selected, noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

b. The nature of the selection, i.e., whether it should be considered final or tentative requiring additional hardware or cost definition.

c. A description of the role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

d. Identification of the principal technical and management points to be treated in subsequent negotiations.

e. Any rights to be granted on use of data, publishing of data, and duration of use of the data.

f. Where applicable, indication that a foreign selectee's participation in the program will be arranged between the International Affairs Division, Office of External Relations, and the foreign government agency which endorsed the proposal.

3. In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible International Affairs Division, Office of External Relations, addressing the following:

a. The scientific technological objective of the effort.

b. The period of time for the effort.

c. The responsibilities of NASA and of the sponsoring governmental agency; these may include:

(1) Provision and disposition of hardware and software.

(2) Responsibilities for reporting, reduction and dissemination of data.

(3) Responsibilities for transportation of hardware.

d. Any additional information pertinent to the conduct of the experiment.

4. Using the information provided above, the International Affairs Division, Office of External Relations will negotiate an agreement with the sponsoring foreign agency.

5. Notices shall also be sent to those proposers not notified pursuant to the preceding paragraphs, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time as those selected. Other agency notifications and press release procedures will apply, as appropriate.

504 Debriefing

It is the policy to debrief, if requested, unsuccessful proposers of investigations in accordance with NFS 1815.1003. The following considerations are offered in arranging and conducting debriefings:

1. Debriefing should be done by an official designated by the responsible Program AA. Any other personnel receiving requests for information concerning the rejection of a proposal should refer to the designated official.

2. Debriefing of unsuccessful offerors should be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

3. Material discussed in debriefing should be factual and consonant with the documented findings of several stages of the evaluation process and the selection statement.

4. The debriefing official should advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

5. The debriefing official should not discuss other unsuccessful proposals, ranking, votes of members, or attempt to make a point-by-point comparison with successful proposals.

6. A memorandum of record of the debriefing should be provided the Chairperson of the Steering Committee.

Chapter 6—Payload Formulation

600 Payload Formulation

1. Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through AOs, those generated by in-house research, unsolicited proposals and those derived from agreements between NASA and external entities. However, it is anticipated that the primary source of NASA payload elements will be the AO process. Generally, proposals for payload elements submitted outside the AO process will not be selected if they would have been responsive to an AO objective.

2. Payload elements for STS flights fall into two major categories. ''NASA or NASA-related'' payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. ''Non-NASA'' payload elements are those which require only STS operation services from NASA and interface with NASA through the Office of Space Flight.

3. In general, a Program Office will be designated responsibility for formulating the ''NASA or NASA-related'' portion of an STS payload. The Office of Space Flight will be responsible for formulating the ''non-NASA'' portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type. Resource allocation for mixed missions will be determined by the Program Office and the Office of Space Flight.

Chapter 7—Procurement and Other Considerations

700 Early Involvement Essential

1. The distinctive feature of the AO process is that it is both a program planning system and a procurement system in one procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Procurement is involved with the purchase of property and services to carry out the selected investigations.

2. Because of both the programmatic and multi-functional aspects of the AO process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and complies with statutory requirements and procurement policy.

3. The planning, preparation and selection schedule for the investigation should commence early enough to meet statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

701 Negotiation, Discussions, and Contract Award

Indicated below are some of the major procurement procedures that need to be accomplished to assure uniformity and sufficiency in the acquisition of investigations. These areas are not exclusive and not intended to substitute for coordination and good judgment before issuance of the AO, during evaluation of proposals, and prior to contract award.

1. As negotiated procurements must be made by soliciting proposals from the maximum number of qualified sources consistent with the requirement, the AO must also be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the AO mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45 days before the date set for receipt of proposals).

2. Significant items for consideration after receipt of proposals:

a. Late Proposals—The policy on late proposals contained in the NFS 1815.412 is applicable. Potential investigators should be informed of this policy. In the AO context, the selection official or designee will determine whether a late proposal will be considered.

b. Competitive Considerations

(1) The proposals submitted in response to the AOs are not necessarily fully comparable. However, all proposals within the scope of an opportunity must be evaluated in accordance with the criteria in the AO.

(2) Cost must be considered in the evaluation if costs are involved in the investigation. General cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories into which the subcommittee places proposals.

(3) Further information should be obtained, as necessary, by the Installation Project

Office and/or any other evaluation group authorized by the selection official and from the investigators whose proposals are being considered. This is similar to the procurement procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Good judgment is required by in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be prepared of the primary points covered in the written and oral discussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(4) During the conduct of discussions, all proposers being considered shall be offered an equitable opportunity to submit cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should note compliance of the investigators with that cut-off date.

3. Significant items for consideration before award:

a. Issuance of a Request for Proposal (RFP)—A formal RFP should not be issued to obtain additional information on proposals accepted under the AO process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

b. Selection of Investigator/Contractor—The selection decision of the Program AA approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

702 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement (NFS)

The AO process supplants normal procurement procedures only to the extent necessary to meet the distinctive features of the process. This process is not intended to conflict with any established statutory requirements. The FAR, the NFS, and related procurement directives should be used for guidance in those instances where instructions are not in this Handbook.

703 Other Administrative and Functional Requirements

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract. These may include requirements contained in such publications as NHB 5300.4(1B), ''Quality Program Provisions for Aeronautical and Space System Contractors,'' and NHB 9501.2, ''Procedures for Contractor Reporting of Correlated Cost and Performance Data.''

Appendix A: Format of Announcement of Opportunity (AO)

OMB Approval Number 2700–0085

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Washington, DC 20546

ANNOUNCEMENT OF OPPORTUNITY

AO No. _____ (Issuance Date)

(Descriptive Heading)

I. Description of the Opportunity

This section should set forth the basic purpose of the AO and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists; and/or any other approved area as identified in NHB 8030.6. In those instances where proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, an qualifying statement should be included to indicate that this AO does not constitute an obligation for the Government to carry the effort to completion.

II. AO Objectives

This section will give a succinct statement of the specific scientific, applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. Background

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader understand the relevance of the opportunity.

IV. Proposal Opportunity Period

This section should provide the proposal opportunity period(s). The following methods may be used individually or in conjunction for establishing the proposal opportunity period(s):

1. The AO may be issued establishing a single date by which proposals may be received. However, the AO could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired.

2. The AO may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the AO.

3. The AO may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. Requirements and Constraints

1. This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flight-worthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user or observer, need for preliminary or raw data analysis and interim reports. It will specify planned period (time) for data analysis to be used for budgeting. It will provide any additional information necessary for a meaningful proposal.

2. When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the AO should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. Proposal Submission Information

1. Preproposal Activities—In this section, the AO will indicate requirements and activities such as the following:

a. Submittal of ''Notice of Intent'' to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit ''Notice of Intent.''

b. Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

c. The name and address of the scientific or technical contact for questions or inquiries.

d. Any other preproposal data considered necessary.

2. Format of Proposals—This section should provide the investigator with the

information necessary to enable an effective evaluation of the proposal. The information is as follows:

a. Proposal—The AO should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections; (1) Investigation and Technical Section; and (2) Management and Cost Section.

b. Certification—The proposal must be signed by an institutional official authorized to certify institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

c. Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

d. Submittal Address—Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space
Administration Office of (Program)
Code _____ AO No. _____
Washington, DC 20546

e. Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each AO. The number of pages, page size, and restriction on photo reduction, etc., may be included. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items or the AO may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the AO or an appropriate form developed.

3. Additional Information—This section may be used to request or furnish data necessary to obtain clear proposals that should not require further discussions with the proposer by the evaluators. Other pertinent data could also be included, such as significant milestones.

4. Foreign Proposals—The procedures for submission of proposals from outside the U.S. are contained in Appendix B, ''General Instructions and Provisions.'' This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations at the same time the proposal is submitted.

5. Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference then should be made to the cost proposal certifications indicated in Appendix B, ''General Instructions and Provisions.''

VII. Proposal Evaluation, Selection, and Implementation

1. Evaluation and Selection Procedure

a. This section should notify the proposers of the evaluation process.

b. For example, a statement similar to the following should be included: ''Proposals received in response to this AO will be reviewed by a subcommittee appointed by the (appropriate Program AA). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this AO and so categorize the proposals. Those proposals which are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations.''

2. Evaluation Criteria

a. This section should indicate that the selection of proposals which best meet the specific scientific, applications, and/or technological objectives, stated in the AO, is the aim of the solicitation. This section should list the criteria to be used in the evaluation of proposals and indicate their relative importance. See paragraph 401, NHB 8030.6, for a listing of criteria generally appropriate.

b. This section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. Schedule

This section should include the following, as applicable:

1. Preproposal conference date.
2. Notice of Intent submittal date.
3. Proposal submittal date(s).
4. Target date for announcement of selections.

IX. Appendices

1. General Instructions and Provisions (must be attached to each AO).
2. Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator for (Program)

Appendix B: General

Instructions and Provisions

I. Instrumentation and/or Ground Equipment

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that becomes available, with or without modification, that will meet the investigative objectives.

II. Tentative Selections, Phased Development, Partial Selections, and Participation with Others

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. Selection Without Discussion

The Government reserves the right to reject any or all proposals received in response to this AO when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. Foreign Proposals

See Appendix C, Section II, para. 3.

V. Treatment of Proposal Data

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. Information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. Status of Cost Proposals (U.S. Proposals Only)

The investigator's institution agrees that the cost proposal is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution will be required to resubmit or execute a Standard

Form (SF) Form 1411 ''Contract Pricing Proposal Cover Sheet'' and certifications and representations required by law and regulation.

VII. Late Proposals

The Government reserves the right to consider proposals or modifications thereof received after the date indicated, should such action be in the interest of the Government.

VIII. Source of Space Transportation System Investigations

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources.

IX. Disclosure of Proposals Outside Government

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. Equal Opportunity (U.S. Proposals Only)

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

2. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection for training, including apprenticeship.

3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

5. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO–1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

8. The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

10. The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

11. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. Patent Rights

1. For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at NFS 1852.227–70, ''New Technology,'' shall apply. Such contractors may, in advance of contract, request waiver of rights as set forth in the provision at NFS 1852.227–71, ''Requests for Waiver of Rights to Inventions.''

2. For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227–11, ''Patent Rights—Retention by the Contractor (Short Form)'' (as modified by NFS 1852.227–11), shall apply.

Appendix C: Guidelines for Proposal Preparation

The following guidelines apply to the preparation of proposals in response to an AO. The material is a guide for the proposer and not intended to be encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should provide information relative to those items applicable or as required by the AO.

I. Cover Letter

A letter or cover page should be forwarded with the proposal signed by the investigator and an official by title of the investigator's organization who is authorized to commit the organization responsible for the proposal.

II. Table of Contents

The proposal should contain a table of contents.

III. Identifying Information

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

SECTION I—INVESTIGATION AND TECHNICAL PLAN

1. Investigation and Technical Plan

The investigation and technical plan generally will contain the following:

a. Summary. A concise statement about the investigation, its conduct, and the anticipated results.

b. Objective and Significant Aspects. A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

c. Investigation Approach

(1) Fully describe the concept of the investigation.

(2) Detail the method and procedures for carrying out the investigation.

2. Instrumentation

This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

a. Instrument Description—This section should fully describe the instrumentation and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

b. Instrument Integration—This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab,

Shuttle Orbiter, Space Station, etc. These include, but are not limited to, volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluent); data processing requirements.

c. Ground Operations—This section should identify requirements for pre-launch or post-launch ground operations support.

d. Flight Operations—This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe real-time ground support requirements and indicate any special equipment or skills required of ground personnel.

3. Data Reduction and Analysis

A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of the Interior, Sioux Falls, SD, for earth observations data.

4. Orbiter Crew and/or Payload Specialist Training Requirement

A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the task duration and equipment involved. Indicate special training necessary to provide the crew members or payload specialist(s) with the capability for performing the aforementioned tasks.

SECTION II—MANAGEMENT PLAN AND COST PLAN

A. Management Plan

The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

1. Management

a. The management plan sets forth the approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

b. The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

c. The plan should describe the proposed method of instrument acquisition. It should include the following, as applicable.

(1) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(2) Method and basis for the selection of the instrument fabricator.

(3) Unique capabilities of the instrument fabricator that are not available from any other source.

(4) Characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(5) Availability of personnel to administer the instrument contract and technically monitor the fabrication.

(6) Status of development of the instrument.

(7) Method by which the investigator proposes to:

(a) Prepare instrument specifications.

(b) Review development progress.

(c) Review design and fabrication changes.

(d) Participate in testing program.

(e) Participate in final checkout and calibration.

(f) Provide for integration of instrument.

(g) Support the flight operations.

(h) Coordinate with co-investigators, other related investigations, and the payload integrator.

(i) Assure safety, reliability, and quality.

(j) Provide required support for Payload Specialist(s), if applicable.

(8) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

2. Facilities and Equipment

All major facilities, laboratory equipment, and ground-support equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

3. Additional Guidelines Applicable to Non-U.S Proposers Only

The following guidelines are established for foreign responses to NASA's AO. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

a. Where a ''Notice of Intent'' to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the AO and send a copy of this letter to the International Relations Division, Office of External Relations, Code IR, NASA, Washington, DC 20546, U.S.A.

b. Unless otherwise indicated in the AO, proposals will be submitted in accordance with this Appendix excluding cost plans. Proposals should be typewritten and written in English.

c. Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates that the proposal merits careful consideration by NASA and that, if the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

d. Proposals including the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each AO. These documents should be sent to:

National Aeronautics and Space Administration
International Relations Division
Code IR
Office of External Relations
Washington, DC 20546
U.S.A.

e. Those proposals received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

f. Shortly after the deadline for each AO, NASA's International Relations Division will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgement will be provided to each proposer.

g. Successful and unsuccessful proposers will be contacted directly by the NASA Program Office coordinating the AO. Copies of these letters will be sent to the sponsoring Government agency.

h. NASA's International Relations Division will then begin making the arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(1) A letter of notification by NASA.

(2) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(3) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

B. Cost Plan (U.S. Investigations Only)

The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

1. The categories of cost should include the following:

a. Direct Labor—List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

b. Overhead—Include indirect costs, which because of its incurrence for common or joint

objectives, is not readily subject to treatment as a direct cost. Usually this is in the form of a percentage of the direct labor costs.

c. Materials—This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

d. Subcontracts—List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

e. Special Equipment—Include a list of special equipment with lead and/or development time.

f. Travel—List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

g. Other Costs—Costs not covered elsewhere.

h. General and Administrative Expense—This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

i. Fee (if applicable).

2. Separate schedules, in the above format, should be attached to show total cost allocable to the following:

a. Principal Investigator and other Investigators' costs.

b. Instrument costs.

c. Integration costs.

d. Data reduction and analysis including the amount and cost of computer time.

3. If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

Appendix D: Glossary of Terms and Abbreviations Associated with Investigations

Advisory Committee Subcommittee—Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO)—A document used to announce opportunities to participate in NASA programs. AOs are published in accordance with this Handbook.

AO Process—A term used to describe the program planning and procurement procedure used to acquire investigative effort, initiated by an AO.

Categorization—The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; Category III—sound investigations requiring further development; Category IV—rejected.

Co-Investigator (Co-I)—Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation. A NASA employee can participate as a Co-I on an investigation proposed by a private organization.

Data Users—Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments—Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR)—The regulations governing the conduct of procurement.

Flight—That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle ''flight'' means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigation—Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity—A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators—Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers.

Investigation—Used interchangeably with ''Experiments.''

Investigation Team—A group of investigators collaborating on a single investigation.

Investigator—A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission—The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement (NFS)—Procurement regulations promulgated by NASA in addition to the FAR.

NHB—NASA Handbook.

NMI—NASA Management Instruction.

Notice of Intent—A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload—A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group—A gathering of experts in related disciplinary areas convened as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review—The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in this Handbook.

Principal Investigator (PI)—A person who conceives an investigation and is responsible for carrying it out and reporting its results. A NASA employee can participate as a PI only on a government-proposed investigation.

Program—An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project—Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office—An office generally established at a NASA field installation to manage a project.

Selection Official—The NASA official designated to determine the source for award of a contract or grant.

Space Facility—An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee—A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office—An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee—An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T)—-The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team—A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader—The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member—A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.

1870.202 [Amended]

187. In section 1870.202, paragraph (b) is revised to read as follows:

1870.202 System Content.

(a) * * *

(b) The system contains instructions for proposers. These instructions shall be included in the NRA, a form of broad agency announcement authorized at 1835.016.

188. Section 1870.203 and Appendix I are revised to read as follows:

1870.203 Instructions for Responding to NRAs.

(a) The ''Instructions for Responding to NASA Research Announcements'' document (prescribed in 1835.016–70(c)(4)) is set forth as Appendix I to this section.

(b) This Appendix may be reproduced locally as part of the NRA provided:

(1) The issuing office shall verify that the current version of Appendix I is used.

(2) The text shall be reproduced verbatim; however, the issuing office may remove the NFS page headers and add the NRA number. Any other change shall be treated as a deviation in accordance with 1801.400.

Appendix I to 1870.203—Instructions for Responding to NASA Research Announcements Instructions for Responding to Nasa Research Announcements

(June 1995)

1. Foreword

a. These instructions apply to ''NASA Research Announcements.'' The ''NASA Research Announcement (NRA)'' permits competitive selection of research projects in accordance with statute while preserving the traditional concepts and understandings associated with NASA sponsorship of research.

b. These instructions are Appendix I to 1870.203 of the NASA Federal Acquisition Regulation Supplement.

2. Policy

a. Proposals received in response to an NRA will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

b. A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

3. Purpose

These instructions supplement documents identified as ''NASA Research Announcements.'' The NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

4. Relationship to Award

a. A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate instrument.

b. Grants are generally used to fund basic research in educational and nonprofit institutions, while research in other private sector organizations is accomplished under contract. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement (NHB 5100.4). Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1).

5. Conformance to Guidance

a. NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

b. To be considered responsive, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

6. NRA-Specific Items

Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

7. Proposal Contents

a. The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

b. Transmittal Letter or Prefatory Material. (1) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(2) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(3) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc.;

(4) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(5) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(6) Identification of the NRA, by number and title, to which the proposal is responding;

(7) Dollar amount requested, desired starting date, and duration of project;

(8) Date of submission; and

(9) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

c. Restriction on Use and Disclosure of Proposal Information. Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Notice

Restriction on Use and Disclosure of Proposal Information.

The information (data) contained in *[insert page numbers or other identification]* of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

d. Abstract. Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

e. Project Description. (1) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(2) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

f. Management Approach. For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described. Intensive working relations with NASA field centers that are not logical inclusions elsewhere in the proposal should be described.

g. Personnel. The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

h. Facilities and Equipment. (1) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use.

(2) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

i. Proposed Costs. (1) Proposals should contain cost and technical parts in one volume: do not use separate ''confidential'' salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all manpower data in terms of man-months or fractions of full-time.

(2) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases. (Standard Form 1411 may be used).

(3) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A–21 for educational institutions and A–122 for nonprofit organizations).

j. Security. Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

k. Current Support. For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

l. Special Matters. (1) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(2) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

8. Renewal Proposals

a. Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

b. NASA may renew an effort either through amendment of an existing contract or by a new award.

9. Length

Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15–20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of ''one-of-a-kind'' attachments: their availability may be mentioned in the proposal.

10. Joint Proposals

a. Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

b. Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. ''Joint'' proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

11. Late Proposals

A proposal or modification received after the date or dates specified in an NRA may be considered if the selecting official deems it to offer NASA a significant technical advantage or cost reduction.

12. Withdrawal

Proposals may be withdrawn by the proposer at any time. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

13. Evaluation Factors

a. Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

b. Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

c. Evaluation of its intrinsic merit includes the consideration of the following factors, none of which is more important than any other:

(1) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(3) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(4) Overall standing among similar proposals and/or evaluation against the state-of- the-art.

d. Evaluation of the cost of a proposed effort includes the realism and reasonableness of the proposed cost and available funds.

14. Evaluation Techniques

Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

15. Selection for Award

a. When a proposal is not selected for award, and the proposer has indicated that the proposal is not to be held for subsequent reviews, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

b. When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model contract and other information which will be of use during the contract negotiation.

16. Cancellation of NRA

NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for cancelling the NRA or for anyone's failure to receive actual notice of cancellation. Cancellation may be followed by issuance and synopsis of a revised NRA, since amendment of an NRA is normally not permitted.

[FR Doc. 95–19144 Filed 8–8–95; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 60, No. 153
Wednesday, August 9, 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.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110A]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Correction to notice of limited reopening of the comment period.

SUMMARY: This document contains corrections to the Notice of Limited Reopening of the Comment Period that was published Monday, July 31, 1995, 60 FR 38974, FR Doc. 95–18737. The notice of limited reopening of the comment period requests public comment on possible options for defining the term ''substantial portion,'' which is used to determine coverage for certain petroleum producers and importers, and on possible modifications of the proposed definition of ''alternative fuel'' with respect to alcohol fuels and biodiesel. In addition, this notice announces DOE's receipt of new information regarding automakers' alternative fueled vehicle production plans for the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6116.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice of limited reopening of the comment period contains errors in the sequence of text in Part II which may be confusing and, therefore, are in need of correction. The substance of Part II is unchanged.

Correction of Publication

Accordingly, the publication on July 31, 1995, of the Notice of Limited Reopening of the Comment Period, which was the subject of FR Doc. 95–18737, is corrected by reprinting Part II, Definition of ''Substantial Portion,'' beginning on page 38975, col. 1, and ending on page 38976, col. 2, in its entirety:

II. Definition of ''Substantial Portion''

Section 501(a)(2) of the Energy Policy Act of 1992 (the ''Act'') defines the class of alternative fuel providers potentially subject to the alternative fueled vehicle acquisition requirements to include persons who: (1) Qualify as a ''covered person'' under section 301(5) of the Act, 42 U.S.C. 13211(5), and (2) produce or import an average of 50,000 barrels per day or more of petroleum and ''a substantial portion of whose business is producing alternative fuels.'' 42 U.S.C. 13251(a)(2)(C). Thus, the term ''substantial portion'' is a key statutory determinant of whether a covered person that produces or imports petroleum is an alternative fuel provider required by the Act to acquire alternative fueled vehicles.

However, even if an entity meets all of the qualifications for a section 501(a)(2)(C) alternative fuel provider, including the ''substantial portion'' test, it nevertheless may be excepted from the vehicle acquisition requirements under section 501(a)(3) or exempted by DOE under section 501(a)(5). Under section 501(a)(3)(A), the vehicle acquisition requirements only apply to an affiliate, division or business unit of a covered person who is substantially engaged in the alternative fuels business. *See* proposed § 490.304. Moreover, under section 501(a)(3)(B), the vehicle acquisition requirements do not apply to any entity whose principal business is transforming alternative fuel into a product other than alternative fuel or consuming such fuel to manufacture a product that is not an alternative fuel. Under section 501(a)(5), DOE may exempt alternative fuel providers from the vehicle acquisition requirements if they can show either that (1) alternative fuels that meet their normal business requirements and practices are not available; or (2) that alternative fueled vehicles that meet their normal business requirements and practices are not offered for purchase or lease on reasonable terms and conditions. *See* proposed § 490.308.

In the February 28, 1995 notice of proposed rulemaking, DOE proposed to define the term ''substantial portion'' to mean that at least two percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. *See* proposed § 490.301. DOE explained that it chose the two percent of refinery yield threshold because it represented the average yield for the production of alternative fuels by petroleum refiners, as reported by the Energy Information Administration. 60 FR 10978.

The notice of proposed rulemaking also explained that in developing the proposed definition of ''substantial portion,'' the Department had considered, as an alternative, basing the definition on the portion of the gross revenue an entity derives from the production of alternative fuels. Ultimately, DOE did not propose a gross revenue threshold because the information needed to support that alternative was more fragmented than that available to support the two percent of refinery yield criterion, and DOE believed the percent of refinery yield criterion would adequately define the class of petroleum producers and importers who are ''covered persons'' under the Act. 60 FR 10979. Nevertheless, DOE asked for comment on whether reliable information exists that would allow establishment of a revenue measure for determining whether alternative fuels production comprises a substantial portion of a company's business, and it solicited suggestions for any other alternative definitions of ''substantial portion.'' 60 FR 10979.

DOE received many comments on the definition of ''substantial portion.'' Some commenters supported DOE's proposed definition of ''substantial portion,'' agreeing that if at least two percent of a refinery's product yield is composed of an alternative fuel, the fuel provider should have to meet the Act's acquisition requirements. However, most comments on this issue criticized the two percent of refinery yield as being too low a threshold. Some commenters stated that the two percent refinery yield of petroleum products threshold would impose vehicle acquisition requirements on many refineries that only produce alternative

fuels (principally propane) as incidental by-products of the refining process. Several commenters recommended that DOE modify the rule to provide that at least 10 percent of a covered person's refinery yield of petroleum products must be composed of alternative fuels before that person would be deemed to have a ''substantial portion'' of its business involved in the production of alternative fuels. Other commenters urged DOE to adopt a definition of ''substantial portion'' that would be the same as the ''principal business'' criterion used in section 501(a)(2) for defining other categories of alternative fuel providers.

A few of the commenters recommended that DOE adopt a percentage of gross revenue derived from the sale of alternative fuels as the basis for the definition of ''substantial portion.'' They pointed out that gross revenue is the measure used for determining whether other alternative fuel providers are ''covered persons'' because their ''principal business'' is in alternative fuels. In their view, if gross revenue can be used to determine whether an entity's principal business involves alternative fuels, it also should be used for determining whether a petroleum producer or importer has a substantial portion of its business in the production of alternative fuels.

After carefully reviewing all of the comments received on this issue, DOE thinks that a percentage of gross revenue derived from the sale of alternative fuels may be a better measure of an entity's involvement in the alternative fuels business than is the percentage of refinery yield of petroleum products included in the proposed rule's definition of ''substantial portion.'' As pointed out by some commenters, a gross revenue measure can be applied to all producers and importers of petroleum, unlike the percent of refinery yield criterion which focuses solely on refining operations.

Despite the lack of comprehensive, publicly available information about petroleum producers' and importers' revenue sources on a product-by-product basis, DOE has been able to collect enough information about their sales of alternative fuels to frame a possible definition of ''substantial portion'' based on percent of gross revenue derived from alternative fuels.

One option DOE is considering is whether to define ''substantial portion'' to mean that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels. This percentage of gross revenue appears to be an appropriate gross revenue threshold for two reasons. First, available information shows that major U.S. energy producing companies historically derive at least 30 percent of their annual gross revenue from the sale of alternative fuels.[1] Major energy producers are typically consolidated or integrated companies that are involved in oil and gas exploration, oil and gas production or importing, petroleum refining and marketing, transportation of products, other energy operations (coal, nuclear and other energy) and nonenergy businesses (primarily chemicals). Second, this definition would exclude from the class of covered persons subject to the vehicle acquisition requirements those refiners who produce alternative fuels only as an incidental by-product of the refining process. Refiners are typically involved only in petroleum refining and marketing operations.

DOE also believes this gross revenue percentage comports with the terms of section 501(a)(2) of the Act, 42 U.S.C. 13251(a)(2). If the term ''substantial portion'' were defined to include a percentage of gross revenue derived from alternative fuels that was higher than 30 percent, the distinction in the Act between ''substantial portion'' which applies to covered petroleum producers and importers (section 501(a)(2)(C)) and ''principal business'' which applies to other alternative fuel providers (section 501(a)(2) (A) and (B)) would be rendered meaningless. As noted in the preamble to the notice of proposed rulemaking, alternative fuels constitute an entity's ''principal business'' if the entity derives a plurality of its gross revenue from sales of alternative fuels, and a plurality may be less than 50 percent. 60 FR 10978. Therefore, DOE believes that 30 percent of gross revenue from alternative fuels may constitute a reasonable basis for the definition of ''substantial portion.''

This possible interpretation of ''substantial portion'' also appears to be consistent with the underlying intent of Congress with regard to petroleum-related entities. That intent was to apply the alternative fueled vehicle acquisition requirements only to major energy producers and importers.[2]

DOE requests comments from interested members of the public on this possible option for defining ''substantial portion'' or any alternative options they would like DOE to consider. DOE is particularly interested in receiving data or analysis that are relevant to this issue.

Thomas J. Gross,

Deputy Assistant Secretary for Transportation Technologies, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 95–19688 Filed 8–8–95; 8:45 am]

BILLING CODE 6450–01–P

[1] Sources used were: Energy Information Administration's *Performance Profiles of Major Energy Producers,* 1993 (DOE/EIA–0206); Moody's 1994 Industrial Manual; 1995 U.S.A. Oil Industry Directory; and Standard & Poor's 1994 Register—Corporations.

[2] The conference report on the Energy Policy Act of 1992 states that ''the intent of section 501(a)(1) is not to cover all affiliates or divisions of the many large energy companies which have some, but not all, of their corporate units engaged in alternative fuels operations. For example, the oil and gas production affiliate or division of a major energy company described in 501(a)(1)(C) would be covered; so might a propane pipeline unit or a natural gas processing division, if the ''substantially engaged'' test is met. But an oil tanker division, a gasoline marketing affiliate, or a petrochemical unit whose major operations are the production of plastics, for example, would not be covered * * *.'' H.R. Rep. 1018, 102d Cong., 2d Sess. 387 (1992).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 950609150–5150–01]

RIN 0648–AI06

Jade Collection in the Monterey Bay National Marine Sanctuary

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow small-scale, non-intrusive collection of jade from the Sanctuary. This advance notice of proposed rulemaking (ANPR) discusses the reasons NOAA is considering authorizing jade collection in the MBNMS, and, if it is determined to proceed with rulemaking to allow jade collection, the possible restrictions NOAA might place on such collection to ensure that Sanctuary resources or qualities would not be adversely impacted. NOAA is issuing this ANPR specifically to invite advice, recommendations, information and other comments from interested parties on whether to allow jade collection in

the MBNMS and, if so, what restrictions might be necessary.

DATES: Comments must be received by September 8, 1995.

ADDRESSES: Comments should be sent to Scott Kathey, Monterey Bay National Marine Sanctuary office, 299 Foam Street, Suite D, Monterey, California, 93940, or Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same addresses.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251 or Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) was designated on September 18, 1992. SRD issued final regulations, effective January, 1993, to implement the Sanctuary designation (15 CFR Part 944). The MBNMS regulations at 15 CFR 944.5(a) prohibit a relatively narrow range of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted.

The leasing, exploration, development or production of oil or gas in the Sanctuary is statutorily prohibited (Section 2203 of Pub. L. 102–587). As such, the final MBNMS implementing regulations absolutely prohibited exploration, production or development of oil, gas or minerals in the MBNMS (57 FR 43310, 43315–43317; 15 CFR 944.5(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 944.5(h); Designation Document, Article V).

There is a region within the Sanctuary known as the Jade Cove area. Jade Cove consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in veins in the serpentine bedrock formation, extending down the cliffs and into the seabed. The area is very dynamic, subject to strong waves and tides, which erode the veins and sometimes free the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless permitted by the State. The National Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is considering amending the regulations for the MBNMS to allow small-scale, non-intrusive collection of jade from the Sanctuary. NOAA is considering this action for a variety of reasons, foremost of which is that preliminary indications suggest that small scale, non-intrusive collection of loose pieces of jade may not destroy, cause the loss of, or injure resources or qualities of the MBNMS. Further, the MBNMS Sanctuary Advisory Council (Council) has recommended to SRD that the regulations be amended to allow jade collection. The Council has devoted several of its meetings to obtain information and public testimony, and convened a work group to review this issue. There has also been consistent public support for the proposed course of action.

It may be possible to allow people to ''beach comb'' or dive for loose pieces of jade, much like what already occurs in this Sanctuary for items such as driftwood, without any resulting harm to Sanctuary resources or qualities. Jade is a non-living resource of the MBNMS. *See* 15 CFR 944.3. However, allowing small-scale, non-intrusive collection of small pieces already loose (''in float'') and that would otherwise naturally disintegrate or be washed out to sea would not seem to pose a risk of harm to this resource. Further, it appears that collection of loose pieces of jade from the Sanctuary could be conducted without creating a risk of harm to other Sanctuary resources or qualities or the MBNMS ecosystem. NOAA will likely limit collection to hand picking pebbles or small stones already ''in float'' and devoid of any marine life, including algae and benthic organisms. If collection were allowed, no tools would be permitted that could injure Sanctuary resources or qualities, such as wedges, crowbars, picks, chisels and other tools used for digging, excavating, boring, breaking, prying, drilling, piercing, scraping, wedging, or other intrusive activities. No vehicles, winches, carts or other removal equipment would be permitted to be used in the Sanctuary to collect jade. However, NOAA may consider allowing the use of lift bags to float loose submerged jade to the shore. Any regulatory exception for the small-scale, non-intrusive collection of loose pieces of jade would not extend to oil or gas. As indicated earlier, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

The prohibition against permitting or otherwise approving the exploration, development, or production of oil, gas, or minerals in the Sanctuary is a term of the Designation Document. Therefore, to allow small-scale, non-intrusive jade collection in the Sanctuary NOAA must comply with the procedures for altering a term of designation for a National Marine Sanctuary. As provided by section 304(a)(4) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(4), the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. §§ 1433, 1434. Section 304 requires the preparation of an environmental impact statement, state consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to state waters within the Sanctuary.

Although NOAA is considering providing a limited exception for small-scale, non-intrusive jade collection from the regulatory prohibition against exploring for, producing or developing oil, gas or minerals, any jade collection that alters the seabed of the Sanctuary (e.g., digging into the seabed) would remain subject to the prohibition against alteration of the seabed (15 CFR 944.5(a)(5)). NOAA would not allow jade collection that alters the seabed of the Sanctuary. Further, any collection in California State waters would require a State permit because of the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands.

NOAA is seeking advice, recommendations, information and other comments, with reasons, on whether NOAA should amend the MBNMS regulations to allow small-scale, non-intrusive jade collection in the MBNMS. If NOAA allows jade collection, comments are requested on: (1) whether collection should be limited to loose pebbles or small stones; (2) whether the use of tools should be permitted to collect jade from the Sanctuary; (3) whether there should be limits on the amount of jade allowed to be taken from the Sanctuary and, if so, what limits; (4) what conditions or restrictions should be placed on jade collection; and (5) any other information

or other comments that may be pertinent to this issue.

Executive Order 12866

For purposes of Executive Order 12866, this advance notice of proposed rulemaking is determined to be not significant.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: June 9, 1995.

David Evans,

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

[FR Doc. 95–19633 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–08–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AD82

Supplemental Security Income for the Aged, Blind, and Disabled; Valuation of In-Kind Support and Maintenance With Cost-of-Living Adjustment

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 13735 of the Omnibus Reconciliation Act of 1993 (OBRA 1993). This statutory provision amends the Social Security Act (the Act) and requires that the new benefit rate, as increased by a cost-of-living adjustment (COLA), be used in determining the value of the statutory one-third reduction and the regulatory presumed maximum value for the computation of Federal supplemental security income (SSI) benefit payments for the first 2 months for which the COLA is in effect. These rules will provide that we will value the statutory one-third reduction and the regulatory presumed maximum value using the benefit rate as increased by a COLA to determine the amount of in-kind support and maintenance received by an individual which is to be counted for those months. This will preclude a decrease in the benefit amount the third month after a COLA, a situation which occurred under the present regulations. The legislation is effective for benefits paid for months after calendar year 1994.

DATES: To be sure that your comments are considered, we must receive them no later than October 10, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by e-mail to regulations@ssa.gov., or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: Under retrospective monthly accounting (RMA), an individual's current SSI benefit amount is usually determined based upon the individual's income in the second preceding month (''budget month'') before the current month. For example, January's SSI benefit amount is based on the individual's November income. In some instances, an individual receives income in the form of in-kind support and maintenance and it is counted using the value of the one-third reduction (VTR) or the presumed maximum value (PMV) rule. Under the law prior to the effective date of section 13735 of Public Law 103–66, the VTR and the PMV were based on the applicable benefit rates in effect in the ''budget month.'' Because of RMA principles, when an annual COLA to the SSI benefit rate became effective in January, we used the VTR/PMV amount from November of the previous year to determine the individual's benefit for January if an individual had in-kind support and maintenance in the ''budget month.'' For example, in figuring an individual's January 1994 benefit, we used November 1993 as the ''budget month.'' Thus, in a computation using the VTR, we would subtract the 1993 VTR amount of $144.66 from the 1994 benefit rate of $446.00, giving the individual an SSI benefit of $301.34. February's benefit amount would also be computed using the new benefit rate and the 1993 VTR amount. However, in computing March's benefit amount, we used the benefit rate of $446.00 less the January 1994 VTR amount of $148.66, resulting in an SSI benefit amount of $297.34. Thus, the individual's January and February payments exceeded the March payment because of the increased amount of the new VTR used when January was the ''budget month.'' Notices were then released to these individuals notifying them of the decrease in their March payment. This was confusing to SSI recipients because their payment amounts increased and then decreased even if there is no change in their living arrangements.

We propose to change the method of valuation of the VTR/PMV to reflect section 13735 of Public Law 103–66 for benefits paid after calendar year 1994, by using the new benefit rate as increased by a COLA in determining the VTR or PMV for the computation of SSI benefits for the first 2 months for which the COLA is in effect. Thus, with a COLA effective January 1, 1995, both the new increased 1995 benefit rate and new increased VTR or PMV amounts are being used in computing a January and February 1995 benefit amount. Unlike the example used previously, the individual's January, February, and March payments calculated by using the VTR amount will be the same assuming all other income remains constant—i.e., there will be no decrease in the SSI benefit amount the third month after a COLA. This will eliminate confusion for recipients and also eliminate the need for issuance of notices informing affected recipients of the decrease in their March payment.

We state in the proposed regulations at § 416.420(a) that we will use the benefit rate, as increased by a COLA, in determining the value of certain in-kind support and maintenance used to compute an individual's SSI benefit amount for the first 2 months in which the COLA is in effect. We also propose to add a third example to § 416.420(a) to further clarify the regulatory intent.

We state in the proposed regulations at § 416.1130 how we value in-kind support and maintenance when a COLA applies and have altered the example to reflect the situation when a COLA becomes effective.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 27, 1995.

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts D and K of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart D—Amount of Benefits

1. The authority citation for Part 416, Subpart D continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. Section 416.420 is amended by revising paragraph (a) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(a) *General rule.* We generally use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We will use the benefit rate (see §§ 416.410 through 416.414), as increased by a cost-of-living adjustment, in determining the value of the one-third reduction or the presumed maximum value, to compute your SSI benefit amount for the first 2 months in which the cost-of-living adjustment is in effect. If you have been receiving an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your social security benefit in January exceeds the amount of your social security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your social security benefit in February exceeds the amount of your social security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Z's SSI benefit amount is being determined for January (the current month). There has been a cost-of-living increase in SSI benefits effective January. Mr. Z's countable income in November is used to determine the benefit amount for January. In November, Mr. Z had in-kind support and maintenance valued at the presumed maximum value as described in § 416.1140(a). We will use the January benefit rate, as increased by the COLA, to determine the value of the in-kind support and maintenance Mr. Z received in November when we determine Mr. Z's SSI benefit amount for January.

Example 3. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of $100 in November, $100 in December, and $105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November ($5) and add that to his income in November to determine the SSI benefit amount for January.

* * * * *

Subpart K—Income

3. The authority citation for part 416, subpart K continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1130 is amended by revising paragraph (a) to read as follows:

In-Kind Support and Maintenance

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in November, we use the Federal benefit rate for January.

* * * * *

[FR Doc. 95–19502 Filed 8–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–123]

RIN 2115-AA97

Safety Zone: Grande Fiesta Italiana Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone located in Hempstead Harbor, New York, for the Grande Fiesta Italiana fireworks program. If adopted, the safety zone would be in effect from 9 p.m.

until 10:15 p.m. on Sunday, September 10, 1995. This proposed regulation would close all waters of Hempstead Harbor, shore to shore, within a 300 yard radius of two fireworks barges anchored approximately 300 yards north of Bar Beach, Port Washington, New York.

DATES: Comments must be received on or before August 29, 1995.

ADDRESSES: Comments should be mailed to Captain of the Port, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Planning and Readiness Division, Bldg 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Planning and Readiness Division at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Good cause exists for publishing this Notice of proposed rulemaking (NPRM) with a 20 day comment period. A 20 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest as it would delay publication of the final rule until immediately before or after the event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–123) and the specific section of the proposal to which their comments apply, and give reasons 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, however, persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announce by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On July 17, 1995, Fireworks by Crucci, Inc. submitted an Application for Approval of Marine Event to hold a fireworks program in the waters of Hempstead Harbor. The fireworks program is being sponsored by the Sons of Italy. If adopted, the regulation would establish a temporary safety zone in all waters of Hempstead Harbor, shore to shore, within a 300 yard radius of the fireworks barges anchored approximately 300 yards north of Bar Beach, Port Washington, New York, at or near 40°49′52″N latitude, 073°39′10″W longitude (NAD 1983). The Safety zone would close this portion of the harbor to through vessel traffic. The regulation would be effective from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone would prevent vessels from transiting this portion of Hempstead Harbor, from shore to shore, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This proposal 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. If adopted, the regulation would close a portion of Hempstead Harbor, shore to shore, north of Bar Beach to vessel traffic from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York. Although it would prevent traffic from transiting the area, the effect of the proposed regulation would not be significant for several reasons: the duration of the event is limited; the event is at a late hour; the amount of commercial traffic in the area is minimal; and the extensive, advance advisories which will be made. Accordingly, the Coast Guard expects the economic impact of the proposed regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket and are available for inspection at the office indicated in the **ADDRESSES** section. Under the National Environmental Policy Act, the approval of the permit for marine event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B, as amended, July 29, 1994. The fireworks display lasts less than 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165,T01–123, is added to read as follows:

§ 156.T01–123 Safety Zone; Grande Fiesta Italiana Fireworks, Hempstead Harbor, New York.

(a) *Location.* The safety zone includes the waters of Hempstead Harbor, shore to shore, within a 300 yard radius of a fireworks barge anchored approximately 300 yards north of Bar Beach, Port Washington, New York, at or near 40°49′52″N latitude 073°39′10″W longitude (NAD 1983).

(b) *Effective period.* This section is in effect from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 1, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–19676 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 183

[CGD 95–041]

Propeller Accidents Involving Houseboats and Other Displacement Type Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period.

SUMMARY: In a notice published May 11, 1995 (60 FR 25191), the Coast Guard solicited comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance. The comment period closed July 10, 1995. In response to the notice, the Coast Guard received over 100 letters. Various parties including the National Association of State Boating Law Administrators (NASBLA) requested an extension of the comment period. This notice reopens and extends the comment period.

DATES: Comments must be received on or before November 7, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD95–041), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this request for comments by submitting written data, views or arguments. Persons submitting comments should include their names and addresses and identify this notice (CGD 95–041). Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclosed stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. All comments received after the close of the initial comment period and before the reopening of the comment period will also be considered.

Background Information

The Coast Guard solicits comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance, including: (1) The economic and other impacts of establishing a requirement for propeller guards on recreational houseboats and other displacement vessels; (2) suggestions on alternatives to propeller guards which should also be considered; (3) recommendations on the applicability of regulations; and (4) the concerns of the recreational vessel livery and charter industries.

Persons submitting comments should do so as directed under Request for Comments above, and specify the area(s) of concern on which comments are being submitted, state what impacts may result from one or more alternatives identified, suggest other alternatives, and provide reasons to support the information provided on potential impact or suggested alternatives.

The Coast Guard will consider all relevant comments in determining what action may be necessary to address propeller accidents involving houseboats and other displacement-type recreational vessels.

Dated: August 2, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–19675 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0E3875/P623; FRL–4967–7]

RIN 2070–AC18

Cyproconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a time-limited tolerance for the residues of the fungicide cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on the imported raw agricultural commodity coffee beans at 0.1 part per million (ppm). Sandoz Agro, Inc., petitioned pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for this regulation to establish a maximum permissible level for residues of the fungicide.

DATES: Comments, identified by the document control number [PP 0E3875/P623], must be received on or before September 8, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the 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, [PP 0E3875/P623]. 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: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to establish an import tolerance for the residues of the fungicide cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on the raw agricultural commodity coffee beans at 0.1 part per million (ppm). The proposed regulation to establish a maximum permissible level of the fungicide pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, by amending 40 CFR part 180 to include this commodity was requested in a pesticide petition (PP 0E3875) submitted by Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018. 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 the following:

1. A 90-day rat study, in which the levels tested in Han Wistar strain rats were 0, 20, 80, and 320 ppm (0, 1, 4, and 16 mg/kg). Cyproconazole inhibited body weight gain, increased blood sodium, increased liver weights, and produced histological changes in the liver at the high dose. Increased blood creatinine and decreased calcium levels were observed at the high and low dose, but not at the mid-dose. Effects were reversed after cessation of dosing and a 4-week recovery period. Since these changes were not observed after the recovery period they were considered treatment related. A NOEL for this study was therefore not attained, but the NOEL would be less than 1.0 mg/kg.

2. A 13-week feeding study in dogs treated at 0, 20, 100, and 500 ppm yielded a NOEL of 20 ppm (0.8 mg/kg/day) and an LEL of 100 ppm (4 mg/kg/day). At the high dose, treatment-related changes included slack muscle tone, depressed body weight gain, and decreases in bilirubin, total cholesterol, HDL-cholesterol, triglycerides, total protein, and albumin. There were increases in platelet counts, alkaline phosphatase, gamma glutamyl transferase, absolute and relative liver weights, relative kidney weights, and relative brain weights. Liver toxicity was indicated by hepatomegaly.

3. A 21-day dermal study, in which levels tested in New Zealand white rabbits were 50, 250, and 1,250 mg/kg. The NOEL was 250 mg/kg and the LEL was 1,250 mg/kg. Effects included depressed body weight gain and food consumption and increased levels of AST, creatinine, and cholesterol.

4. A 1-year dog study. When dogs were fed a diet containing cyproconazole at levels of 0, 30, 100, or 350 ppm for one year, a NOEL of 30 ppm (1.0 mg/kg/day) and an LEL of 100 ppm (3.2 mg/kg/day) were attained. Several clinical laboratory parameters indicated a difference between the control and treated animals which was consistent with liver effects. Laminal eosinophilic intrahepatocytic bodies were observed in all males and two females at the high dose, and in one male at the mid-level dose. These changes were thought to represent adaptive hypertrophy of the endoplasmic reticulum. Relative kidney weights were increased in low- and high-dose females; cytochrome P450 was significantly increased in males and females at 350 ppm and females at 100 ppm.

5. A mouse carcinogenicity study in which cyproconazole at levels of 0, 15, 100, or 200 ppm added to the diet of CD-1 mice for 81 weeks (males) and 88 weeks (females) resulted in a NOEL for systemic toxicity of 15 ppm (1.8 mg/kg for males and 2.6 mg/kg for females). The LEL was 100 ppm (13.2 mg/kg for males and 17.7 mg/kg for females) based on a significantly increased incidence of hepatic single cell necrosis and diffuse hepatocytic hypertrophy at the two highest levels. The effect was more severe in males than females. There was a decreased amount of testicular germinal epithelium in males at the high dose which corresponded to an increased incidence of flaccid testes. There was an increased incidence of liver adenomas and carcinomas in both sexes.

6. A rat chronic/carcinogenicity study in which cyproconazole fed to KFM Wistar (HAN Wistar origin) rats (males for 118 weeks, females for 121 weeks) at 0, 20, 50, or 350 ppm (males: 1.0, 2.2, and 15.6 mg/kg; females: 1.2, 2.7, and 21.8 mg/kg) resulted in slightly decreased body weights in the high-dose females and increased incidence of fatty infiltration of the liver in the high-dose males. The NOEL for systemic toxicity was 50 ppm. The LEL was 350 ppm. It was determined that the dose levels were inadequate for the assessment of the carcinogenic potential of cyproconazole in the rat. The HED Carcinogenicity Peer Review Committee recommended that this phase of the study be repeated. The committee classified cyproconazole as a quantitated Group B_2 carcinogen with a $Q1^*$ of 0.30 $(mg/kg/day)^{-1}$ based on the absence of an adequate carcinogenicity study in rats and the structural relationship of cyproconazole to closely related analogues shown to have carcinogenic activity.

7. A rat developmental toxicity study in which cyproconazole (95.6% purity) was administered as a suspension by gavage to sperm-positive Wistar/HAN female rats at dose levels of 0, 6, 12, 24, or 48 mg/kg on days 6 through 15 of gestation. The NOEL for maternal toxicity was 6 mg/kg, and the LEL was 12 mg/kg based on decreased body weight gain during dosing. The NOEL for developmental toxicity was 6 mg/kg. The LEL was 12 mg/kg based on the increased incidence of supernumerary ribs.

8. A chinchilla rabbit developmental toxicity study in which cyproconazole (95.6% purity) was administered by gavage to 16 Chinchilla rabbits on days 6 through 18 of gestation at 0, 2, 10, or

50 mg/kg. The NOEL for maternal toxicity was 10 mg/kg (equivocal). The LEL was 50 mg/kg based on decreased body weight gain during dosing. Developmental effects were also evaluated. Hydrocephalus internus was observed in 1 fetus at each treatment level. Therefore, the NOEL for developmental toxicity was set at less than 2 mg/kg, and the LEL was 2 mg/kg. The incidence was 0.85, 0.83, and 0.93 for the low-, mid-, and high-dose fetuses and 0.08 for the historical control.

9. A New Zealand white rabbit developmental toxicity study in which cyproconazole (94.8% purity) was administered by gavage to 18 inseminated New Zealand White rabbits once daily on days 6 through 18 of gestation at dose levels of 2, 10, or 50 mg/kg. The NOEL for maternal toxicity was 10 mg/kg, and the LEL was 50 mg/kg based on decreased body weight gain. There was also evidence of developmental toxicity. The NOEL for developmental toxicity was 2 mg/kg, and the LEL was 10 mg/kg based on the increased incidence of malformed fetuses and litters with malformed fetuses.

10. A rat two-generation reproduction study in which technical cyproconazole (95.6% purity) was administered to 26 male and 26 female F_0 and F_1 KFM-Wistar rats per group for 10 and 12 weeks, respectively, during the pre-mating period via the diet at 0, 4, 20, or 120 ppm. Treatment of males continued for 3 weeks after termination of mating and females were treated until necropsy (post-weaning). The systemic NOEL for parental toxicity was set at 20 ppm (1.7 mg/kg) based on liver effects at 10.6 mg/kg/day. For reproductive toxicity, the NOEL was set at 4 ppm (0.4 mg/kg) and the LEL at 20 ppm (1.7 mg/kg) based on increased gestation length in the F_0 dams and decreased F_1 litter sizes.

11. Several mutagenicity studies. Mutagenicity potential of cyproconazole was tested in several studies considered acceptable by the Agency. Since the results of two chromosomal aberration assays indicated the cyproconazole is clastogenic, additional mutagenicity data were requested to address an identified heritable risk concern. For the potential to induce chromosome aberrations in CHO cells, cyproconazole was positive under nonactivated and activated conditions, thus supporting the evidence that cyproconazole is clastogenic in this test system. Cyproconazole was negative in Salmonella, mouse micronucleus, and SHE/cell transformation assays. A dominant-lethal assay in rats was submitted and was negative. Based on this evidence, the concern for a possible heritable effect was not pursued.

12. Metabolism/pharmacokinetics studies. Cyproconazole was shown to be extensively metabolized in the rat. Unchanged cyproconazole and 13 metabolites were isolated and identified, and 35 metabolites were detected in the excreta. Excretion was relatively rapid with the majority of the radioactivity appearing in the feces as a result of biliary elimination. Residues were found in renal fat, adrenals, kidney and liver, although no significant tissue radioactivity was observed at 168 hours post-dose.

The reference dose (RfD) used in the dietary exposure analysis was 0.01 mg/kg bwt/day based on a NOEL of 30.0 ppm (1.00 mg/kg bwt/day) from a 1-year dog feeding study with an uncertainty factor of 100 that demonstrated hepatotoxicity and organ weight changes observed at 3.2 mg/kg/day. The theoretical maximum residue contribution (TMRC) for the general population is 0.000002 mg/kg/day and for females, 20 years old and older, the TMRC is 0.000003 mg/kg/day. The anticipated residue contributions (ARC) as percentages of the RfD are 0.018 and 0.028% for the general population and females 20 years old or older, respectively. The chronic analysis for cyproconazole is not a worst-case estimate of dietary exposure, with all residues at anticipated levels and 100% of the commodities assumed to be treated with cyproconazole. Based on the risk estimates calculated in this analysis, it appears that chronic dietary risk from the use recommended is not of concern.

The upper-bound cancer risk, based on a Q_1^* of 0.30 $(mg/kg/day)^{-1}$, was calculated to be 5.3×10^{-7}, contributed through the proposed use of cyproconazole in the production of imported coffee beans. The carcinogenic analysis demonstrates that, using the proposed anticipated residues and without percent crop treated information incorporated into the analysis, the use on coffee does not result in a risk estimate exceeding the Agency's value for negligible cancer risk of 10^{-6}.

The nature of the residue in coffee is not fully understood. A metabolism study in coffee, using triazole-labeled cyproconazole, was submitted and was acceptable. Cyproconazole per se was the primary component of the residue. A metabolism study in wheat is being conducted to determine the fate of the phenyl portion of cyproconazole in plants. Preliminary results of the study have been submitted. It is the Agency's conclusion that the results of this study will not significantly alter the risk evaluation for cyproconazole and, therefore, establishing a time-limited tolerance for coffee beans would not pose any significant dietary risk to the public during the timeframe involved in completing and reviewing the wheat metabolism data on this chemical.

Adequate analytical methodology is available for enforcement. However, additional data are required to demonstrate that residues of several other pesticides registered for use on coffee do not interfere with the method. Prior to publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below. By way of public reminder, this notice also reiterates the registrant's responsibility under section 6(a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by these pesticides.

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 notice 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 0E3875/P623]. 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

0E3875/P623] (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, October 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 27, 1995.

Stephen L. Johnson,

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. By adding new § 180.485, to read as follows:

§ 180.485 Cyproconazole; tolerances for residues.

A time-limited tolerance is established for the residues of the fungicide cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on the following imported raw agricultural commodity:

Commodity	Parts per million	Expiration date
Coffee beans[1]	0.1	July 1, 1997.

[1] There are no U.S. registrations as of August 9, 1995 for use on coffee beans.

[FR Doc. 95–19531 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–F

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1051 and 1220

[Ex Parte No. 55 (Sub-No. 95)]

Petition for Rulemaking—Invoiceless Billing Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is issuing an advance notice of proposed rulemaking to examine restrictions against invoiceless billing between shippers and carriers. In this context, invoiceless billing means a system in which payments are made with no paper or electronic freight bill being issued by the carrier. Presently, Commission regulations require the issuance of freight bills by motor common carriers and require their retention for one year. This proceeding is instituted in response to a petition asking the Commission to modify the present regulations to allow consensual invoiceless billing between shippers, on the one hand, and motor common and contract carriers on the other. The Commission is asking for comments on this proposal and on whether consensual invoiceless billing should be authorized for other modes, including rail and water carriers. Following receipt of public comments, the Commission will decide whether any changes to the present rules may be warranted. If so, a notice of proposed rulemaking will be issued. Otherwise, the proceeding will be discontinued.

DATES: Any person interested in participating in this proceeding as a party of record may file comments by October 10, 1995.

ADDRESSES: Send an original and 10 copies of pleadings referring to Ex Parte No. 55 (Sub-No. 95) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201

Constitution Avenue, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: For a more detailed discussion of the current statutes and regulations, the issues raised by the petition, and the information that is needed to go forward, see the Commission's separate decision in this proceeding issued today. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

Regulatory Flexibility

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct at this point an examination of impacts on small business. However, we welcome any comments regarding small entity considerations embodied in that Act.

Environmental and Energy Considerations

Issuing this notice will not significantly affect either the quality of the human environment or the conservation of energy resources because the notice merely seeks information and is not proposing any change in current rules or policy. We preliminarily conclude that, even if we subsequently decide to grant the relief sought by petitioner, an environmental assessment would not be necessary under our regulations because the proposed action would not result in changes in carrier operations that exceed the threshold established in our regulations. See 49 CFR 1105.6(c)(2). We invite comments on the environmental and energy impacts of the proposal.

List of Subjects

49 CFR Part 1051

Buses, Freight, Motor carriers, Reporting and Recordkeeping requirements.

49 CFR Part 1220

Motor carriers, Railroads, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 10321 and 11144, and 5 U.S.C. 553.

Decided: July 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19512 Filed 8–8–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD 38

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants From Southwestern California and Baja California, Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Acanthomintha ilicifolia* (San Diego thornmint), *Dudleya stolonifera* (Laguna Beach dudleya), *Hemizonia conjugens* (Otay tarweed), and *Monardella linoides* ssp. *viminea* (willowy monardella) as endangered throughout their respective ranges in southwestern California and northern Baja California, Mexico, pursuant to the Endangered Species Act of 1973, as amended (Act). These species occur in coastal sage scrub, chaparral, and grassland habitats. The four taxa are threatened by a variety of factors including urban and agricultural development, competition from non-native plant species, off-road vehicle use, mining, grazing, and trampling by hikers. This proposed rule, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these four plant species.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich at the above address (telephone 619/431-9440).

SUPPLEMENTARY INFORMATION:

Background

Acanthomintha ilicifolia (San Diego thornmint), *Dudleya stolonifera* (Laguna Beach liveforever), *Monardella linoides* ssp. *viminea.* (willowy monardella), and *Hemizonia conjugens* (Otay tarweed) occur in San Diego and Orange Counties in southwestern California. In addition, populations of three of these taxa (*A. ilicifolia, H. conjugens,* and *M. linoides* ssp. *viminea*) extend into extreme northern Baja California, Mexico. These species occur in coastal sage scrub or in a mosaic of sage scrub, chaparral, riparian scrub, and grassland habitats.

Coastal sage scrub is a community typically dominated by a variety of drought-deciduous and evergreen sclerophyllous shrubs, including *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (California buckwheat), *Encelia californica* (California encelia), *E. farinosa* (brittle bush), *Malosma laurina* (laurel sumac), *Opuntia* spp. (prickly pear, cholla), *Salvia* spp. (black sage, white sage), *Rhus integrifolia* (lemonadeberry), and *R. ovata* (sugarbush). Coastal sage scrub was historically distributed throughout cismontane (coastal) California south of San Francisco to Ensenada in Baja California, Mexico (Westman 1983). It ranges in elevation from sea level to about 600 meters (m) (2,000 feet (ft)) in inland sites in the southerly portion of its distribution (O'Leary 1990).

Acanthomintha ilicifolia grows in heavy clay soils in open areas of coastal sage-scrub, chaparral, and native grassland in San Diego County and northern Baja California, Mexico. *Dudleya stolonifera* is primarily restricted to weathered bluffs and rock outcrops in microhabitats within coastal sage scrub or chaparral. *D. stolonifera* is found only in the vicinity of Laguna Beach (Orange County). *Hemizonia conjugens* occurs in southern coastal San Diego County and northern Baja California, Mexico, and is typically found in clay soils on slopes and mesas within coastal sage scrub or grassland habitats. *Monardella linoides* ssp. *viminea* primarily inhabits washes in coastal sage scrub or riparian scrub habitats. Populations of *M. linoides* ssp. *viminea,* concentrated in the Miramar area of San Diego County, extend south into Baja California, Mexico.

Typically, areas with Mediterranean climates such as southern California have numerous rare, locally endemic species (Stebbins and Major 1965, Cody 1986). Southern California has the highest concentration of locally endemic plant species in the United

States (Gentry 1986) and currently experiences one of the highest human population growth rates in the country. Habitat destruction or modification adversely affects taxa native to this area by reducing population densities and contributing to habitat fragmentation. Rapid urbanization and agricultural conversion in Orange and San Diego Counties has already eliminated or reduced populations of the four plant taxa addressed in this proposed rule. These species have also been adversely affected by the invasion of non-native plants, off-road vehicle use, increased erosion, grazing, and trampling by humans.

By the 1980's, nearly 90 percent of the entire coastal sage scrub ecosystem in California had been lost (Westman 1981a, 1981b). In San Diego County, 95 percent of the native perennial grasslands and nearly 60 percent of the coastal sage scrub had been eliminated as a result of urban and agricultural development (Oberbauer and Vanderweir 1991, San Diego Association of Governments 1995). From 1950 to 1990, the human population of San Diego County increased by 349 percent and the population of Orange County increased by 1,015 percent (California Department of Finance 1993). Most of these increases occurred within or near sites historically occupied, in part, by coastal sage scrub. About 125,000 acres of coastal sage scrub remain in San Diego County (Service 1991). Between 1990 and 2015, the number of occupied housing units in San Diego County is expected to increase by 69 percent (San Diego Association of Governments 1991). The trend of habitat loss and fragmentation is expected to continue as the population of southern California expands.

Populations of the proposed taxa in Baja California are also threatened by land use practices. For example, Bowler (1990) and Oberbauer (1994) reported that coastal scrub vegetation in northern Baja California is being grazed, burned to increase grass production, and rapidly converted to row-crop agriculture or condominiums, campgrounds, and resort housing. Rea and Weaver (as cited in Atwood 1990) also noted that coastal sage scrub in Baja California ''. . . has been seriously degraded by burning, grazing, and conversion to vineyards during the past two decades.''

Discussion of the Four Species Proposed for Listing

Acanthomintha ilicifolia (San Diego thornmint) was first described by Asa Gray as *Calamintha ilicifolia,* based on a type specimen collected from ''lower California,'' (Gray 1872). Gray (1878) subsequently renamed the species *A. ilicifolia. A. ilicifolia* is an annual aromatic herb of the mint family (Lamiaceae). Members of the genus have whorled flowers subtended by a pair of leaves and several sharply-spined bracts. *A. ilicifolia* can be distinguished from other members of the genus by its hairless anthers and style. The tubular, two-lipped corollas are white with rose markings on the lower lip.

Acanthomintha ilicifolia usually occurs on clay soils in open patches of coastal sage scrub and chaparral of coastal San Diego County and south to San Telmo in northern Baja California, Mexico. This taxon is considered to be ''. . . one of the most restricted clay soil endemics'' (Oberbauer 1993). It is frequently associated with gabbro soils derived from igneous rock, and also occurs in calcareous marine sediments. About 40 percent of the known 35 historic populations of *A. ilicifolia* in the United States have been extirpated. Currently, about 40,000 individuals are distributed over 20 sites in the United States ranging from San Marcos east to Alpine and south to Otay Mesa (San Diego County) (California Native Natural Diversity Data Base (CNNDDB) 1994, Reiser 1994). At least nine sites are known to have recently supported *A. ilicifolia* in Baja California, Mexico. The status of this species in Mexico is uncertain.

Dudleya stolonifera (Laguna Beach liveforever) was first described by Reid Moran (1949), based on a specimen collected in 1948 from Aliso Canyon (Orange County). This succulent perennial member of the stonecrop family (Crassulaceae) has basal rosettes of flat, oblong, bright green leaves that arise from a woody base. Its flowers have bright yellow-green petals that are fused near their base. *D. stolonifera* is distinguished by its branching stolons, with lateral vegetative branches that arise from the basal rosette (Moran 1977). *D. stolonifera* occurs on steep cliffs in canyons near Laguna Beach. This species is known from only six populations, comprising a total of 8,000 to 10,000 individuals (Fred Roberts, Service botanist, pers. comm. 1994).

Hemizonia conjugens (Otay tarweed) was first described by David D. Keck (1958) based on a specimen collected by L.R. Abrams from river bottom land in the Otay area of San Diego. *H. conjugens,* a glandular, aromatic annual of the sunflower family (Asteraceae), has a branching stem from 5 to 25 centimeters (2 to 9.8 inches) in height, and deep green or gray-green leaves with soft, shaggy hairs. The yellow flower heads are composed of 8 to 10 ray flowers and 13 to 21 disk flowers with hairless or sparingly downy corollas. The phyllaries are keeled with short-stalked glands and large, unstalked, flat glands near the margins. *H. conjugens* occurs within the range of *H. fasciculata* and *H. paniculata.* Certain morphological characteristics of *H. conjugens* are intermediate between those of the closely related species, *H. fasciculata* and *H. paniculata* (Tanowitz 1982). *H. conjugens* can be distinguished from other members of the genus by its keeled phyllaries, black anthers, and its number of disk and ray flowers.

Hemizonia conjugens has a very limited distribution, consisting of 15 populations near Spring Valley in southern San Diego County and one population in Baja California, Mexico (Rieser 1994; Sandy Morey, Endangered Plants Program Coordinator, California Department of Fish and Game, *in litt.* 1994). Three of the 18 historic localities of *H. conjugens* in the United States are considered to be extirpated (Hogan 1990, S. Morey *in litt.* 1994). This taxon is restricted to clay soils in coastal sage scrub and grassland habitats. *H. conjugens* appears to tolerate mild levels of disturbance such as light grazing (Dr. Barry Tanowitz, University of California, Santa Barbara, *in litt.* 1977; Hogan 1990). Such mild disturbances may create sites necessary for germination (Tanowitz 1977), but the species is threatened by activities such as development and intensive agriculture. Until its rediscovery in Baja California in 1977, this species was considered to be extinct as a result of extensive development within its range (Tanowitz 1978).

Monardella linoides.ssp. viminea was first described in 1902 by Edward L. Greene, who named it *Monardella viminea,* from a type specimen collected by Vassey in 1880 (Greene 1902). Greene (1906) subsequently renamed the plant *Madronella viminea.* Munz (1935) reduced the rank of *Monardella viminea* to a subspecies of *Monardella linoides. Monardella linoides* ssp. *viminea* is a perennial herb of the mint family (Lamiaceae) with a woody base and aromatic foliage. The leaves of this species are linear to lanceolate. Its pale white to rose-colored flowers are borne in dense terminal heads subtended by greenish-white, often rose-tipped bracts. This taxon can be distinguished from other members of the genus by its glaucous-green, hairy stem and its conspicuously gland-dotted bracts. *Monardella linoides* ssp. *viminea* often grows in sandy washes and floodplains, and is frequently associated with

Eriogonum fasciculatum (California buckwheat), *Platanus racemosa* (sycamore), *Quercus agrifolia* (coast live oak), *Artemisia californica* (California sagebrush), and *Baccharis sarothroides* (coyote-bush) (Scheid 1985).

Approximately 6,000 individuals of *Monardella linoides* ssp. *viminea* from 20 populations are thought to be extant in the United States. This taxon was previously known from 27 occurrences in the United States. All but one population of approximately 200 individuals occurs between Penasquitos Canyon and Mission Gorge in San Diego County. Fifteen populations have fewer than 100 plants, and 6 of these contain fewer than 15 individuals. One population occurs near Arroyo Jatay in northern Baja California, Mexico.

Previous Federal Actions

Federal government action on the four plant taxa considered in this rule began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and listed *Acanthomintha ilicifolia, Dudleya stolonifera, Monardella linoides* ssp. *viminea,* and *Hemizonia conjugens* as endangered. The Service published a notice on July 1, 1975 (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa named therein. *A. ilicifolia, D. stolonifera, H. conjugens,* and *M. linoides* ssp. *viminea* were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, publication. *A. ilicifolia, D. stolonifera, H. conjugens,* and *M. linoides* ssp. *viminea* were also included in the June 16, 1976, proposal.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the outstanding portion of June 16, 1976, proposal, along with four other proposals that had expired.

The Service published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Acanthomintha ilicifolia, Dudleya stolonifera, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* as category 1 candidate taxa (species for which data in the Service's possession are sufficient to support a proposal for listing). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 Notice of Review. This supplement treated *A. ilicifolia, M. linoides* ssp. *viminea,* and *H. conjugens* as category 2 candidate taxa (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). In the September 27, 1985, revised Notice of Review for plants (50 FR 39526), *D. stolonifera* was included as category 1 species; and *A. ilicifolia, H. conjugens,* and *M. linoides* ssp. *viminea* were included as category 2 taxa. Enough data were subsequently gathered to include *A. ilicifolia* as a category 1 species in the February 21, 1990, **Federal Register** (50 FR 45242). The plant Notice of Review was again revised on September 30, 1993 (58 FR 51144). The status of *D. stolonifera* and *A. ilicifolia* remained as category 1 candidate species; *H. conjugens* and *M. linoides* ssp. *viminea* remained as category 2 candidate species.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for all the species presently being proposed, because the 1975 Smithsonian report that included these species was accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but that the listing of these species was precluded by other pending listing actions of higher priority pursuant to section 4(b)(3)(c)(i) of the Act. The finding was reviewed in October 1984 through 1993.

In 1990, the Service received a petition to list *Hemizonia conjugens* (dated December 14, 1990) as endangered and a petition to list *Acanthomintha ilicifolia* (undated) as endangered from David Hogan of the San Diego Biodiversity Project. These petitions also requested the designation of critical habitat. *A. ilicifolia* and *H. conjugens* were included in the Smithsonian Institution's Report of 1975 that had been accepted as a petition. The Service, therefore, regarded Mr. Hogan's petitions to list these two taxa as second petitions.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). The threats facing these four taxa are summarized in Table 1. These factors and their application to *Acanthomintha ilicifolia* (Gray). Gray (San Diego thornmint), *Dudleya stolonifera* Moran (Laguna Beach liveforever), *Hemizonia conjugens* Keck (Otay tarweed), and *monardella linoides* ssp. *viminea* (Greene) Abrams (willowy monardella) are as follows:

	Trampling grazing	Alien plant species	ORV*	Urbanization	Mining	Alteration of hydrology
Acanthomintha ilicifolia	X	X	X	X	X	
Dudleya Stolonifera	X	X		X		
Hemizonia Conjugens	X		X	X		
Monardella linoides ssp. viminea	X	X	X	X		

*ORV=Off-road Vehicle.

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The rapid urbanization of coastal southern California imminently threatens the four taxa in this proposed rule. Many of the same factors threatening *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* in the United States (urban and agricultural development) are threatening these species in Baja California, Mexico.

Of the 35 historically known populations of *Acanthomintha ilicifolia* in the United States, 15 have been extirpated by residential or commercial developments. In addition, off-road vehicle activity and trampling by cattle and humans have contributed to the decline of this species. Thirteen of the remaining 20 populations of *A. ilicifolia* occur on unprotected land, and several of these are declining rapidly. For example, a site near Rancho Santa Fe supported hundreds of plants in 1978, but only three plants in 1986 (CNNDDB 1994). The habitat in this area was degraded, apparently from the impacts of adjacent development (CNNDDB 1994). A population of *A. ilicifolia* in Encinitas contained 11,000 plants in 1989, but only 1,400 in 1992. This population is threatened by trampling and soil erosion (Robert Taylor, botanical consultant, pers. comm. 1992). Another locality was partially extirpated by an unauthorized haul road, which eliminated 60 to 70 percent of the population (CNNDDB 1994).

Five of the known remaining locations of *Acanthomintha ilicifolia* occur on protected land. Two populations occur on the Cleveland National Forest (Viejas Mountain and Poser Mountain). Two populations are found in parks owned by the City of San Diego (Penasquitos Canyon and Mission Trail). One population, located on McGinty Mountain, is managed by The Nature Conservancy and the California Department of Fish and Game. However, these localities are vulnerable to habitat degradation resulting from trampling, dumping, erosion, and off-road vehicle activity. The McGinty Mountain population is threatened by a proposed water tower project (Fred Sproul, botanical consultant, pers. comm. 1992). Roads adjacent to populations in the vicinity of McGinty Mountain and Penasquitos Canyon provide easy access for foot traffic and off-road vehicle use (Mike Kelly, Friends of Los Penasquitos Canyon, pers. comm. 1992). The Viejas Mountain population has been adversely affected by trampling impacts associated with grazing, resulting in increased erosion and the invasion of non-native plant species (Fred Sproul, pers. comm. 1992).

The status of *Acanthomintha ilicifolia* and its habitat in northwestern Baja California, Mexico, is not well documented. The species is known to occur as far south as Las Escobas near San Quintin, but its distribution in Mexico is spotty (Reid Moran, pers. comm. 1992). The San Diego Natural History Museum has herbarium specimens of *A. ilicifolia* from nine localities in Baja California, Mexico. However, little information is available on numbers of individuals or specific threats. One population near Tecate is threatened by an adjacent clay mining operation (Tom Oberbauer, senior planner, San Diego County, pers. comm. 1992). This northern region represents one of the most severely impacted areas in Baja California and many of the same factors (urban and agricultural development) that have affected the status of this taxon in the United States also threaten the species in Mexico.

Approximately 8,000 to 10,000 individuals of *Dudleya stolonifera* in six locations are thought to be extant. Urban development and associated edge effects (see Factor E) threaten *D. stolonifera.* Approximately half of the Canyon Acres population of *D. stolonifera* has been cleared by the landowner (CNNDDB 1992).

Habitat for *Dudleya stolonifera* is also degraded by adjacent land uses. The type locality for *D. stolonifera* is adjacent to urban development and is declining due to increased shading and competition from non-native plants (Kei Nakai, botanical consultant, pers. comm. 1992). The largest population of *D. stolonifera,* located directly adjacent to residential development in Aliso Canyon (Orange County), is threatened by fuel modification and hydroseeding (City of Laguna Beach 1993; Fred Roberts, pers. comm. 1994).

Proposed development threatens the majority of the remaining populations of *Hemizonia conjugens* in the United States. In addition, much of the potentially suitable habitat for this species has been cleared for agriculture. Three of the 18 historic locations of *H. conjugens* are considered to be extirpated (Hogan 1990, S. Morey *in litt.* 1994). None of the existing populations are entirely protected. One population previously known from an open space easement in a residential area had 100 plants in 1987, but was subsequently reported as extirpated (Hogan 1990). The majority of remaining habitat for this species is degraded by illegal dumping and off-road vehicle activity. At least five of the remaining localities for *H. conjugens* are within proposed development projects, and one of these may already be extirpated. At least 80 percent of the largest known population (about 60 percent of all known individuals) of this species is threatened by a proposed housing development (Dudek and Associates 1992, S. Morey *in litt.* 1994).

Monardella linoides ssp. *viminea* was previously known from 27 occurrences in the United States, seven of which have been extirpated by transportation projects and industrial development. Of the five remaining occurrences with at least 100 individuals, none are currently protected. The remaining populations of *M. linoides* ssp. *viminea* are threatened by urban development, sand and gravel mining, off-road vehicle activity, trampling, trash dumping, and erosion. One of the largest populations (2,000 to 3,000 individuals) is located on private property, on Federal land managed by the Navy, and on City-owned property (Sycamore Canyon City Park). This population has been damaged by off-road vehicles and fire, which continue to threaten the remaining populations of this taxon. Two populations on Miramar Naval Air Station land have been partially destroyed by road construction. The other two large populations of *M. linoides* ssp. *viminea* are on private property. One of these (approximately 340 individuals) is threatened by sand and gravel mining. The other population, with approximately 200 individuals, is on property proposed for development. Habitat for this taxon in Los Penasquitos City Regional Park is degraded by stream erosion, trash dumping, and the invasion of non-native species. Another population in San Clemente Park, owned by the City of San Diego, was reported to have approximately 60 plants in the-early 1980's, but contained fewer than 35 plants in 1987 (CNNDDB 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Dudleya stolonifera* is threatened by overcollection. Field-collected specimens of *Dudleya stolonifera* have been found in southern California nurseries, and are likely to be harvested for private collections (Kei Nakai, horticulturalist, *in litt.* 1978, and pers. comm. 1992). *D. stolonifera* and *Monardella linoides* ssp. *viminea* are known to be in cultivation (Mike Evans, Tree of Life Nursery, *in litt.* 1987; Hickman 1993). Overutilization is not known to be a factor for the other taxa in this proposed rule.

C. *Disease or predation.* Herbivory may threaten some populations of the plants contained in this proposed rule. For example, failure of the

Acanthomintha ilicifolia transplants at Quail Gardens was attributed primarily to rabbit predation (Don Miller, Quail Gardens, pers. comm. 1992). Herbivory by rabbits has also been identified as a threat to populations of *Monardella linoides* ssp. *viminea* in San Clemente Park (John Rieger, biologist, California Department of Transportation, pers. comm. 1992).

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for these taxa include: (1) the Federal Endangered Species Act in cases where these taxa occur in habitat occupied by a listed species; (2) conservation provisions under the Federal Clean Water Act; (3) listing under the California Endangered Species Act; (4) the California Environmental Quality Act; (4) implementation of conservation plans pursuant to the California Natural Community Conservation Planning program; (5) land acquisition and management by Federal, State, or local agencies or by private groups and organizations; (6) local laws and regulations; and (7) enforcement of Mexican laws.

The coastal California gnatcatcher *(Polioptila californica californica)* is listed as a threatened species under the Act, and occurs in some of the areas occupied by these four plant taxa. However, the legal authority to protect the gnatcatcher does not extend to candidate species. For example, the City of San Diego has recently approved plans for a large-scale development project that will result in significant impacts to the California gnatcatcher and coastal sage scrub. No mitigation for impacts to *Hemizonia conjugens* has been recommended by the project proponent (Ellen Berryman, Service biologist, pers. comm. 1994) Currently, the Service is working with local fire management agencies in San Diego County on a cooperative agreement that would allow for incidental take of the California gnatcatcher within 30 m (100 ft) of existing development. If implemented, this agreement may result in additional impacts to several of the taxa here proposed (John Lovio, Service biologist, pers. comm. 1995).

Conservation agreements with other Federal agencies may reduce the decline of some species to the point at which listing as threatened or endangered would not be appropriate. However, conservation agreements with other Federal agencies would not appreciably benefit most of the taxa in this rule. Two of the four taxa *(Dudleya stolonifera* and *Hemizonia conjugens)* do not occur on Federal lands, and only a small fraction of the populations of *Acanthomintha ilicifolia* occur on Federal lands (two of 14 populations). It is unlikely that a Conservation Agreement with the Forest Service on these populations would significantly affect the decline of the species. About one-half of the extant *Monardella linoides* ssp. *viminea* populations occur on private land and the distribution of this taxon, frequently characterized by small populations, is extremely restricted. A conservation agreement with the Navy would not reduce the decline of this taxon over a significant portion of its range.

Monardella linoides ssp. *viminea* could potentially be affected by projects requiring a permit from the Army Corps of Engineers under section 404 of the Clean Water Act. Although the objective of the Clean Water Act is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Pub. L. 92-500), which includes navigable and isolated waters, headwaters, and adjacent wetlands, there are no specific provisions that adequately address the need to conserve candidate species such as those considered herein. Candidate species receive no special consideration under section 404 of the Clean Water Act.

The California Fish and Game Commission has listed *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* as endangered and *Dudleya stolonifera* as threatened under the Native Plant Protection Act (chapter 10 section 1900 et seq. of the Fish and Game Code) and California Endangered Species Act (chapter 1.5 section 2050 *et seq.*). Though both statutes prohibit the ''take'' of State-listed plants (sections 1908 and 2080), State law exempts the taking of such plants via habitat modification or land use change by a landowner. After the Department notifies a land owner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such plants'' (chapter 10 section 1913). Although *H. conjugens* is listed as endangered by the State, at least two large-scale development projects have recently been approved by the City of San Diego that will have significant, unmitigated impacts on this species and its associated grassland/coastal sage scrub habitat (Ellen Berryman, pers. comm. 1994).

The majority of the known populations of *Acanthomintha ilicifolia, Dudleya stolonifera,* and *Hemizonia conjugens* occur on privately-owned land. Local and county zoning designations are subject to change and may not adequately consider the needs of sensitive species in the establishment of open space areas. The few existing resource protection ordinances are subject to interpretation, and compliance is not required in cases where findings of overriding social and economic considerations are made. In many cases, land-use planning decisions are made on the basis of environmental review documents prepared as a requirement of the California Environmental Quality Act (CEQA) or the National Environmental Policy Act. These documents have not adequately addressed potential impacts to the four taxa or offered sufficient compensation for losses that continue to contribute to net loss of habitat. As an example, impacts to biological resources associated with two large-scale residential development projects (approximately 98 hectares (ha) (244 acres (ac)) and 266 ha (665 ac)) in the vicinity of Otay Mesa, occupied in part by *H. conjugens,* are considered to be significant even after all mitigation measures are implemented. Nonetheless, statements of overriding considerations were developed, and both projects were recently approved by the San Diego City Council (Ellen Berryman, pers. comm. 1994).

Transplantation and relocation projects are frequently used to compensate for the loss of rare plant species under CEQA. Hall (1987) and Fiedler (1991) document several attempts at transplanting *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea.* In one transplantation project for *A. ilicifolia,* maintenance and monitoring was scheduled for a period of 5 years. Subsequently, all records of the project were lost and the new property owner claimed no responsibility for the project. This site was destroyed by trash dumping and off-road vehicle use (Hall 1987). At least six of the eight transplant populations of this species are either rapidly declining or have been extirpated, largely as a result of weed invasion (Fred Sproul, Mitch Beauchamp, Robert Taylor, botanical consultants, pers. comm. 1992). Although two of the transplanted *A. ilicifolia* populations (Sabre Springs and San Pasqual) are somewhat stable, they are not likely to survive when weeding is discontinued (Robert Taylor, pers. comm. 1992). One year after 45 individuals of *M. linoides* ssp. *viminea* were transplanted by the California Department of Transportation, only four had survived (Hall 1987). Of the 53 transplantation, relocation, or reintroduction projects reviewed by

Fiedler (1991), only 15 percent were considered to be fully successful. None of these included *A. ilicifolia, H. conjugens,* or *M. linoides* ssp. *viminea.* Transplantation has not yet been demonstrated to provide for the long-term viability of any of the four taxa under consideration in this proposed rule.

In 1991, the State of California established the Natural Communities Conservation Planning (NCCP) Program to address conservation needs of natural ecosystems throughout the State. The initial focus of the program is the coastal sage scrub community occupied, in part, by these four taxa. *Acanthomintha ilicifolia, Dudleya stolonifera, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* have been included as taxa for consideration under the coastal sage scrub NCCP Program. Several regional plans, the Multi-species Conservation Plan (MSCP) and the Multi-habitat Conservation Plan (MHCP) of San Diego County, and the Central/Coastal Subregional NCCP/Habitat Conservation Plan (Central/Coastal NCCP) of Orange County are under development by a consortium of county and municipal governments and other parties, including the California Department of Fish and Game and Service. Though no plans have been completed to date, progress is currently being made and significant protection will be provided by the NCCP program for the four taxa.

If adopted and implemented, the Central/Coastal NCCP as currently proposed may preclude the need to list *Dudleya stolonifera.* The Central/Coastal NCCP proposes protection for about 80 percent of the *D. stolonifera* populations in the San Joaquin Hills of Orange County. The largest population (about 40 percent of all individuals) would not be included within the preservation boundary. However, this population (Big Bend, Laguna Canyon) occurs on a rugged cliff and already receives some protection and management from the City of Laguna Beach which has recognized the significance of this locality since 1982.

While *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* will benefit from the MSCP and MHCP planning efforts in San Diego County, these planning efforts have yet to be approved. If adopted and implemented, the plans may preclude the need to list one or more of these taxa. About 70 percent of the United States populations of *A. ilicifolia* occur within the MSCP subregion, including eight of 11 major populations. Four of these eight major populations are not adequately conserved by the proposed preserve within the subregion, and other major populations are protected but subject to edge effects. The MHCP contains about 25 percent of the United States populations of *A. ilicifolia,* including two major populations. These populations are adequately protected.

All of the United States populations of *Hemizonia conjugens* occur within the MSCP subregion. Two of the major populations, containing about 70 percent of all known individuals, are within proposed development projects that would fragment the remaining habitat. The five remaining major populations (containing about 25 percent of all individuals) may be subject to edge effects. The Service is working with local jurisdictions and landowners to protect these populations.

While about 95 percent of the United States range of *Monardella linoides* ssp. *viminea* occurs within the MSCP subregion, only about 20 percent occurs outside Miramar Naval Air Station. Though Miramar is not participating in the MSCP, the Navy is working on a management plan with the advice of the Service. At least one additional small population occurs within the Poway Habitat Conservation Plan area. Current efforts in the MSCP and Poway, while proposing adequate conservation within their respective areas, are not enough to preclude listing. However, with the completion of the Navy's management plan, *M. linoides* ssp. *viminea* should be adequately protected.

Populations of *Acanthomintha ilicifolia* on Federal land (Cleveland National Forest) are being negatively affected by unauthorized grazing and illegal shooting and dumping (Winter 1991). The most significant populations of *Monardella linoides* ssp. *viminea* occur on Federal land at Miramar Naval Air Station. Though no management plan exists for this taxon, Miramar is nearing the completion of a draft plan. Management of the Naval Air Station will soon be transferred to the United States Marine Corps, which will participate in the planning effort.

The ranges of *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* extend into northern Baja California, Mexico. Mexico has laws that could provide protection to rare plants; however, enforcement of these laws is lacking (Service 1992).

On July 29, 1983, *Dudleya stolonifera* was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is a treaty established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be exported for primarily commercial purposes. However, plants that are certified by the Service as artificially propagated in accordance with CITES conference resolutions may be exported for commercial purposes with only CITES export documents from the exporting country. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not regulate take or domestic trade.

E. *Other natural or manmade factors affecting their continued existence.* At least two of the taxa in this proposed rule, *Dudleya stolonifera* and *Monardella linoides* ssp. *viminea,* are threatened with stochastic (random) extinction by virtue of their small population sizes. Chance events, such as floods, fires, or drought, can substantially reduce or eliminate populations and increase the likelihood of extinction. In addition, small populations are threatened by inbreeding depression (Lande 1988, Ellstrand 1992). Small populations can have significantly lower germination rates than larger populations of the same species due to high levels of homozygosity (Menges 1991). Local extinctions of plant species can occur in areas with a high degree of environmental stochasticity (e.g. large fluctuations in rainfall, etc.). Furthermore, *Acanthomintha ilicifolia* and *Hemizonia conjugens* are annuals that undergo large population fluctuations from year to year. Annuals may not have a persistent seed bank or may be unable to recolonize areas of suitable habitat due to dispersal barriers such as intervening development. These populations are particularly vulnerable to local extirpations.

Non-native grass and forb species have invaded many of southern California's plant communities. Their presence and abundance is generally an indirect result of habitat disturbance by development, mining, grazing, discing, and alteration of hydrology. The invasion of both native and non-native wetland plant species as a result of altered drainage patterns threatens habitat for *Monardella linoides* ssp. *viminea* (Scheid 1985). Grazing negatively affects *Acanthomintha ilicifolia* by increasing erosion, contributing to soil compaction, and introducing a variety of non-native

grasses that exclude *A. ilicifolia* from areas of otherwise suitable habitat (Winter 1991). Several populations of *Dudleya stolonifera* are threatened by trampling and the invasion of exotic plant species (Marsh 1992). All four taxa in this proposal are subject to displacement by exotic plant species.

Although many coastal sage scrub and chaparral species are adapted to periodic fires, the taxa in this proposal are threatened by fire that can result in the extirpation of individuals or entire populations of these species. In addition, the disruption in natural fire cycles can also result in the conversion of coastal sage scrub or chaparral habitats into non-native grasslands (Tyrrel 1982). For example, several catastrophic wildfires in 1993 burned over 16,000 ha (40,000 ac) of coastal sage scrub and associated habitats in Orange and San Diego Counties (Service, unpublished data). These fires affected three of the six remaining populations of *Dudleya stolonifera*. Due to the intensity of these burns, it is possible that some of the affected *D. stolonifera* populations will not fully recover.

Dudleya stolonifera, Hemizonia conjugens, Acanthomintha ilicifolia, and *Monardella linoides* ssp. *viminea* generally persist as small, isolated populations surrounded by urban or agricultural development. Much of the remaining habitat for these taxa is degraded, and is threatened by off-road vehicle activity, the invasion of nonnative plants, and trampling by cattle and humans. These four species are in danger of extinction throughout all or a significant portion of their ranges. The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these four taxa in determining to propose this rule. Based on this evaluation, the Service finds that the preferred action is to list *Dudleya stolonifera, Hemizonia conjugens, Acanthomintha ilicifolia,* and *Monardella linoides* ssp. *viminea* as endangered. These four taxa are threatened by one or more of the following factors: urbanization, agricultural conversion, off-road vehicle activity, stochastic events, overcollecting, trampling, and the invasion of nonnative species.

Critical habitat is not being proposed for these taxa for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is listed. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that the designation of critical habitat is not prudent for these four species at this time. Publication of precise maps and descriptions of critical habitat would increase the degree of threat to the four taxa from take or vandalism and could contribute to their decline. The listing of these species under the Act publicizes the rarity of the plants and, thus, can make them attractive to researchers, curiosity seekers, or collectors of rare plants. *Dudleya stolonifera* and *Monardella linoides* ssp. *viminea* are known to be in cultivation.

Most populations of *Acanthomintha ilicifolia, Dudleya stolonifera,* and *Hemizonia conjugens* are on privately owned land with little or no Federal involvement. Therefore, the designation of critical habitat would provide no additional benefit for these taxa. Several populations of *Monardella linoides* ssp. *viminea* are found on Federal land at Miramar Naval Air Station. In addition, this taxon generally occurs along streams and washes where Federal involvement may occur through section 404 of the Clean Water Act. All appropriate Federal and State agencies and local planning agencies have been notified of the locations and importance of protecting habitat for these species. Protection of habitat for the four taxa will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of the taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, local, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agencies expected to have involvement with *Monardella linoides* ssp. *viminea* include the Army Corps of Engineers and the Environmental Protection Agency due to their permit authority, under section 404 of the Clean Water Act. *M. linoides* ssp. *viminea* occurs on Miramar Naval Air Station. This base will likely be involved through military activities or potential transfer of excess Federal lands. The Forest Service has jurisdiction over several populations of

Acanthomintha ilicifolia. M. linoides ssp. *viminea* may be affected by projects funded in part by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that permits may be sought for cultivated specimens, since two of the taxa are known to be under cultivation and are in domestic trade.

It is the policy of the Service (59 FR 36272) to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. Three of the four species in this rule are known to occur on lands under the jurisdiction of the Forest Service or the Department of Defense. Collection, damage, or destruction of listed plants on these lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act, if conducted in knowing violation of California State law, including State criminal trespass law.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE Lith Avenue, Portland, Oregon 97232–4181 (503) 231–2063 or FAX (503) 231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final decisions on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received by September 25, 1995. Such requests must be made in writing and be addressed to the Field Supervisor of the Carlsbad Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposal is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary authors of this proposed rule are Ellen Berryman and Edna Rey-Vizgirdas (see **ADDRESSES** section) (telephone 619/431–9440).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Section 17.12(h) is amended by adding the following, in alphabetical order under Flowering plants, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Acanthomintha ilicifolia.	San Diego thornmint	U.S.A. (CA)	Lamiaceae	E		NA	NA
*	*	*	*	*	*	*	
Dudleya stolonifera ..	Laguna Beach liveforever.	U.S.A. (CA)	Crassulaceae	E		NA	NA
*	*	*	*	*	*	*	
Hemizonia conjugens.	Otay tarweed	U.S.A. (CA) Mexico .	Asteraceae	E		NA	NA
*	*	*	*	*	*	*	
Monardella linoides ssp. viminea.	Willowy monardella .	U.S.A. (CA) Mexico .	Lamiaceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: July 5, 1995.

Mollie Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–19714 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 153
Wednesday, August 9, 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

Forms Under Review by Office of Management and Budget

August 4, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entity contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Animal and Plant Health Inspection Service
  Gypsy Moth Identification Worksheet
  PPQ Form 305
  State, Local or Tribal Government; Federal Government; 97,180 responses; 32,039 hours
  Terry McGovern, (301) 734–6365

Extension

- Cooperative State Research, Education and Extension Service
  Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program, Application Guidelines CSRS–701, 702, 703, 707, 708, and 709
  Not-for-profit institutions; Individuals or households; State, Local or Tribal Government; 463 responses; 9,375 hours
  Jeffrey L. Gilmore, (202) 720–1973.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–19673 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

National Genetic Resources Advisory Council

According to the Federal Advisory Committee Act of October 6, 1972 (P.L. 92–463), the Agricultural Research Service announces the following meeting:

Name: National Genetic Resources Advisory Council.

Date: September 18–19, 1995.

Time: 8:30 a.m.–5:00 p.m., September 18, 1995; 8:30 a.m.–5:00 p.m., September 19, 1995.

Place: USDA, South Building, Room 3109, 14th and Independence Avenue S.W., Washington, D.C. 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before on after the meeting with the contact person below.

Purpose: To advance the development of the National Genetic Resources Program.

Contact Person: Henry L. Shands, Director, National Genetic Resources Program, Building 005, Room 115, BARC-West, Beltsville, Maryland 20705. Telephone: 301–504–5059.

Done at Beltsville, Maryland, this 1st day of August 1995.

Henry L. Shands,

Director, National Genetic Resources Program.

[FR Doc. 95–19642 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on August 23 and 24, 1995, for a field trip and meeting. The field trip will begin at 8:00 a.m., August 23, at the Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, California, and continue until 5:00 p.m. The field trip will visit the Pilot Creek Project on the Mad River Ranger District and will include presentations on watershed analysis, riparian management, and the Hayfork Adaptive Management Area. The meeting on August 24 will begin at 8:00 a.m. at the Six Rivers National Forest Supervisor's Office and continue until 3:00 p.m. Agenda items to be covered include: (1) Open public forum; (2) Report from Eel River Basin taskforce (3) Presentation on fish stock at risk; (4) Agency projects/programs needing PAC coordination; (5) Presentation on funding available through the California State Community Economic Revitalization Team (SCERT); (6) Overview of salmon restoration; and (7) Build agenda for next meeting. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting the Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316.

Dated: July 31, 1995.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 95–19562 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–FK–M

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on August 25, 1995 at the City of Hoquiam High School conference room, 501 W. Emerson Street, Hoquiam, Washington. The meeting will begin at 10 a.m. and continue until 3 p.m. Agenda items include: (1) Review Watershed Analysis Priority Selections by PIEC; (2) Introduce 1996 restoration program; (3)

Federal Process for Jobs-in-the-Woods (Update); (4) Pilot Adaptive Management Area Proposed Strategy; (5) Biodiversity Pathways Approach for Managed Forests; (6) Status Reports on Timber Harvest Levels, Salvage Sales and Late Successional Reserve Assessments; (7) Open Forum and (8) Public Comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Ronald R. Humphrey, Forest Supervisory, at (360) 956–2301.

Dated: August 3, 1995.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 95–19625 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Monday, September 11, 1995, at the Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa 50309. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19589 Filed 8–8–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 8:30 p.m. on Thursday, September 28, 1995, at the Radisson Hotel and Conference Center, 4728 Constitution Avenue, Baton Rouge, Louisiana 70808. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19590 Filed 8–8–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on Thursday, September 7, 1995, at the Kansas City Marriott Allis, 200 West 12th Street, Kansas City, Missouri 64106. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19591 Filed 8–8–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Monday, September 18, 1995, at the Oklahoma State University, Student Union Building, Room 211, Stillwater, Oklahoma 74058. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19592 Filed 8–8–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration/IEP.

Title: American Management & Business Internship Training (AMBIT) Program: Applications.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,050 hours.

Number of Respondents: 450.

Avg Hours Per Response: 1 hour U.S. firms and 3 hours interns.

Needs and Uses: The U.S. Department of Commerce's International Trade

Administration, in collaboration with the International Fund for Ireland, has established the American Management & Business Internship Training (AMBIT) program. AMBIT–participating U.S. firms provide one–to–six–month training programs for managers and technical experts from Ireland and the border counties of Ireland in innovative business practices.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IEP/SABIT.

Title: SABIT: Applications and Questionnaire.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 700 hours.

Number of Respondents: 200.

Avg Hours Per Response: 3 hours applications; 30 minutes questionnaire.

Needs and Uses: The Special American Business Internship Training (SABIT) program assist economic restructuring in the Independent States of the former Soviet Union by exposing top–level business executives and scientists to American ways of innovation and management. SABIT places these individuals in U.S. firms for one to six month internships to gain firsthand experience in a market economy.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/SIPS.

Title: SABIT: Application for License to Enter Watches and Watch Movements into the Customs Territory of the U.S. —– P.L. 97–446.

Form Number(s): ITA–334P.

Agency Approval Number: 0625–0040.

Type of Request: Extension of a currently approved collection.

Burden: 6 hours.

Number of Respondents: 6.

Avg Hours Per Response: 1 hour.

Needs and Uses: Public Law 97–446, passed in 1983, requires Commerce to administer the distribution of duty–exemptions and duty–refunds to watch producers in the U.S. Territories and the Northern Marianas Islands. The annual allocation and the production incentive certificate for each producer are based on data supplied from this application.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/EPS.

Title: Marketing Data Forms.

Form Number(s): ITA–466P.

Agency Approval Number: 0625–0047.

Type of Request: Revision of a currently approved collection.

Burden: 3,750 hours.

Number of Respondents: 5,000

Avg Hours Per Response: ¾ hour.

Needs and Uses: The Marketing Data Form is sent to participants in overseas trade events to obtain information necessary to produce exhibit brochures and directories for promotional purposes. The information is also helpful in identifying foreign companies that may be interested in the products and/or services.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/EPS.

Title: Commercial News USA.

Form Number(s): ITA–4063P.

Agency Approval Number: 0625-0061.

Type of Request: Extension of a currently approved collection.

Burden: 917 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 20 minutes initial application; 5 minutes evaluation.

Needs and Uses: As part of its export promotion activities, ITA published COMMERCIAL NEWS USA (CNUSA) ten times a year. The purpose of the publication is to promote new American products and technology to overseas buyers. To participate in the program, a firm must apply to have its product information included. A fee must be paid if accepted. The application is used to determine if the product meets criteria for being included in CNUSA.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/I.

Title: Petition Format for Requesting Relief Under U.S. Antidumping Duty Law.

Form Number(s): ITA–357P.

Agency Approval Number: 0625–0105.

Type of Request: Extension of a currently approved collection.

Burden: 1520 hours.

Number of Respondents: 38.

Avg Hours Per Response: 40 hours.

Needs and Uses: The information requested by the ''Antidumping Questionnaire'' is used to back–up petitioners' allegations that foreign merchandise is being dumped in the U.S. Petitioners can also follow the requirements set forth in the regulations and submit information in that manner. ITA uses this information to determine whether or not an antidumping duty investigation is warranted.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/FTZ.

Title: Annual Report for Foreign Trade Zones (FTZ).

Form Number(s): ITA–359P.

Agency Approval Number: 0625–0109.

Type of Request: Extension of a currently approved collection.

Burden: 9,681 hours.

Number of Respondents: 15.

Avg Hours Per Response: 84 hours.

Needs and Uses: The Foreign Trade Zone Act (FTZ) requires annual reports from the FTZs. The reports summarize zone projects, operations and activities and they are the FTZ Board's only source of information on zone projects in the U.S. The information provides the basis for a consolidated annual report to Congress as required by the FTZ Act.

Affected Public: Businesses or other for–profit organizations and other not–for–profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA).

Title: Export Trading Companies Contact Facilitation Service.

Form Number(s): ITA–44P.

Agency Approval Number: 0625–0120.

Type of Request: Extension of a currently approved collection.

Burden: 5,000 hours.
Number of Respondents: 10,000.
Avg Hours Per Response: 30 minutes.
Needs and Uses: The Export Trading Company Act of 1982 directs the Department of Commerce to provide a service to facilitate contact between producers of exportable goods and firms offering export trade services. ITA has established a clearinghouse for U.S. suppliers, banks, service organizations and export trading companies (ETCs). This helps U.S. producers identify and contact newly formed ETCs. The Contact Facilitation Service form is designed to obtain the information needed to put producers together with exporters.
Affected Public: Businesses or other for–profit organizations and other not–for–profit institutions and State, Local or Tribal Government.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA)
Title: Trade Fair Certification Program Application
Form Number(s): ITA–4100P.
Agency Approval Number: 0625–0130.
Type of Request: Extension of a currently approved collection.
Burden: 700 hours.
Number of Respondents: 70.
Avg Hours Per Response: 10 hours.
Needs and Uses: Non–governmental enterprises int he business of trade promotion requesting endorsement and assistance from Commerce can do so through the Trade Fair Certification Program. This endorsement signals to suppliers and foreign buyers that the U.S. Government supports the Trade Event.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/SIPS.
Title: Watch Duty Exemption Program Forms.
Form Number(s): ITA–321P, 360P, 361P 15 CFR 303.6 THRU 303.12.
Agency Approval Number: 0625–0134.
Type of Request: Extension of a currently approved collection.
Burden: 96 hours.
Number of Respondents: 6.
Avg Hours Per Response: 29.5 hours
Needs and Uses: Public Law 97–446, passed in 1983, requires Commerce to administer the distribution of duty–exemptions and duty–refunds to watch producers in the U.S. territories. There are three forms used to implement this program. Form ITA–360P is a Certificate of Entitlement for Duty Refunds and is issued by the Department. Form ITA–361P is used by a company to request refunds of duties on watches and watch movements. Form ITA–321P collects information on duty–free shipments which is used to monitor duty–exemptions so as to prevent abuse of the Watch Duty Program.
Affected Public: Businesses or other for–profit organizations.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.
Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Officer Building, Washington, D.C. 20503.

Dated: August 2, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19638 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Agency: Bureau of Export Administration (BXA).
Title: Exception to Order Requirement.
Agency Form Number: None.
OMB Approval Number: 0694–0011.
Type of Request: Extension of a currently approved collection.
Burden: 3 hours.
Number of Respondents: 10.
Avg Hours Per Response: 15 minutes for reporting requirements and 1 minute for recordkeeping.
Needs and Uses: An export license application must be based on an order from a party in a foreign country. On rare occasions, BXA will consider granting a waiver to the order requirement when the exporter can show that an exception is warranted. The information collected is used to determine if an exception should be granted.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion, recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Mission – Exhibition Evaluation.
Agency Form Number: ITA–4075P.
OMB Approval Number: 0625–0034.
Type of Request: Extension of the expiration date.
Burden: 167 hours.
Number of Respondents: 2,000.
Avg Hours Per Response: 5 minutes.
Needs and Uses: In support of its export promotion program, ITA sponsors trade events abroad. The purpose of this data collection is obtain the views of participants on the success of the respective events. ITA uses the information to determine the efficiency, impact, and effectiveness of its overseas trade promotion activities.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Product Characteristics, Design Checkoff List.
Agency Form Number: ITA–426P.
OMB Approval Number: 0625–0035.
Type of Request: Extension of the expiration date.
Burden: 1,500 hours.
Number of Respondents: 3,000.
Avg Hours Per Response: 30 minutes.
Needs and Uses: ITA sponsors a number of overseas trade events each year. This form is used by U.S. firms participating in the trade fairs to indicate physical requirements of their displays.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Overseas Business Interest Questionnaire.

Agency Form Number: ITA–471P.
OMB Approval Number: 0625–0039.
Type of Request: Extension of a currently approved collection.
Burden: 1,000 hours.
Number of Respondents: 2,000.
Avg Hours Per Response: 30 minutes.
Needs and Uses: This information collection allows U.S. firms participating in overseas trade events sponsored by the Department of Commerce an opportunity to specifically identify the products they wish to promote. The information is used to schedule business appointments and to invite foreign companies to trade events.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration.
Title: Commercial News USA —– Worldwide Services Program.
Agency Form Number: ITA–4099P.
OMB Approval Number: 0625–0127.
Type of Request: Extension of the expiration date.
Burden: 167 hours.
Number of Respondents: 500.
Avg Hours Per Response: 20 minutes.
Needs and Uses: This collection allows ITA to promote U.S. services available for export in overseas markets as part of its trade promotion activities. The information in incorporated into ITA's magazine, COMMERCIAL NEWS USA.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Information Services Order Form Program.
Agency Form Number: ITA–4096P.
OMB Approval Number: 0625–0143.
Type of Request: Extension of the expiration date.
Burden: 1,366 hours.
Number of Respondents: 7,659.
Avg Hours Per Response: Varies but ranges between 5 and 60 minutes.
Needs and Uses: The United States and Foreign Commercial Service offers their clients programs, market research, and services to enable them to begin exporting or to expand existing export efforts. This form is design to elicit information so that the trade specialists can make recommendations on which services or programs would help the client meet individual goals.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration.
Title: Advocacy Questionnaire.
Agency Form Number: ITA–4133P.
OMB Approval Number: 0625–0220
Type of Request: Extension of the expiration date.
Burden: 100 hours.
Number of Respondents: 200 respondents (multiple responses).
Avg Hours Per Response: 15 minutes.
Needs and Uses: ITA's Advocacy Center marshals federal resources to assist U.S. firms competing for major procurement worldwide. To provide this service, the Advocacy Center must determine whether the U.S. firm is eligible for U.S. government advocacy support.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Commerce Trade Fair Privatization Application.
Agency Form Number: ITA–4134P.
OMB Approval Number: 0625–-0222.
Type of Request: Extension of the expiration date.
Burden: 2,400 hours.
Number of Respondents: 200.
Avg Hours Per Response: 12 hours.
Needs and Uses: DOC has identified overseas trade fairs for which it seeks to transfer organization and management of U.S. pavilions from ITA to U.S. firms or trade associations. The information provided is used to assess the qualifications of applicants and to make selections for managing U.S. pavilions selected for this privatization effort.
Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Sea Grant Control.
Agency Form Number: NOAA 90–1.
OMB Approval Number: 0648–0008.
Type of Request: Extension of the expiration date.
Burden: 20 hours.
Number of Respondents: 40.
Avg Hours Per Response: 30 minutes.
Needs and Uses: The information collected identifies the participating organizations and personnel in a proposed Sea Grant project. It is used in the review of proposals.
Affected Public: Not–for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 482–3271.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Monthly Cold Storage Fish Report.
Agency Form Number: NOAA 88–16.
OMB Approval Number: 0648–0015.
Type of Request: Extension of the expiration date.
Burden: 1,000.
Number of Respondents: 200 (monthly responses).
Avg Hours Per Response: 8 minutes.
Needs and Uses: Data on cold storage of fish holdings are needed by the National Marine Fisheries Service for fishery management and development purposes, and by industry for the orderly distribution and purchase of fishery products.
Affected Public: Businsses or other for–profit organizations.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Processed Product Family of Forms.
Agency Form Number: NOAA 88–13.
OMB Approval Number: 0648–0018.
Type of Request: Extension of the expiration date.
Burden: 617 hours.
Number of Respondents: 5,141 (some more than 1 response).
Avg Hours Per Response: Approximately 8 minutes.
Needs and Uses: Data from seafood processors and wholesale dealers are needed by NMFS to develop economic forecasts on the impacts of fishery management regulations.
Affected Public: Businesses or other for–profit institutions.
Frequency: Monthly, annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Pacific Billfish Angler Survey.
Agency Form Number: 88–10.
OMB Approval Number: 0648–0020.

Type of Request: Extension of the expiration date.
Burden: 175 hours.
Number of Respondents: 2,500.
Avg Hours Per Response: 4 minutes.
Needs and Uses: Recreational fishermen who have fished for billfish in the Pacific Ocean are asked to report on their effort and catch. The information obtained is used to determine annual trends and is used in domestic and international fishery management discussions and plans.
Affected Public: Individuals.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Sea Grant Budget.
Agency Form Number: NOAA 90–4.
Type of Request: Extension of the expiration date.
Burden: 200 hours.
Number of Respondents: 40 (multiple responses).
Avg Hours Per Response: 15 minutes.
Needs and Uses: The object of the Sea Grant Program is to increase the understanding, assessment, development utilization, and conservation of the Nation's ocean and coastal resources. Both single and multi–project grants are given. The information on the budget form is used by both the grantee and grantor to determine the cost of each project and to determine the allowability of matching costs offered. Also is used in negotiating costs and administrative controls of expenditures by both parties.
Affected Public: Not–for–profit institutions.
Frequency: Annually.
Respondent's Obligation: Required to obtain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Saltonstall–Kennedy (S–K) Grant Application.
Agency Form Number: NOAA 88–204 and 88–205.
OMB Approval Number: 0648–0135.
Type of Request: Revision of a currently approved collection.
Burden: 2,566 hours.
Number of Respondents: 265 (some with multiple responses).
Avg Hours Per Response: Ranges between 2 and 13 hours depending on the requirement.
Needs and Uses: Under the S–K Act, financial assistance is made available through the Secretary of Commerce to the public for projects that help to strengthen or develop the U.S. fishing industry. Information is needed to decide which projects should be funded and to monitor and assess the success of completed projects.
Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, federal, state, local or tribal government.
Frequency: On occasion, semi–annually, annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Deep Seabed Mining Regulations for Exploration Licenses.
Agency Form Number: None.
OMB Approval Number: 0648–0145.
Type of Request: Extension of the expiration date.
Burden: 80 hours.
Number of Respondents: 4.
Avg Hours Per Response: 20 hours.
Needs and Uses: Information is required under the mandate of the Deep Seabed Hard Mineral Resources Act for the purpose of issuing exploration licenses for deep seabed mining. Licensees are required to submit an annual report.
Affected Public: Businesses or other for–profit organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Applications and Reports for Registration as a Tanner or Agent.
Agency Form Number: None.
OMB Approval Number: 0648–0179.
Type of Request: Extension of the expiration date.
Burden: 78 hours.
Number of Respondents: 39.
Avg Hours Per Response: 2 hours.
Needs and Uses: Under the Marine Mammal Protection Act, Alaskan natives may take marine mammals for subsistence or for creating and selling native handicrafts. Possession of marine mammals so taken is allowed only to natives or registered agents or tanners. The requested information is needed to register the agent or tanner and to monitor activities through reports.
Affected Public: Individuals, businesses or other for–profit organizations.
Frequency: Annually, recordkeeping, on occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: GOES Weather Facsimile Transmission System (WEFAX).
Agency Form Number: None assigned.
OMB Approval Number: 0648–0227.
Type of Request: Revision of a currently approved collection.
Burden: 50 hours.
Number of Respondents: 300.
Avg Hours Per Response: 10 minutes.
Needs and Uses: Respondents are an international user community in the public domain who desire to receive and use satellite–derived products from GOES, TIROS, GMS, and METESAT satellite. NOAA requires a minimal amount of information from respondents in order to determine their station location, receiving status, and the satellites to be received.
Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, farms, federal, state, local or tribal governments.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D. C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 31, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19640 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Agency: International Trade Administration.
Title: Foreign Trade Zone (FTZ) Application.
Form Number(s): None.
Agency Approval Number: 0625–0139.
Type of Request: Extension of a currently approved collection.
Burden: 9715 hours.

Number of Respondents: 100.
Avg Hours Per Response: It is estimated that the range of burden hours for each category is as follows: new zones, 90–150 hours; expansions, 15–30 hours; subzones, 60–150 hours.
Needs and Uses: The Foreign Trade Zone (FTZ) Act requires that a one–time application be made to the FTZ Board for authority to establish a foreign–trade zone project in a port of entry community. Applicant is normally a city, state port authority or other public or quasi–public organization.
Affected Public: Businesses or other for–profit institutions and State, Local or Tribal Government.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration
Title: Participant Agreement.
Form Number(s): ITA–4008P and ITA 4008P–A.
Agency Approval Number: 0625–0147.
Type of Request: Extension of a currently approved collection.
Burden: 2500 hours.
Number of Respondents: 7500.
Avg Hours Per Response: 20 minutes.
Needs and Uses: The International Trade Administration (ITA) sponsors trade fairs, trade and seminar missions, and catalogue or video–catalogue shows in which U.S. companies promote their goods and services. The Participation Agreement establishes the dollar contribution, collects participants profile information, and identifies goods to be shipped in conjunction with the overseas trade event.
Affected Public: Business or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration
Title: Format for Petition Requesting Relief Under U.S. Countervailing Duty Law.
Form Number(s): ITA–366P.
Agency Approval Number: 0625–0148
Type of Request: Revision of a currently approved collection.
Burden: 560 hours.
Number of Respondents: 14.
Avg Hours Per Response: 40 hours.
Needs and Uses: Under the Tariff Act of 1930, Commerce is required to conduct countervailing duty (CVD) investigations when acceptable petitions are received from an interested party. Commerce provides potential petitioners with Form ITA–366P to elicit the information required by the statute and regulations for the initiation of a countervailing investigation. The Information is used by ITA in determining whether a ''countervailing duty'' investigation should be started. It is also used by the International Trade Commission in making its ''injury determination,'' as required by the statute.
Affected Public: Business or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/EPS
Title: International Buyer Program: Application and Exhibitor Data.
Form Number(s): ITA–4014P, ITA–4102P.
Agency Approval Number: 0625–0151.
Type of Request: Extension of a currently approved collection.
Burden: 919 hours.
Number of Respondents: 4,080.
Avg Hours Per Response: 3 hours, 20 minutes.
Needs and Uses: The International Buyer Program focuses on U.S. trade shows which have high export potential. U.S. Embassies recruit international buyers to attend these shows and encourage them to buy U.S. products and services. Information is gathered from U.S. exhibitors participating to determine which U.S. companies are interested in meeting with foreign visitors and to determine the overseas business interests of the exhibitors. Export counseling and services are provided to the U.S. exhibitors.
Affected Public: Business or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration.
Title: OECD Industrial Committee Subsidies and Structural Adjustment Questionnaire.
Form Number(s): None.
Agency Approval Number: 0625–0223
Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.
Burden: 1,120 hours.
Number of Respondents: 40.
Avg Hours Per Response: ¾ hour.
Needs and Uses: The U.S is a member of the Organization for Economic Cooperation and Development (OECD) and is participating in the OECD Industrial Subsidies Database project. The U.S. is required to provide information on State. Federal support to manufacturing from 1989–93. The U.S. will receive access to information submitted by other member countries.
Affected Public: Federal Government and State, Local or Tribal Government.
Frequency: One–time collection.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Application for Dean John A. Knauss Policy Fellowship.
Form Number(s): None.
Agency Approval Number: None.
Type of Request: Existing Collection.
Burden: 100.
Number of Respondents: 50.
Avg Hours Per Response: 2 hours.
Needs and Uses: The National Sea Grant Federal Fellows Program was established to provide a unique educational experience to students enrolled in graduate programs related to marine or Great Lakes studies. The program matches highly qualified students with ''hosts'' in the Legislative Branch, the Executive Branch, or appropriate associations/institutions located in Washington, D.C. A written application must be submitted to be considered for the fellowship.
Affected Public: Not–for–profit organizations.
Frequency: One–time collection.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.
Title: Emergency Beacon Registrations.
Form Number(s): None.
Agency Approval Number: None.
Type of Request: Existing Collection.
Burden: 1,250.
Number of Respondents: 5,000.
Avg Hours Per Response: 15 minutes.
Needs and Uses: This information collection is needed to support the mission of the satellite–aided search and rescue program known as COSPAS–SARSAT. Under this program distress signals are detected through NOAA's weather satellites, and transmitted to the Mission Control Center. The Center alerts the appropriate rescue forces worldwide.

Affected Public: Individuals or households, business or other for–profit organizations, Not for–profit institutions, Federal Government and State, Local or Tribal Government.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: NOAA General Counsel for Ocean Services.
Title: Involuntary Child and Spousal Support Allotments NOAA Corps Officers.
Form Number(s): None.
Agency Approval Number: 0648–0242.
Type of Request: Extension of a currently approved collection.
Burden: 1.
Number of Respondents: 1.
Avg Hours Per Response: 1.
Needs and Uses: Individuals entitled to (unpaid) spousal and/or child support from NOAA Corps officers may submit substantiating information in order to have money deducted from the officer's paycheck.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.
Title: Billfish Tagging Report. NOAA Corps Officers.
Form Number(s): 88–162.
Agency Approval Number: 0648–0009.
Type of Request: Extension of a currently approved collection.
Burden: 45 hours.
Number of Respondents: 1,500.
Avg Hours Per Response: .03 hour.
Needs and Uses: Anglers who volunteer to tag billfish are requested to submit a short report on the species and size of the fish tagged and the tagging location. This information is needed if information on the recovery of the tag is to have any value. Data obtained from the tagging program are used to determine growth rates and migratory patterns of billfish. Resulting analyses are used in developing fishery management plans.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS).
Title: Atlantic Tuna Fisheries.
Form Number(s): None.
Agency Approval Number: 0648–0168.
Type of Request: Extension of a currently approved collection.
Burden: 56.
Number of Respondents: 5.
Avg Hours Per Response: 10.6 hours.
Needs and Uses: The U.S. is a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Membercountries are required to report tuna catches made by their flag ships in the Commission's regulatory area. To comply with this requirement, vessels are required to keep a daily fishing log providing a variety of data. NMFS and ICCAT biologists use the information to study the effects of fishing on tuna abundance, If NMFS did not collect the data, the U.S. would not meet its responsibilities to ICATT.
Affected Public: Business or other for–profit.
Frequency: Annual.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: NOAA/OAR/National Sea Grant Program.
Title: Sea Grant Project Summary.
Form Number(s): None.
Agency Approval Number: 0648–0019.
Type of Request: Revision of a currently approved collection.
Burden: 240.
Number of Respondents: 40.
Avg Hours Per Response: 20 minutes.
Needs and Uses: The U.S. is a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Membercountries are required to report tuna catches made by their flag ships in the Commission's regulatory area. To comply with this requirement, vessels are required to keep a daily fishing log providing a variety of data. NMFS and ICCAT biologists use the information to study the effects of fishing on tuna abundance. If NMFS did not collect the data, the U.S. would not meet its responsibilities to ICATT.
Affected Public: Business or other for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202 New Executive Office Building, Washington, DC 20503.

Dated: August 4, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19687 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of Export Administration

[Docket No. 5118–01]

Realtek Semi-Conductor Co. Ltd., 6F, No. 4 Fu-Shon Street, Taipei, Taiwan, Respondent; Decision and Order of Default

On July 12, 1995, the Administrative Law Judge (ALJ) issued a Recommended Decision and Default Order in the above-captioned matter. The Recommended Decision and Default Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. After describing the facts of the case and his findings based on those facts, the ALJ found that Realtek Semi-Conductor Co. Ltd. committed one violation of section 787.2 of the Regulations (EAR) by causing, aiding, or abetting the export in 1990 of U.S.-origin Trident TVGA 8800 and TVGA 8900 graphic chip technology from the United States to Taiwan without the written letter of assurance required by Section 779.4 of the Regulations.

The ALJ found that the appropriate penalty for the violations should be that the Respondent and all successors, assignees, officers, representatives, agents and employees be denied for a period of five years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I affirm the Recommended Decision and Default Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: August 3, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Default Order

On March 31, 1995, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter, the ''Department''), issued a charging letter initiating an administrative proceeding against Realtek Semi-Conductor Co. Ltd. (hereinafter, ''Realtek''), a Taiwanese entity. The charging letter alleged that Realtek committed one violation of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (hereinafter, the ''Regulations''),[1] issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (hereinafter, the ''Act'').[2]

Specifically, the charging letter alleged that, on or about April 1, 1990, Realtek caused, aided, or abetted the export from the United States to Taiwan of U.S.-origin Trident TVGA 8800 and TVGA 8900 technology without the written letter of assurance required by Section 779.4 of the Regulations. Accordingly, the Department alleged that Realtek committed one violation of Section 787.2 of the Regulations.

The charging letter was served on Realtek on April 12, 1995. Realtek failed to file an answer within 30 days after service pursuant to Section 788.7(a) of the Regulations. On June 5, 1995, I ordered the Department to file a proposed order together with any evidence in support of the allegation in the charging letter.

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Realtek violated Section 787.2 of the Regulations by causing, aiding, or abetting the export from the United States to Taiwan of U.S.-origin Trident TVGA 8800 and TVGA 8900 technology without the written letter of assurance required by Section 779.4 of the Regulations.

The Department urges as a sanction that Realtek's export privileges be denied for a period of five years. I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Realtek appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Realtek's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, Realtek, with an address at 6F, No. 4 Fu-Shon Street, Taipei, Taiwan, and all successors, assigns, officers, representatives, agents, and employees, shall, for a period of five years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly, or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department of using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Realtex by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Exporter Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Realtek and on the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

Dated: July 12, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Room 3898B, Washington, D.C. 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 95–19686 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–DT–M

[1] The alleged violation occurred during 1990. The Regulations governing the violation are found in the 1990 version of the Code of Federal Regulations, codified at 15 C.F.R. Parts 768–799 (1990).

[2] The Act expired on August 20, 1994. Executive Order 12924 (59 *Fed. Reg.* 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

Interntional Trade Administration

[A–357–804]

Silicon Metal From Argentina; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and termination in part.

SUMMARY: In response to a request from petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumpting duty order on silcon metal from Argentina. Petitioners requested that the review cover two manufacturers/exporters, Electrometalurgica Andian, S.A.I.C. (Andina) and Silarsa, S.A. (Silarsa), and the period September 1, 1993 through August 31, 1994. However, within 90 days of the publication of the Department's initiation notice, the petitioners withdrew their request for review of Andina in accordance with 19 CFR § 353.22(a). Because no other party requested a review of Andina, we are terminating this administrative review with respect to Andina. Petitioners did not withdraw their request with respect to Silarsa.

Since Silarsa did not provide the information requested by the Department in its questionnaire, we were unable to conduct an administrative review of this firm. We have, therefore, preliminary determined to use the best information available (BIA) and have assigned to Silarsa a 24.62 percent margin, the highest margin obtained in any review of this order. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION: On September 26, 1991, the Department published in the **Federal Register** (56 FR 48779) the antidumping duty order on silicon metal from Argentina. On September 2, 1994, the Department published in the **Federal Register** (59 FR 45664) a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period September 1, 1993 through August 31, 1994. We received timely requests on September 30, 1994, to conduct an administrative review of Andina and Silarsa from a group of four domestic producers of silicon metal (the petitioners): American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc., and SKW Metals and Alloys, Inc.

On October 13, 1994, in accordance with 19 § CFR 353.22(c), we published notice of initiation (59 FR 51939) covering the two manufacturing/exports named above.

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act. Unless otherwise indicated, all citations of the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The product covered by the review is silicon metal. During the less-than-fair-value (LTFV) investigation, silicon metal was described as containing at least 96.00 percent, but less than 99.99 percent, silicon by weight. In response to a request by petitioners for clarification of the scope of the antidumping duty order on silicon metal from the People's Republic of China (PRC), the Department determined that material with a higher aluminum content containing between 89.00 and 96.00 percent silicon by weight is the same class or kind of merchandise as silicon metal described in the less-than-fair-value (LTFV) investigation (*Final Scope Rulings—Antidumping Duty Orders on Silicon Metal from the People's Republic of China, Brazil, and Argentina* (February 3, 1993)). Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil, and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) and is commonly referred to as a metal.

Semiconductor-grade silicon (silicon metal containing by weight not less than 99.9 percent of silicon metal and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. The HTS subheadings are provided for convenience and U.S. Customs Service purposes only; our written description of the scope of the proceedings is dispositive.

This review covers two manufactures/exporters of silicon metal to the United States, Andina and Salarsa. The period of review (POR) is September 1, 1993 through August 31, 1994.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of BIA is appropriate for Silarsa. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR § 353.37(b)) in selecting BIA. Generally, whenever a company refuses to cooperate with the Department, or otherwise significantly impedes the proceeding, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise for the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the review for any firm for the same class or kind of merchandise from the same country. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et. al.; Final Results of Antidumping Duty Administrative Review,* 56 FR 31692, (Fed. Cir. 1993).

On October 26, 1994, the Department sent questionnaires to Andina and Silarsa requesting their respective responses to company-specific information needed to conduct the administrative review. The deadline for submission of the respondents' information was December 28, 1994. Andina submitted its response in a timely manner. However, petitioners subsequently withdrew their request for review of Andina in accordance with 19 CFR § 353.22(a)(5) of the Department's regulations. The Department, therefore, is terminating its review with respect to Andina. On December 29, 1994, Silarsa requested that it be excused from responding to the Department's antidumping duty request for information as it had exported only a small amount of silicon metal in October 1993. Moreover, Silarsa stated that it had ceased to produce silicon metal as of January 1994 (see letter from Silarsa to the Department dated December 29, 1994). Absent a timely filed withdrawal of the petitioners' review request, pursuant to 19 CFR § 353.22(a), the Department is obligated to conduct an administrative review following specific procedures after receipt of a timely request for review from an interested party, pursuant to 19 CFR § 353.22(c). In this instance, the petitioners did not withdraw their request for review of Silarsa. Neither the volume of Silarsa's exports to the United States, nor its claim that it ceased producing silicon metal is relevant to the Department's obligation to conduct this administrative review.

Since Silarsa did export silicon metal to the United States during the POR in question, but failed to provide the Department with the information needed to conduct the administrative review, we consider the firm to be uncooperative, and we have used as BIA 24.62 percent, the highest rate ever determined in this proceeding. This rate is Silarsa's BIA rate from the first administrative review of this antidumping duty order.

Preliminary Results of Review

We preliminarily determine the margin for this administrative review to be:

Manufacturer/exporter	Margin
Silarsa, S.A.	24.62

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs are due, under 19 CFR § 353.38(c). The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results of this review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies, in the event the order is not revoked in part, will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 8.65 percent, the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 353.22(c)(5) of the Department's regulations.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19693 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Revocation of Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty orders.

SUMMARY: Pursuant to section 753(b)(4) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the Commission) has issued a negative injury determination with respect to each of the countervailing duty orders listed in the Appendix to this notice. Therefore, pursuant to section 753(b)(3)(B) of the Act, the Department of Commerce (the Department) is notifying the public of its revocation of these countervailing duty orders.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Lebowitz or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1995, the Department published a notice in the **Federal Register** which informed domestic interested parties of their right under section 753(a) of the Act to request an injury investigation from the Commission with respect to certain outstanding countervailing duty orders issued pursuant to former section 303 of the Act. *Countervailing Duty Order; Opportunity To Request a Section 753 Injury Investigation,* 60 FR 27693 (May 26, 1995), amended 60 FR 32942 (June 26, 1995). In conjunction with this notice, the Department sent letters to domestic interested parties notifying them of their right to request an injury investigation covering the subject orders pursuant to section 753(a) of the Act. The notice and letter advised parties that failure to submit a timely request for an injury investigation would result in the revocation of the subject order(s).

The Commission has notified the Department that it did not receive a timely request under section 753(a) covering any of the countervailing duty orders listed in the Appendix and, therefore, a negative injury determination has been made with respect to these orders pursuant to section 753(b)(4) of the Act. 19 U.S.C. 1675b(b)(4). As a result, the Department hereby revokes these countervailing duty orders pursuant to section 753(b)(3)(B) of the Act and will refund, with interest, any estimated countervailing duties collected since January 1, 1995, the period during which liquidation was suspended pursuant to section 753(a)(4) of the Act.[1]

[1] At the time the order on Ferrosilicon from Venezuela was issued, part of the merchandise (non-dutiable) covered by the order was subject to the requirement of an affirmative determination of material injury under section 303 of the Act. *See* ''Notice of Opportunity to Request a Section 753 Injury Investigation,'' 60 FR 27963, at 27964 column 3, footnote 1 (May 26, 1995). The Department, therefore, partially revokes the order on Ferrosilicon from Venezuela with respect to subject merchandise entered on or after January 1, 1995 under the following HTS numbers:

Dated: August 3, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX

Country	Case name/number	Date/FR of order
Argentina	Apparel (C–357–404)	3/12/85; 50 FR 9846
Argentina	Carbon Steel—Cold-Rolled Flat Products (C–357–005).	4/26/84; 49 FR 18006
Argentina	Leather Wearing Apparel (C–357–001)	3/18/83; 48 FR 11480
Argentina	Line Pipe (C–357–801)	9/27/88; 53 FR 37619
Argentina	Non-Rubber Footwear (C–357–052)	1/17/79; 44 FR 3474
Argentina	Standard Pipe (C–357–801)	9/27/88; 53 FR 37619
Argentina	Textile Mill Products (C–357–404)	3/12/85; 50 FR 9846
Argentina	Tubing, Heavy-Walled Rectangular (C–357–801).	9/27/88; 53 FR 37619
Argentina	Tubing, Light-Walled Rectangular (C–357–801).	9/27/88; 53 FR 37619
Malaysia	Wire Rod, Carbon Steel (C–557–701)	4/22/88; 53 FR 13303
Mexico	Ceramic Tile (C–201–003)	5/10/82; 47 FR 20012
Mexico	Leather Wearing Apparel (C–201–001)	4/10/81; 46 FR 21357
Mexico	Textile Mill Products (C–201–405)	3/18/85; 50 FR 10824
New Zealand	Brazing Copper Rod & Wire (C–614–501)	8/5/85; 50 FR 31638
New Zealand	Steel Wire (C–614–601)	9/2/86; 51 FR 31156
New Zealand	Steel Wire Nails (C–614–701)	10/5/87; 52 FR 37196
New Zealand	Wire Rod, Carbon Steel (C–614–504)	3/7/86; 51 FR 7971
Peru	Cotton Sheeting and Sateen (C–333–001)	2/1/83; 48 FR 4501
Peru	Cotton Yarn (C–333–002)	2/1/83; 48 FR 4508
Peru	Rebar (C–333–502)	11/27/85; 50 FR 48819
Peru	Textile Mill Products (C–333–402)	3/12/85; 50 FR 9871
South Africa	Ferrochrome (C–791–001)	4/9/81; 46 FR 21155
Sri Lanka	Textile Mill Products (C–542–401)	3/12/85; 50 FR 9826
Thailand	Apparel (C–549–401)	3/12/85; 50 FR 9818
Thailand	Butt-Weld Pipe Fittings (C–549–804)	1/18/90; 55 FR 1695
Thailand	Malleable Iron Pipe Fittings (C–549–803)	2/10/89; 54 FR 6439
Thailand	Pipe and Tube (C–549–501)	8/14/85; 50 FR 32751
Thailand	Rice (C–549–503)	4/10/86; 51 FR 12356
Thailand	Steel Wire Nails (C–549–701)	10/2/87; 52 FR 36987
Venezuela	Circular Welded Nonalloy Steel Pipe (C–307–806).	9/17/92; 57 FR 42964
Venezuela	Ferrosilicon (C–307–808) [1]	5/10/93; 58 FR 30770

/1/ This is only a partial revocation pertaining to entries under the following HTS numbers: 7202.21.7500 and 7202.21.9000. An order still remains on Ferrosilicon from Venezuela, covering the following HTS numbers: 7202.21.1000, 7202.21.5000, 7202.29.0010, and 7202.29.0050.

[C–475–815]

Notice of Countervailing Duty Order: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe (''Seamless Pipe'') From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–0588.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Investigation and Order

The scope of this investigation and order includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation and order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable

7202.21.7500 and 7202.21.9000. The order remains in effect with respect to all subject merchandise entered under the following HTS numbers: 7202.21.1000, 7202.21.5000, 7202.29.0010, 7202.29.0050.

under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another countervailing duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671(a)), on June 12, 1995, the Department made its final determination that producers or exporters of seamless pipe in Italy receive benefits which constitute subsidies within the meaning of the countervailing duty law (60 FR 31992, June 19, 1995). On July 26, 1995, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Italy materially injure a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. sections 1671e and 1675), the Department hereby directs United States Customs officers to assess, upon further advice by the administering authority pursuant to sections 706(a)(1) and 751 of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of seamless pipe from Italy. These countervailing duties will be assessed on all unliquidated entries of seamless pipe from Italy entered, or withdrawn from warehouse, for consumption on or after November 28, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 60774), and before March 28, 1995, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals for consumption made on or after the date of publication of this order in the **Federal Register**. Entries of seamless pipe made on or after March 28, 1995, and prior to the date of publication of this order in the **Federal Register** are not subject to the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on November 28, 1994, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, the following cash deposit for seamless pipe from Italy.

Seamless Pipe

Country-Wide *Ad Valorem* rate 1.47 percent.

This notice constitutes the countervailing duty order with respect to seamless pipe from Italy, pursuant to section 706 of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is published in accordance with section 706 of the Act and 19 CFR 355.21.

Dated: August 2, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19694 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Quota Requirements for Certain Needle-Craft Display Models

August 3, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and quota requirements for needle-craft display models.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on August 11, 1995, needle-craft display models under United States Harmonized Tariff Schedule number 9817.57.01 are no longer subject to visa or quota requirements.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements. This directive also amends, but does not cancel, all visa requirements for all countries for which visa arrangements are in place with the United States.

Effective on August 11, 1995, needle-craft display models which are produced or manufactured in various countries and entered into the United States for consumption and withdrawal from warehouse for consumption into the United States under Harmonized Tariff Schedule (HTS) number 9817.57.01 are no longer subject to visa and quota requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19641 Filed 8–08–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Defense Policy Board Advisory Committee

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee (MHCAC) has been renewed, effective August 3, 1995, in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The Defense Policy Board Advisory Committee will continue to provide the Secretary of Defense and other sernior officials in the Department of Defense with independent, informed advice and recommendations concerning matters of Defense policy. The Board focuses on long-term issues central to strategic planning for the Department of Defense, and provides research and analysis of topical issues of particular significance to the Secretary.

The Committee will continue to be composed of about 20 members who are acclaimed leaders in national security affairs. Efforts will be made to ensure a balanced membership, considering the functions to be performed and the interest groups represented, and will include academicians, private consultants, corporation executive, and both current and former government officials.

For further information regarding the Defense Policy Board Advisory Committee, contact: LTC Clay Stewart, (703) 697–4557.

Dated: August 3, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19656 Filed 8–8–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board

Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 6 & 7 September 1995.

Time of Meeting: 0800–1600, 6 September 1995; 0900–1200, 7 September 1995.

Place: SRI—San Francisco, CA.

Agenda: The Army Science Board Ad Hoc Study on ''The Impact of Information Warfare on Army Command, Control, Communications, Computers and Intelligence (C4I) Systems'' will meet to hear classified briefings relative to the subject under study. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title, 5 U.S.C., Appendix 2, subsection 10(d). The proprietary matter to be discussed is so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–19564 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24 and 25 August 1995.

Time of Meeting: 0900–1700, 24 and 25 August 1995.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) C4I Issue Group on ''A Strategy for Leveraging Commercial Technologies for Future Army Radios'' will meet to hear selected briefings relative to the study. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the

committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–19563 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command Option To Extend Guaranteed Traffic

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice (Request for carrier industry comments).

SUMMARY: This notice establishes the procedures the Government will follow to exercise its option to extend the term of a Guaranteed Traffic award.

1. The Government may extend the term of awarded Guaranteed Traffic (GT) by written notice to the carrier. Notice of this intent will be sent to the carrier(s) 60 days prior to the original expiration date. The preliminary notice does not commit the Government to an extension.

a. If the Government exercises this option, the extended GT shall be considered to allow up to three 1-year extensions. All extensions will be in increments up to one year, not to exceed a total of 3 years.

b. The total duration of the GT, including the exercise of any option under this item, shall not exceed 5 years.

2. Rates shall be subject to adjustment in accordance with the following price adjustment procedures:

a. Increases or decreases in tendered rates shall be automatically made by the MTMC in accordance with the Producer Price Index published by the U.S. Department of Labor. Factors considered will be the Producer Price Index for General Freight, Truckload (PPI–GFTL), and Less than Truckload (PPI–GFLTL). Adjustments may be made for years 3, 4, and 5 of the GT award. No adjustments will be made when the percent of change is less than one percent.

b. For example, on a two-year GT award, the basic index will be that indicated for the month of the original effective date of the tender and at the end of the 21st month (3 months prior to expiration). Subsequent extension options will be based on the index for each of the succeeding 12 months. The net change will be developed by subtracting the latest index from the index in effect at the time of the original award or previous extension. The difference will be divided by the base index at the time of the award/previous extension for the increase authorized.

For example: October 1992=104.9
June 1994=110.1 (21 months)
Net Change=5.2
Price adjustment:
Net change/Base Index=5.2/104.9=4.9
This results in a 4.9% increase.

3. The Government will provide the carrier written notification of the price adjustment at least 45 days prior to the effective date thereof.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin Lamm, Military Traffic Management Command, ATTN: MTOP–T–ND, 5611 Columbia Pike, Falls Church, VA 22041–5050; or telephone (703) 681–6103.

SUPPLEMENTARY INFORMATION: Carrier comments or suggestions on these procedures will be considered if received at Headquarters, MTMC, MTOP–T–ND by September 7, 1995.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–19565 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/R) for the San Pedro Creek Section 205 Flood Control Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The San Francisco District, U.S. Army Corps of Engineers and its local sponsor, the City of Pacifica, are planning the construction of a flood control project along San Pedro Creek in San Mateo County, California. The project would provide a 100-year level of flood protection to homes and businesses in the floodplain of the lower portion of the San Pedro Creek drainage. This project would also restore wetlands and riparian habitat along this portion of San Pedro Creek that have been lost due to past development.

The Corps of Engineers is the lead agency for this project under the National Environmental Policy Act (NEPA), and the City of Pacifica is the lead agency under the California Environmental Quality Act (CEQA). The DEIS/R will enable the lead agencies to comply with the requirements of NEPA and CEQA.

FOR FURTHER INFORMATION CONTACT: Mr. Bill DeJager at (415) 744–3341, or at the Army Corps of Engineers, San Francisco District, 211 Main Street, Room 918, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: The San Pedro Creek Flood Control Project would be constructed under the authority of Section 205 of the Water Resources Act of 1948. An initial study of potential flood control alternatives along San Pedro Creek was completed in 1988. This study determined that there is a Federal interest in structural flood-control measures in the study area. A detailed project report has subsequently been initiated with the City of Pacifica, to support further Federal participation in the project.

As part of this study, the City of Pacifica has devised a flood control project for San Pedro Creek based on extensive public input. This project would involve construction of an underground bypass channel and an aboveground excavated floodway, both located on the southside of San Pedro Creek. The bypass channel would start at the Adobe Drive Bridge and would extend downstream approximately 2,300 feet to a point midway between the Adobe Drive Bridge and the Highway 1 Bridge. The bypass would be routed almost entirely under city streets, and would discharge into an excavated floodway. The excavated floodway would extend from the downstream end of the bypass west to State Highway 1. The portion of San Pedro Creek alongside the floodway would be rerouted and would meander through the floodway, which would be developed into a riparian forest. From Highway 1 downstream to the Pacific Ocean, the existing stream channel would be widened. In addition, an area north of the creek and west of Highway 1 would be excavated and would serve as a wetland and wildlife habitat.

Other alternatives to be considered in the DEIS/R will include: (1) no action; (2) channelization of the creek; and (3) construction of a floodwall. These alternatives have been considered in the past by both the Corps and the local sponsor.

The Corps of Engineers is requesting public input during the preparation of the DEIS/R for this project. All interested Federal, State, and local agencies, Indian tribes, private organizations, and individuals are invited to participate in the environmental scoping process established by Federal regulations.

A scoping meeting will be held in the City Council chambers, 2212 Beach Boulevard, Pacifica, California on September 7, 1995 at 7:30 p.m. The purpose of the meeting will be to determine the environmental issues of concern to the public that should be addressed by the DEIS/R. A public comment period for the proposal will open on August 16, 1995 and will close on September 15, 1995. The public will

have an additional opportunity to comment on this proposal after the DEIS/R is released to the public, which is expected to be in January 1996.

The DEIS/R will examine environmental impacts of public concern arising from the scoping process, as well as project impacts already known to the Corps. These impacts will include, but are not limited to: wildlife, fisheries, threatened and endangered species, water quality, recreation, aesthetics, air quality, public safety, transportation, and construction impacts.

The DEIS/R will disclose the project's compliance with all other Federal environmental statutes, rules, and regulations. Included will be consultation with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and possibly the Endangered Species Act, and consultation with the State of California under the Coastal Zone Management Act, Clean Water Act, and Clean Air Act.

The City of Pacifica is issuing a separate notice regarding compliance with the requirements of CEQA. The aforementioned DEIS scoping meeting will also serve as a scoping meeting for the purposes of CEQA.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–19566 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitte- the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995. The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507 (d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (7) Affected public; (8) An estimate of the number of respondents per report period; (9) An estimate of the number of responses per respondent annually; (10) An estimate of the average hours per response; (11) The estimated total annual respondent burden; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Norma White, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Ms. White may be telephoned at (202) 254–5327.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–574
3. 1902–0016
4. Gas Pipeline Certificates: Hinshaw Exemption
5. Business or other for-profit
6. Extension
7. Mandatory
8. 1 respondent
9. 1 response
10. 245 hours per response
11. 245 hours
12. FERC–574 data are used by the Commission in assessing applications for exemption from certain provisions of the Natural Gas Act by companies engaging in the transportation of sale for resale natural gas in interstate commerce.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FPC–14
3. 1902–0027
4. Annual Report for Importers and Exporters of Natural Gas
5. Business or other for-profit
6. Extension
7. Mandatory
8. 54 respondents
9. 1 response
10. 2 hours per response
11. 108 hours
12. The purpose of this report/filing is to collect data used to assist in the monitoring and regulation of natural gas imports and exports in the United States.

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–73
3. 1902–0019
4. Oil Pipeline Service Life Data
5. Business or other for-profit
6. Extension
7. Mandatory
8. 10 respondents
9. 1 response
10. 40 hours per response
11. 400 hours
12. Data are used by the Commission to determine the depreciating portion of oil pipeline company operating expenses in establishing a company's total cost of service and ultimately the reasonableness of the amount charged to shippers/customers that is intended to recover the depreciation expense component.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., Aug. 1, 1995.

Yvonne M. Bishop, Director,

Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–19690 Filed 8–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

August 3, 1995.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Type of Application: Declaratory Order.

b. Docket No.: DI95–3–000.

c. Date Filed: July 3, 1995.

d. Applicant: Georgia-Pacific Corporation.

e. Name of Project: Forest City (P–2660) and West Branch (P–2618).

f. Location: East Branch of St. Croix River in Washington and Aroostook Counties, Maine; and West Branch of St. Croix River in Washington, Hancock, and Penobscot Counties, Maine, respectively.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Pierce, Atwood, Scribner, Allen, Smith & Lancaster, One Monument Square, Portland, ME 04101, (207) 773–6411.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: September 15, 1995.

k. Description: The existing Forest City Project (No. 2660) consists of all United States portions of the following project works:

(1) Forest City Dam, a 16-foot-high, 500-foot-long earth embankment dam containing a gated timber spillway structure 65 feet wide, with 3 gates and a fish passage facility; (2) a reservoir (East Grand Lake) with surface area of 16,070 acres at elevation 434.94 feet m.s.l. and storage capacity of 105,300 acre-feet; and (3) other appurtenances.

The existing West Branch Project (No. 2618) consists of:

(A) West Grand Lake development: (1) West Grand Lake Dam, earth embankment and gravel-filled timber crib structure, 485 feet long and 13 feet high, containing a gated spillway structure, 77 feet wide with 5 gates, and a fish passage facility 24 feet wide; (2) a reservoir with surface area of 23,825 acres at elevation 301.43 feet m.s.l. and storage capacity of 160,000 acre-feet; and (3) other appurtenances.

(B) Sysladobsis Lake development (Project No. 2618): (1) Sysladobsis Lake Dam, an earth embankment structure, 250 feet long and 5.5 feet high, with a concrete cut-off wall and rock masonry downstream face, containing a gated spillway structure 23 feet wide with 2 gates, and a fish passage facility 7 feet wide; (2) a reservoir with surface area of 5,400 acres at elevation 305.62 feet m.s.l., and storage capacity of 25,000 acre-feet; and (3) other appurtenances.

The above-referenced reservoirs supply water to three downstream generating facilities, Grand Falls, Woodland, and Milltown. These generating facilities do not require licensing by the Commission.[1] The issue raised in Georgia-Pacific Corporation's petition is whether the above-referenced reservoirs are required to be licensed under Section 23(b) of the Federal Power Act.

1. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19574 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[1] See October 28, 1988, Commission orders (UL89–1–000 Grand Falls Hydro Project and UL89–2–000 Woodland Hydro Project), and June 7, 1990 letter—Milltown Project.

Notice of Application Filed With the Commission

August 3, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No: 9340–022.

c. Date Filed: July 31, 1995.

d. Applicants: Lawrence E. and Veronica P. Smith Central Maine Power Company.

e. Name of Project: Kezar Falls.

f. Location: On the Ossipee River in the Village of Kezar Falls in York and Oxford Counties, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. Applicant Contact: John H. Bernotavicz, Esq. Curtis, Thaxter, Stevens, Broder & Micoleau, 185 State Street, P.O. Box 5307, Augusta, ME 04332–5307, (207) 775–2361.

i. FERC Contact: David W. Cagnon, (202) 219–2693.

j. Comment Date: August 21, 1995.

k. Description of Transfer: Central Maine Power agreed to purchase and terminate the power purchase agreement between central Maine Power and Lawrence E. and Veronica P. Smith (Smiths) and purchase all rights, title, permits, licenses, etc. related to ownership and operation from the Smiths. The termination of the power purchase agreement and the project purchase will result in savings to the rate payers of Central Maine Power.

1. 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'', ''PROTESTS'', 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19575 Filed 8–8–95; 8:45am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. CP95–634–000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

August 2, 1995

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP95–634–000]

Take notice that on July 21, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–634–000 a request pursuant to Sections 157.205 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to abandon and to construct and operate replacement facilities under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Issaquah Meter Station by replacing one existing 8-inch turbine meter and appurtenances. The meter station is located in King County, Washington.

Comment date: September 18, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–641–000]

Take notice that on July 26, 1995, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–641–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon an interruptible exchange service that is performed between the two parties, all as more fully set forth in the application on file with the Commission and open to public inspection.

The exchange service is performed pursuant to Texas Eastern's Rate Schedule X–106 and Transco's Rate Schedule X–171, for an initial term of ten years, and year to year thereafter. It is stated that Texas Eastern and Transco no longer have purchase obligations from the respective fields and thus have no current need for this exchange service. No facilities are proposed to be abandoned herein.

Comment date: August 23, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–644–000]

Take notice that on July 27, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–644–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities for a new point of delivery to Rock-Tenn Company (Rock-Tenn) located in Monroe County, Pennsylvania under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a 2-inch tap, 2-inch meter, meter run, 2-inch regulator, 2-inch monitor and approximately 100 feet of 4-inch pipeline within Columbia's existing measuring station yard on Columbia's Line L–1278 to provide a new point of delivery in order to provide interruptible transportation service for up to 1,700 dekatherms (dth) per day and up to 544,000 dth annually, for industrial use, for Rock-Tenn in Monroe County, Pennsylvania under Columbia's Rate Schedule ITS within certificated entitlements. Columbia states that there is no impact on Columbia's existing design day and annual obligations to its other customers as a result the construction and operation of these facilities. Columbia states that Rock-Tenn would reimburse Columbia for the cost of these facilities estimated to be $72,000, plus gross-up for income tax.

Comment date: September 18, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 95–19576 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–410–000]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective September 1, 1995:

Third Revised Sheet No. 4A

Alabama-Tennessee states that the purpose of this filing is to adjust the take-or-pay charges applicable to each of its jurisdictional sales and transportation customers pursuant to the reconciliation procedures established under Article I, section A.3 of the settlement approved by the Commission in this docket on October 17, 1991. Alabama-Tennessee states that this reconciliation has resulted in an increase in the Direct Billed Obligation and the Volumetric Surcharge (as those terms are defined under the settlement) that Alabama-Tennessee is authorized to collect from its jurisdictional sales and transportation customers.

Alabama-Tennessee requests such waivers of the Commission's Regulations as will be necessary to permit the tariff sheet to become effective as proposed in its filing.

Alabama-Tennessee states that copies of its filing were served upon its customers and interested public bodies and all the parties on the Commission's official service list established in the captioned docket.

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 Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1994)). All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19577 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–49–000]

Algonquin LNG, Inc.; Notice of Proposed Changes In FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Algonquin LNG, Inc. (Algonquin LNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Volume No. 1
Second Revised Sheet No. 200.

The proposed effective date of this tariff sheet is September 1, 1995. Algonquin LNG states that the purpose of this filing is to reflect changes in Algonquin LNG's index of purchasers.

Algonquin LNG states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19578 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–11–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on July 31, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective September 1, 1995.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 154.308 of the Commission's Regulations and Section 24 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional storage rates. ESNG further states that the instant filing is being made to ''track'' changes in Transcontinental Gas Pipe Line (Transco) storage service rates.

As background to the instant filing, on March 1, 1995, Transco filed a Section 4 general rate case in Docket No. RP95–197–000, et. al. Transco filed to have rates effective April 1, 1995, but Commission suspended rates for five months making the effective September 1, 1995.

ESNG states that copies of the filing have been served upon its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and 385.214). All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19579 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–13–000]

NorAm Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

August 3, 1995.

Take notice that on July 31, 1995, NorAm Gas Transmission Company (NorAm) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 31, 1995:

First Revised Sheet No. 239
Second Revised Sheet No. 240

NorAm states that this filing is being made pursuant to Order Nos. 566, *et seq.*, and Section 250.16(b) of the Commission's Regulations to update the subject tariff sheets.

NorAm states that a copy of this filing has been served upon NorAm's jurisdictional customers and state commissions.

Any person desiring to be heard or to protest the subject 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19580 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–004]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume 1, the following tariff sheets, proposed to be effective September 1, 1995:

Substitute First Revised Sheet No. 135
Substitute First Revised Sheet No. 140
Substitute Second Revised Sheet No. 144
Substitute First Revised Sheet No. 148
Substitute Second Revised Sheet No. 291
Substitute First Revised Sheet No. 292

Northern states that such tariff sheets are being submitted in compliance with the Commission's ''Order Following Technical Conference'', issued July 17, 1995, in Docket No. RP95–185–000, to modify the tariff for changes to existing storage service and a new System Underrun Limitation (SUL) provision.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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 must be filed on or before August 10, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19581 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–409–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing changes to its FERC Gas Tariff to be effective September 1, 1995,[1] consisting of the following tariff sheets:

Third Revised Volume No. 1

Seventh Revised Sheet No. 5
Sixth Revised Sheet No. 5–A
Third Revised Sheet No. 6
Third Revised Sheet No. 7
Sixth Revised Sheet No. 8
Second Revised Sheet No. 8.1
First Revised Sheet No. 116
Second Revised Sheet No. 117
First Revised Sheet No. 118
Third Revised Sheet No. 271
First Revised Sheet No. 360
First Revised Sheet No. 361
Fifth Revised Sheet No. 375
Fourth Revised Sheet No. 376
Fifth Revised Sheet No. 377
Third Revised Sheet No. 378
Second Revised Sheet No. 380

Original Volume No. 2

Twenty-First Revised Sheet No. 2
Sixteenth Revised Sheet No. 2.1
Twentieth Revised Sheet No. 2–A

Northwest states that the changes reflect an overall change in its jurisdictional rates for transportation and storage services for the twelve month period ended April 30, 1995, adjusted for known and measurable changes through January 31, 1996, to provide additional revenues related to an increased revenue requirement and redesign of rates of approximately $19.2 million.[2]

Northwest's revenue requirement has increased due to increased cost of service, primarily as a result of 1) additions to gross rate base including system expansion facilities, 2) increased operating and maintenance expenses, the majority of which relate to an increase in headquarters office rent, and 3) increased depreciation expenses related primarily to new facilities, the reclassification of items for transmission to general plant, and to adjustments to the depreciable life of certain general plant items. All of these increases are partly offset by the revenues associated with additional services provided to system expansion shippers.

Northwest submitted with its filing proposed changes to modify Northwest's tariff to incorporate an amendment to Northwest's Rate Schedule T–1 firm transportation service for Pacific Interstate Transmission Company to restate the volume obligation and to eliminate the Btu conversion factor to be consistent with Northwest's other firm transportation service agreements. The filing also updates the existing tariff's rate sheets, updates the Index of Shippers, reduces the allocation to interruptable transportation, and corrects typographical errors in the tariff.

Northwest states that the filing was served on each of its customers and affected state commissions pursuant to Section 154.16(b) of the Commissions Regulations.

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[1] Northwest in its filing indicated that it anticipates the filing to be suspended for the full five month period. In the event of such a suspension, Northwest requested an effective date of February 1, 1996. Northwest also requested that all tariff sheets be suspended for the same period of time as the rate changes.

[2] This amount reflects the increase over Northwest's currently effective rates in Docket No. RP94–220 as adjusted to reflect the removal of Northwest's investment in lost and unaccounted-for gas as ordered by the Commission in Docket No. RP95–187. The increase does not reflect the mitigating effects of the Storage Services Settlement in Docket No. RP93–5 and RP94–220, 71 FERC ¶ 61,063, on Northwest's Docket No. RP94–220 currently effective rates or Northwest's cost of service positions in rebuttal testimony filed on July 11, 1995, in that proceeding.

Any person desiring to be heard or 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 Rules of Practice and Procedure. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19582 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2984 Maine]

S.D. Warren Company; Notice of Public Scoping Meeting

August 3, 1995.

The Federal Energy Regulatory Commission (Commission) has received a ''Report on S.D. Warren Company's Level Management Plan for Sebago Lake'', required by the August 1994, Order on Complaints. The Order on Complaints required the licensee to file, for Commission approval, a lake level management plan that balances the various competing uses of Sebago Lake and that contains procedures for monitoring the impacts of the lake level management plan on indicators such as shoreline erosion, lake pollution, fish and wildlife resources, recreation, etc.

The Commission will proceed with scoping for an Environmental Impact Statement (EIS) for the Sebago Lake Water Management Plan. The Sebago Lake Water Level Management Plan EIS will describe and evaluate the probable impacts of the licensee's proposed management plan and all reasonable alternatives.

One element of the NEPA process is scoping. Scoping activities are initiated early in the process to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the document;
- Identify significant environmental issues related to the elements of the proposed water level management plan;
- Determine the depth of analysis for issues that will be discussed in the document; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis.

Scoping Meetings

Commission staff will conduct two public meetings for the Sebago Lake Water Level Management Plan EIS. All interested individuals, organizations, and agencies are invited to attend the planned meetings and help staff identify the scope of environmental issues that should be analyzed in the EIS.

The first scoping meeting, primarily, for public, will be conducted at 7 p.m. on Tuesday, August 22, 1995, at the Heffernan Center Auditorium, Saint Joseph's College, Windham, Maine.

The second meeting, primarily for agencies, will be held at 2 p.m. on Wednesday, August 23, 1995, at the Portland Public Library, Rines Auditorium, 5 Monument Square, Portland, Maine.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the EIS. Individuals presenting statements at the meeting need to sign in before the meeting starts and to identify themselves for the record.

Concerned parties are encouraged to speak during the public meetings. Speaking time allowed for individuals will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At each scoping meeting, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EIS;
- Identify resource issues that the staff believes are of lesser importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the EIS.

Information Requested

Federal and state resource agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with the proposed Sebago Lake Water Level Management Plan. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the projects; and
- Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than September 5, 1995. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All filings sent to the Secretary of the Commission should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show the following caption on the first page:

FERC No. 2984
Sebago Lake Water Level Management Plan EIS

Intervenors and interceders (as defined in 18 CFR 385.2010) who file documents with the Commission are reminded of the Commission's Rules of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the official service list for this proceeding.

For further information, please contact Thomas J. LoVullo (202) 219–1168.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19573 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–314–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 3, 1995.

Take notice that on August 1, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing in compliance with the Commission's July 17, 1995 order in the reference proceeding (72 FERC 61,052) a schedule indicating the current status of its Volumetric Transition Cost Account.

Tennessee states that, as required by the Commission's Order, the schedule shows the current status of both Tennessee's supply area and market area volumetric transition subaccounts and the cumulative amounts recovered pursuant to the volumetric market area and supply area surcharges.

Tennessee states that a copy of this filing was served on each of its customers and affected state commissions.

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. All such protests should be filed on or before August 10, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19583 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–47–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 3, 1995.

Take notice that on July 17, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission a Refund Report in accordance with Section 4 of its Rate Schedule FT–NT.

Transco states that the report shows the flow through of refunds to Transco's FT–NT customers resulting from a refund received from Texas Gas Transmission Corporation (Texas Gas) in accordance with the Stipulation and Agreement in Texas Gas's general rate case Docket No. RP93–106, *et al.*, approved by the Commission on September 21, 1994.

Transco states that on July 13, 1995, it flowed through refunds totalling $1,381,483.30 including interest of $36,778.09, to its FT–NT customers for the referenced Texas Gas refund for the period November 1, 1993 through March 31, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 385.214). All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19584 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–30–000]

Trunkline Gas Company Notice of Proposal Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Trunkline Gas Company (Trunkline) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, listed on Appendix A to the filing. Trunkline, requests an effective date on September 1, 1995.

Trunkline states that this filing is being made in accordance with Section 23 (Miscellaneous Revenue Flowthrough Surcharge Adjustment) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to make the tariff sheets and rates submitted herewith effective September 1, 1995.

Trunkline further states that copies of the filing area being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

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 385.214). All such petitions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19585 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA96–1–35–000]

West Texas Gas, Inc.; Filing

August 3, 1995.

Take notice that on August 1, 1995, West Texas Gas, Inc. (WTG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 4, proposed to be effective October 1, 1995. Sixteenth Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19586 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–136–000]

Williams Natural Gas Company; Notice of Informal Settlement Conference

August 3, 1995.

Take notice that an informal conference will be convened in this proceeding on Thursday, August 31, 1995, at 10 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory

Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19587 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 95–51–NG]

Sandoval Energy Corp.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada and Mexico

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 Sandoval Energy Corporation (Sandoval) authorization to import and export a combined total of up to 100 Bcf of natural gas from and to Canada and Mexico. This import/export authorization shall extend for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

Sandoval's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 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, D.C., July 20, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–19691 Filed 8–8–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces proposed procedures for the disbursement of $592,001 (plus accrued interest) collected pursuant to a consent order with Macmillian Oil Company and $15,822 (plus accrued interest) collected pursuant to a consent order with Kenny Larson Oil Company. The funds will be distributed in accordance with the DOE's special refund procedures, 10 C.F.R. Part 205, Subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of the date of publication in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments concerning the Kenny Larson proceeding should conspicuously display reference to Case Number LEF–0046 and those concerning the Macmillian proceeding should display reference to Case Number VEF–0002.

FOR FURTHER INFORMATION CONTACT: Bryan F. MacPherson, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–5405.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been collected by the DOE pursuant to a consent orders with Macmillian Oil Company (Macmillian) and Kenny Larson Oil Company (Larson). The consent order with Macmillian settled possible pricing violations with respect to Macmillian's sales of propane, No. 2 fuel oil and Nos. 5 and 6 residual fuel oil. The DOE has collected $592,001 from Macmillian. The consent order with Larson settled possible pricing violations with respect to Larson's sales of motor gasoline. The DOE has collected $15,822 from Larson. The DOE is holding the funds in interest-bearing escrow accounts pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register** and should be sent to the address provided at the beginning of the notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: August 2, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

August 2, 1995.

Name of Firms:
Macmillan Oil Company
Kenny Larson Oil Company

Dates of Filings:
June 5, 1992
October 18, 1994

Case Numbers:
LEF–0046
VEF–0002

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on June 5, 1992 and on October 18, 1994. The petitions request that the OHA formulate and implement procedures for the distribution of funds received pursuant to consent orders entered into between the DOE and Kenny Larson Oil Company (Larson) of Oregon City, Oregon, and Macmillan Oil Company (Macmillan) of Des Moines, Iowa.

I. Background

Larson and Macmillan were ''reseller-retailers'' as defined in 6 CFR 150.352 and 10 CFR 212.31. During the period from August 1973 to January 28, 1981, these companies were subject to the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F, and antecedent regulations at 6 CFR Part 150, Subpart L. An ERA audit of Larson's business records revealed possible pricing violations with respect to the firm's sales of motor gasoline during the period May through

December 1979. An ERA audit of Macmillan's business records revealed possible pricing violations with respect to the firm's sales of propane, No. 2 fuel oil, and Nos. 5 and 6 residual fuel oil during the period November 1, 1973, through April 30, 1974. In order to settle all claims and disputes between these companies and the DOE regarding their compliance with the price regulations, the DOE entered into consent orders with Larson and Macmillan on September 21, 1981, and March 7, 1988, respectively.

In the Larson consent order, the firm agreed to remit a total of $7,415, approximately 38 percent of the amount of the overcharges alleged by the DOE, plus installment interest. Of the principal amount, $5,842 was to be remitted to the DOE, and $1,573 was to be paid directly to six of Larson's customers. Larson failed to comply with the Consent Order and remitted no funds to either the DOE or the six customers.[1] On August 29, 1994, we granted Larson a refund of $15,822 in the Texaco special refund proceeding. *Texaco Inc./Kenny Larson Oil Company,* 24 DOE ¶ 85,081 (1994) (*Texaco/Larson*). At that time, Larson was in default in the amount of $26,168 ($7,415 principal plus $18,753 interest) in its obligations pursuant to the Consent Order. Accordingly, in *Texaco/Larson*, we determined that the Texaco refund should be used to fund Larson's consent order escrow account, in satisfaction of the firm's principal settlement amount and partial satisfaction of its debt for interest accrued. Accordingly, the $15,822 Texaco refund was deposited into the Kenny Larson Oil Company escrow account maintained at the Department of the Treasury, Consent Order No. 000H00439. This is the amount which is available for distribution in this proceeding.

On February 1, 1983, a Proposed Remedial Order was issued to Macmillan which alleged that the firm violated the price regulations with respect to its sales of propane, No. 2 fuel oil, and Nos. 5 and 6 residual fuel oil. Macmillan contested the PRO before the OHA (Case No. HRO–0122). During the course of that proceeding, the ERA reduced the amount of the alleged overcharges from $383,268 to $333,853. *See* Letter from Ann C. Grover, Associate Solicitor, ERA, to Richard T. Tedrow, OHA Deputy Director (October 5, 1987). On March 7, 1988, Macmillan and DOE entered into a consent order that settled the PRO's allegations. Pursuant to the consent order obligation, Macmillan remitted a total amount of $592,001 (including pre-settlement interest) to the DOE in full satisfaction of the amount owed. The audit workpapers identify the customers that Macmillan allegedly overcharged.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement plans of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. It is DOE policy 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 obtained as part of settlement agreements, see *Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 9 DOE ¶ 82,508 (1981). After reviewing the records in the present cases, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Larson and Macmillan consent order funds. We therefore propose to grant the ERA's petitions and assume jurisdiction over distribution of the funds.

III. Proposed Refund Procedures

A. Refund Claimants

In the first stage, refund monies will be distributed to those parties which were directly injured in transactions with Larson and Macmillan during the audit periods. We believe that the Larson and Macmillan customers who were adversely affected by the alleged overcharges are primarily those purchasers specifically identified in the consent orders and in the audit papers. In addition, customers who purchased motor gasoline from the three retail outlets operated by Larson were referred to as a class in the ERA audit files but could not be individually identified.[2] These parties may also file for refunds in this proceeding.

Based on the information we have about Larson's business, we expect that all applicants in the Larson proceeding and most applicants in the Macmillan proceeding will be ultimate consumers. As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges covered by the Consent Order. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period and were not required to keep records which justified selling-price increases by reference to cost increases. *See, e.g., Marion Corp.,* 12 DOE ¶ 85,014 (1984); *Thornton Oil Corp.,* 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement,* 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,209 (1984). We therefore propose that the end-users of Larson and Macmillan petroleum products named in the consent orders or workpapers be presumed injured by the alleged overcharges. Other end-user applicants in the Larson proceeding, if any, need only demonstrate that they purchased from Larson and document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.[3]

We expect some of the applicants in the Macmillan proceeding to be resellers or retailers. With respect to such applicants, we shall adopt a small-claims threshold of $5,000. Reseller or retailer applicants seeking refunds of $5,000 or less will not be required to demonstrate that they were injured by Macmillan's alleged overcharges. In addition, one former customer of Macmillan, E.L. Bride, appears to be a reseller whose potential refund amount is $141,986. Consistent with prior cases, it will be able to obtain a refund of $50,000 without making a demonstration that it was injured by Macmillan's overcharges. In order to obtain a refund of its full overcharge amount, it would have to show that it was injured by the overcharges. *See Gulf Oil Corporation,* 16 DOE ¶ 85,381 at 88,738 (1987); *Marathon Petroleum Company,* 14 DOE ¶ 85,269 at 88,510 (1986).

[1] On October 13, 1983, ERA filed a Subpart V petition with respect to the Larson Consent Order (Case No. HEF–0104). However, because of Larson's failure to remit the settlement amount, that petition was dismissed without prejudice. *See* Memorandum from Richard T. Tedrow, OHA Deputy Director, to Rayburn Hanzlik, ERA Administrator (July 3, 1985).

[2] See Memorandum from Leslie Adams, Director of the Case Settlement Division, ERA, to Milton Lorenz, Special Counsel, ERA, Case No. HEF–0104 (June 24, 1982).

[3] One of the named Larson customers (Portland General Electric) and three Macmillan customers (Iowa Power & Light, Atlantic Municipal Utilities, and Iowa South Utilities) are public utilities. As in other Subpart V proceedings, we will treat the utilities as end-users. Moreover, because each of their potential refunds is less than $5,000, we will not require them to submit the type of certification of pass-through required of public utilities that receive refunds in excess of the $5,000 small claims threshold. *See, e.g., Placid Oil Co.,* 18 DOE ¶ 85,176 at 88,290 (1988).

B. Calculation of Refund Amounts

As stated above, the audits which gave rise to the Macmillan Consent Order identified all of the customers allegedly overcharged during the audit period. In total, there are 66 identified customers who were allegedly overcharged by Macmillan during its refund period. The Larson audit identified six customers which account for 21.2 percent of the alleged overcharges, while the remaining 78.8 percent of the alleged overcharges were attributed to Larson's sales to customers at its retail stations. With respect to the identified customers of Larson and Macmillan, we have determined that the use of the audit results to establish potential refunds on a firm-specific basis is more accurate than any other method to relate probable injury to refund amount.

We shall therefore base the identified customers—potential refunds on the amount that each of these firms was allegedly overcharged, as determined by the ERA audit. Thus, the principal amount of each firm's maximum refund is 100 percent of the amount designated for that firm in the Consent Order plus a pro rata share of the interest that the DOE has collected on that amount. (For Larson, the latter is approximately 45 percent of the interest that Larson actually owed at the time the money was placed in the escrow account.) The firms and their potential refund amounts are listed in the Appendices to this Decision.

We propose to use a volumetric methodology to distribute that portion of the consent order fund attributable to transactions with members of Larson's retail class of purchaser. The volumetric refund presumption assumes that the alleged overcharges by a firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A retail customer claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co./ Siouxland Propane Co.,* 12 DOE 85,054 (1984).

Under the volumetric methodology we plan to adopt for the Larson proceeding, a retail customer claimant will be eligible to receive a refund equal to the number of gallons of motor gasoline purchased from Larson from May through December 1979 multiplied by the volumetric factor. The volumetric factor for Larson is equal to $0.0123.[4] We also propose to establish a minimum amount of $15 for refund claims. We have found that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 82,225 (1982); *see also* 10 CFR 205.286(b). Therefore, a claimant must have purchased at least 1,220 ($15/$0.0123) gallons of Larson motor gasoline during the Larson audit period in order to be eligible for a refund.

In addition, each successful claimant will receive a pro rata share of the interest accrued on the consent order funds between the date the funds were placed in the Larson and Macmillan escrow accounts and the date the applicant's refund is disbursed.

IV. Conclusion

Refund applications in this proceeding should not be filed until the issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim.

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. § 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Larson and Macmillan escrow account that OHA determines will not be needed to effect direct restitution to injured Larson and Macmillan customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That

(1) The refund amount remitted to the Department of Energy by Kenny Larson Oil Company pursuant to the September 21, 1981 Consent Order will be distributed in accordance with the foregoing Decision.

(2) The refund amount remitted to the Department of Energy by Macmillan Oil Company pursuant to the March 7, 1988 Consent Order will be distributed in accordance with the foregoing Decision.

APPENDIX A—LARSON CUSTOMERS AND THEIR POTENTIAL REFUND AMOUNTS

Customer name	Consent order amount	Interest collected	Potential principal refund
Schultz Sanitary Service	$416	$471	$887
B & C Towing	96	109	205
D & A Supply	91	101	192
Portland General Electric	685	773	1,458
Larry Hepler	93	109	202
Skig Nagal Farms	192	219	411
Retail Customers	5,842	6,625	12,467
Total	7,415	8,407	15,822

APPENDIX B—MACMILLAN CUSTOMERS AND THEIR POTENTIAL REFUND AMOUNTS

Customer name	Overcharge amount	Pre-settlement interest	Potential refund amount
Ace Lines, Inc	$223	$172	$395
Armstrong Rubber	17,982	13,904	31,886
Associated Milk Producers	635	491	1,126
Atlantic Municipal Utilities	694	537	1,231
Bankers Life	2,068	1,599	3,667

[4] The volumetric factor was computed by dividing $12,467 (78.8 percent of the $15,822 collected for the Larson escrow account) by 1,016,250 (the approximate number of gallons of motor gasoline sold by Larson to its retail customers during the audit period). The latter figure was obtained using information provided by Larson and by its primary supplier, Texaco Inc.

APPENDIX B—MACMILLAN CUSTOMERS AND THEIR POTENTIAL REFUND AMOUNTS—Continued

Customer name	Overcharge amount	Pre-settlement interest	Potential refund amount
Beaver Valley Canning	4,922	3,806	8,728
Bell Watcher	1,834	1,418	3,252
Bitucote Products	14	11	25
Boesen the Florist	285	220	505
Bookey Packing	843	652	1,495
C&K Enterprises	360	278	638
Charles Krizan	556	430	986
City of Pleasant Hill	7	5	12
College Osteopath Medicine	222	172	394
Crees Enterprises	1,015	785	1,800
Crouse Cartage	414	320	734
Dakota Oil Co	650	503	1,153
Dept. General Services	3,092	2,391	5,483
Des Moines Community College	411	318	729
Des Moines Independent Schools	10,035	7,759	17,794
E.L. Bride Company	80,066	61,920	141,986
Elview Construction	1,345	1,040	2,385
Equitable Life Insurance Co	4,736	3,662	8,398
Everds Bros	213	165	378
Exco Industries	520	402	922
Fidelity Warehouse	$3,146	2,432	5,578
Firestone	196	152	348
Fort Dodge Transport	517	400	917
George A. Hormel & Co	11,756	9,090	20,846
H. West Construction	25	19	44
Hotel Des Moines	325	251	576
Hotel Ft. Des Moines	3,494	2,702	6,196
Howe Laundry	1,093	845	1,938
Inland Mills	2,565	1,983	4,548
Iowa Road Builders	4,379	3,386	7,765
Iowa South Utilities	409	316	725
Iowa Power and Light	4,352	3,365	7,717
Keck, Inc	1,071	828	1,899
Little Giant Crane	652	504	1,156
Local 334	99	77	176
Matt Construction	523	404	927
Maytag	88,470	68,405	156,875
Meredith Publishing Co	2,721	2,104	4,825
National Gypsum	508	393	901
New Monroe Community Schools	2,111	1,632	3,743
Parker Oil Co	746	577	1,323
Pepsi Cola Bottlers	957	740	1,697
Ralston Purina	1,281	990	2,271
Savory Hotel	3,617	2,797	6,414
Sendler Stone Products	193	149	342
Shaver Oil Co	582	450	1,032
Stark Heating	761	588	1,349
State of Iowa Bldg	183	141	324
State of Iowa	1,222	945	2,167
Swift & Co	1,766	1,365	3,131
Swift Edible Oil Co	8,054	6,227	14,281
Target Ready Mix	18,175	14,053	32,228
Univ of N. Iowa	4,519	3,494	8,013
Univ of Iowa	21,616	16,713	38,329
VA Hospital	12	9	21
Veterans Memorial Auditorium	1,009	780	1,789
West Towers	3,406	2,634	6,040
Western Electric	952	736	1,688
Wilson & Co	1,822	1,409	3,231
Younkers (Dan Thomas)	407	315	722
[Illegible] Oil	1,019	788	1,807
Total	333,853	258,148	592,001

[FR Doc. 95–19689 Filed 8–8–95; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180978; FRL 4969–1]

Carbofuran; Notice of Issuances and Receipt of Application for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued specific exemptions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, to the Texas Department of Agriculture, the Oklahoma Department of Agriculture, and the Mississippi Department of Agriculture and Commerce (hereafter referred to as the ''Applicants'') for use of the insecticide, flowable carbofuran, to control aphids on cotton. Due to the unique nature of these emergency situations, in which the time to review the conditions of these situations was short, it was not possible to issue a solicitation for public comment, in accordance with 40 CFR 166.24, prior to the Agency's decision to grant these exemptions. EPA is also announcing the receipt of a request from the Louisiana Department of Agriculture and Forestry for an emergency exemption to use flowable carbofuran on 300,000 acres of cotton.

DATES: EPA is waiving the public comment period, as allowed in 40 CFR 166.24, due to the short period of time available with which to review this situation and render a timely decision. However, comments may still be submitted and will be evaluated.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180978,'' 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, D.C. 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–180978]. 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: Dave Deegan, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington VA, (703) 308–8417; Internet address: deegan.dave@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 Applicants requested that the Administrator issue specific exemptions for the use of the insecticide, carbofuran, formulated as Furadan 4F Insecticide-Nematicide, EPA Reg. No. 279–2876, manufactured by FMC Corporation, to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

According to the Applicants, carbofuran is the only insecticide that could provide effective control of aphids. The applicants submitted data indicating that other currently registered insecticides either are showing signs of diminishing efficacy due to development of resistance in pest populations, or whose efficacy is not consistently reliable enough to control this pest infestation.

Under the uses requested and/or authorized in these specific exemptions, Furadan 4F was requested to be used at a rate of 0.25 lb. of active ingredient (a.i.) per acre per application, applied as a foliar spray using ground or aerial equipment. A maximum of two applications per acre were requested. If two applications are made, a maximum total rate of 0.5 lbs. of carbofuran may not be exceeded per acre.

Under the exemptions which have been granted, the Texas Department of Agriculture was authorized use of up to 100,000 lbs. of carbofuran to treat up to 400,000 acres of cotton; the Oklahoma Department of Agriculture was authorized use of up to 10,000 lbs. of carbofuran to treat up to 40,000 acres of cotton; and the Mississippi Department of Agriculture and Commerce was authorized use of up to 50,000 lbs. of carbofuran to treat up to 200,000 acres of cotton. These states were granted use of these amounts of carbofuran following the requested application rates.

The granted specific exemptions expire on September 15, 1995. In the event that it is granted, the proposed exemption from Louisiana would expire on September 15, 1995 as well.

The regulations governing section 18 [40 CFR 166.24(a)(5)] require that the Agency publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if the applicant proposes use of a chemical which has been the subject of a special review within the Agency. In the case of these states', and the situation found in their cotton producing areas, there was not adequate time to publish a notice of receipt and solicit public comments on these applications prior to the Agency reviewing the submitted data, and making and issuing its decisions. Therefore, as allowed for by 40 CFR 166.24(c), the comment period following a notice of receipt was eliminated, since the time available to make a decision required this.

A record has been established for this notice under docket number ''[OPP–180978]'' (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.

Interested persons are still invited to submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received regarding continuance of these emergency exemptions for the use of carbofuran on cotton.

List of Subjects

Environmental Protection, Pesticides and pests, Crisis exemptions.

Dated: July 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–19667 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Withdrawal of Report No. 2088; Application for Review of Action in Rulemaking Proceedings

August 4, 1995.

Report No. 2088, released August 1, 1995 listing the following Application for Review is hereby withdrawn.

Subject: Deferral of Licensing of MTA Commercial Broadband PCS. (GN Docket No. 93–253 and ET Docket No. 92–100)

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Canton,

Acting Secretary.

[FR Doc. 95–19600 Filed 8–8–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

BOK Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, Tulsa, Oklahoma, to acquire 9.9 percent of Liberty Bancorp, Inc., Oklahoma City, Oklahoma, and thereby acquire Liberty Trust Company, Oklahoma City, Oklahoma, and thereby engage in: trust company activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y; Mid-America Credit Life Assurance Co., Oklahoma City, Oklahoma, and Mid-America Insurance Agency, Oklahoma City, Oklahoma; and thereby engage in underwriting credit-related, life, accident, and health insurance sold in connection with credit extensions made by subsidiaries of Liberty Bancorp, and acting as agent for the sale of credit-related life, accident, and health insurance sold in connection with credit extensions made by subsidiaries of Liberty Bancorp, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; and personal property leasing, pursuant to § 225.25(b)(5)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1995.

William W. Wiles,

Deputy Secretary of the Board.

[FR Doc. 95-19668 Filed 8-8-95; 8:45 am]

BILLING CODE 6210-01-F

Ralph L. Matteucci, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ralph L. Matteucci, Phoenix, Arizona; to acquire an additional 11.19 percent, for a total of 18.01 percent; Richard L. Matteucci, Albuquerque, New Mexico, to acquire a total of 4.88 percent; Anna Maria Matteucci, Phoenix, Arizona, to acquire an additional 1.73 percent, for a total of 4.41 percent; and James L. Matteucci, Phoenix, Arizona, to acquire an additional 1.73 percent, for a total of 4.41 percent, of the voting shares of New Mexico National Financial, Inc., Roswell, New Mexico, and thereby indirectly acquire Bank of the Southwest, Roswell, New Mexico.

Board of Governors of the Federal Reserve System, August 3, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-19669 Filed 8-8-95; 8:45 am]

BILLING CODE 6210-01-F

Southern Financial Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern Financial Bancorp, Inc., Warrenton, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Financial Bank (successor by merger to Southern Financial Federal Savings Bank), Warrenton, Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Sable Bancshares, Inc., Chicago, Illinois; to become a bank holding company by acquiring 93.45 percent of the voting shares of Community Bank of Lawndale, Chicago, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to acquire 100 percent of the voting shares of City National Bancorp, Inc., Fulton, Kentucky, and thereby indirectly acquire City National Bank, Fulton, Kentucky.

Board of Governors of the Federal Reserve System, August 3, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19670 Filed 8–8–95; 8:45 am]

BILLING CODE 6210–01–F

Spencer Bancorporation, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Spencer Bancorporation, Inc., Spencer, Wisconsin; to engage *de novo*, in forming a community development corporation (CDC) as a wholly owned subsidiary; and the CDC would primarily make investments that would benefit low- and moderate-income persons and/or small businesses located in a low- and moderate-income area to stimulate economic development, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19671 Filed 8–8–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Administration for Children and Families; Statement of Organization, Functions and Delegates of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Service (DHHS), Administration for Children and Families (ACF) as follows: Chapter K, Administration for Children and families (56 FR 42332), as last amended, August 27, 1991; KA, the Office of the Assistant Secretary for Children and Families (59 FR 13969), as last amended, March 24, 1994; Chapter KP, the Office of Program Support (56 FR 42344), as last amended, August 27, 1991; Chapter KJ, the Office of Information Systems Management (OISM)/Child Support Information Systems (CSIS) (58 FR 40432), as last amended, July 28, 1993; KK, the Office of Financial Management (OFM) (59 FR 23730) as last amended May 6, 1995; KL, the Office of Management (OM) (58 FR 40432), as last amended July 28, 1993; Chapter KM, the Office of Policy and Evaluation (OPE) (56 FR 42348), as last amended, August 27, 1991; Chapter KN, the Office of Public Affairs (OPA) (56 FR 42349), as last amended, August 27, 1991. This reorganization of the ACF staff offices will achieve several important objectives and create a high performance team with highly permeable borders across organizational lines to focus on stewardship, partnership, results and service to the customers both internally and externally.

These Chapters are amended as follows:

I. Delete Chapter K, ''The Administration for Children and Families'' in its entirety and replace with the following:

K.00 Mission
K.10 Organizations
K.20 Functions

K.00 *Mission*. The Administration for Children and Families (ACF) provides national leadership and direction to plan, manage and coordinate the nationwide administration of comprehensive and supportive programs for vulnerable children and families. The Administration oversees and finances a broad range of programs for children and families, including Native Americans, persons with developmental disabilities, refugees, and legalized aliens, to help them develop and grow toward a more independent, self-reliant life. These programs, carried out by state, county, city, and tribal governments, and public and private local agencies, are designed to promote stability, economic security, responsibility and self-sufficiency.

The Administration coordinates development and implementation of family-centered strategies, policies, and linkages among its programs, and with other federal and state programs serving children and families. The Administration's programs assist families in financial crisis, emphasizing short-term financial assistance, and education, training and employment for the long term. Its programs for children and youth focus on those children and youth with special problems, including children of low-income families, abused and neglected children, those in institutions or requiring adoption or foster family services, runaway youth, children with disabilities, migrant children, and Native American children. The Administration promotes the development of comprehensive and integrated community and home-based modes of service delivery where possible.

The Administration provides national leadership to develop and coordinate public and private programs and serves as a focal point for states in the provision of financial assistance and intervention programs which promote and support permanence for children and family stability. The Administration advises the Secretary on issues pertaining to children and families, including Native Americans, people with developmental disabilities, refugees and legalized aliens.

K.10 *Organization*. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (DHHS). The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition the Assistant Secretary, the Administration consists of the Deputy Assistant Secretary for Program Operations, the Deputy Assistant Secretary for Policy and External Affairs, and Staff and Program Offices. ACF is organized as follows:

- Office of the Assistant Secretary for Children and Families (KA)
- Administration on Children, Youth and Families (KB)
- Administration on Developmental Disabilities (KC)
- Regional Office for Children and Families (KD 1–X)
- Administration for Native Americans (KE)
- Office of Child Support Enforcement (KF)—(which will remain as a separate organizational unit)
- Office of Community Services (KG)
- Office of Family Assistance (KH)
- Office of Regional Operations and State Systems (KJ)
- Office of Staff Development and Employee Relations (KL)
- Office of Planning, Research and Evaluation (KM)
- Office of Public Affairs (KN)
- Office of Program Support (KP)
- Office of Refugee Resettlement (KR)
- Office of Human Resources and Equal Employment Opportunity/Civil Rights (KS)
- Office of Legislative Affairs and Budget (KT)

K.30 *Functions*. The Administration develops, recommends and issues policies, procedures and interpretations to provide direction to the programs it administers. It directs reviews, provides consultation and conducts negotiations to achieve adherence to federal law and regulations for administration of its programs. It designs and administers systems and directs reviews of the programs to ensure cost-effectiveness, efficiency, quality, and financial integrity. The Administration provides technical assistance, conducts research and evaluation, and promotes information sharing for its programs. It also provides departmental leadership and guidance in the development and implementation of policies and standards applicable to state data systems development, information systems sharing, financial integrity, and quality assurance activities. The functions of the organizational elements of ACF are described in detail in successful chapters.

II. Delete Chapter KA, ''The Office of the Assistant Secretary for Children and Families'' in its entirety and replace as follows:

KA.00 Mission
KA.10 Organization
KA.20 Functions

KA.00 *Mission*. The Office of the Assistant Secretary for Children and Families provides executive direction, leadership, and guidance for all ACF programs. The Office provides national leadership to develop and coordinate public and private initiatives for carrying out programs which promote permanency placement planning, family stability and self-sufficiency. The Office advises the Secretary on issues affecting America's children and families, including Native Americans, persons with developmental disabilities, refugees and legalized aliens.

KA.10 *Organization*. The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary who reports directly to the Secretary and consists of:

- The Office of the Assistant Secretary (KA)
- Executive Secretariat Office (KAB)
- President's Committee on Mental Retardation Staff (KAD)
- U.S. Advisory Board on Child Abuse and Neglect Staff (KAE)
- U.S. Commission on Child and Family Welfare Staff (KAF)

KA.20 *Functions*. A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out AFC's mission and provides executive supervision to the major components of ACF.

These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to assure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement, and signs official Child Support Enforcement documents as the Assistant Secretary for Children and Families.

The Deputy Assistant Secretary for Program Operations serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of strategic and operation management issues. The Deputy Assistant Secretary for Program Operations serves as ACF liaison to the General Counsel and, as appropriate, initiates action in securing resolution of

legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters. The Deputy Assistant Secretary provides day-to-day executive leadership and direction for the Office of Human Resources and Equal Employment Opportunity/Civil Rights, Office of Staff Development and Employee Relations and the Executive Secretariat Office. The Deputy Assistant Secretary for Program Operations represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with reinvention and continuous improvement initiatives.

The Deputy Assistant Secretary for Policy and External Affairs serves as the principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of legislation, policy, strategic planning, performance measures and demonstration testing, research, evaluation, intergovernmental affairs, budget formulation and media. The Deputy Assistant Secretary for Policy and External Affairs develops broad policy strategies and concepts pertaining to on-going and anticipated program issues and recommends legislation relevant to ACF programs. The Deputy Assistant Secretary for Policy and External Affairs formulates and presents ACF's program budgets; represents the Assistant Secretary for Children and Families in budget negotiations with the Department and the Office of Management and Budget (OMB); and assists in planning for and presenting the budget before the OMB and Congress. The Deputy Assistant Secretary for Policy and External Affairs represents the Assistant Secretary for Children and Families on intergovernmental matters, media affairs, and in contacts and negotiations with Congressional members and staff and executives of agencies and organizations. The Deputy Assistant Secretary for Policy and External Affairs provides executive leadership and direction to the Office of Legislative Affairs and Budget, the Office of Planning, Research and Evaluation and the Office of Public Affairs. The Deputy Assistant Secretary for Policy and External Affairs also provides oversight for agency commissions and advisory committees, including the U.S. Advisory Board on Child Abuse and Neglect, the U.S. Commission on Child and Family Welfare and the President's Committee on Mental Retardation.

B. The Executive Secretariat Office ensures that issues requiring the attention of the Assistant Secretary, Deputy Assistant Secretaries and/or executive staff are addressed on a timely and coordinated basis; facilitates decisions on matters requiring immediate action including White House, congressional and secretarial assignments. It serves as the ACF liaison with the HHS Executive Secretariat. It receives, assesses and controls incoming correspondence and assignments to the appropriate ACF component(s) for response and action; provides assistance and advice to ACF staff on the development of responses to correspondence and on the controlled correspondence system; coordinates and/or prepares congressional correspondence; and tracks development of periodic reports and facilitates departmental clearance. The Director of the Executive Secretariat Office serves as the Freedom of Information Act Officer for ACF and coordinates hot line calls received by the Office of Inspector General and the General Accounting Office on ACF operations and personnel.

C. The President's Committee on Mental Retardation Staff (PCMR) provides general staff support for a Presidential-level advisory body, the President's Committee on Mental Retardation. It coordinates all meetings and congressional hearing arrangements; provides such advice and assistance in the areas of mental retardation as the President or Secretary may request; prepares and issues an annual report to the President concerning mental retardation and such additional reports or recommendations as the President may require or as PCMR may deem appropriate; and evaluates the national effort to prevent and ameliorate mental retardation. It works with other federal, state, and local governments and private sector organizations to achieve Presidential goals in mental retardation; develops and disseminates information to increase public awareness of mental retardation, to reduce its incidence, and to alleviate its effects. The Staff that supports the Committee reports to the Deputy Assistant Secretary for Policy and External Affairs.

D. The National Advisory Board on Child Abuse and Neglect Staff Provides support and information pertaining to studies, research, or analyses of various matters affecting child abuse and neglect for the Board to use in its deliberations and recommendations. The Staff assists the Board in preparing and submitting to the Secretary and appropriate Committees of Congress an annual report with recommendations on ways in which the purposes of the Child Abuse Prevention and Treatment Act can effectively be achieved. The Staff makes arrangements for all meetings and hearings of the Board. The staff reports to the Deputy Assistant Secretary for Policy and External Affairs.

E. The U.S. Commission on Child And Family Welfare Staff provides support pertaining to studies, research and analyses of various matters affecting families and children. The Commission's initial focus is on custody and visitation with an interest in keeping both parents involved in the emotional and financial support of their children. The staff assists the Commission by scheduling public hearings and forming panels of experts in family law, child welfare, child support and parents' and children's advocacy groups. The Staff assists the Commission in preparing an interim and final report to the Congress. The staff that supports the Commission reports to the Deputy Assistant Secretary for Policy and External Affairs.

III. Retitle Chapter KJ. ''The Office of Information Systems Management/Child Support Information Systems'' as the ''Office of Regional Operations and Systems,'' and replace with the following:

KJ.00 Mission
KJ.10 Organization
KJ.20 Functions

KJ.00 *Mission*. The Office of Regional Operations and State Systems (OROSS) recommends to and advises the Assistant Secretary on all strategic and operational activities related to implementation of the agency's programs at the regional level. It oversees the performance and operation of all Regional Offices, and coordinates with program offices on strategies and implementation of program initiatives. It serves as the focal point for State automated systems funded with Federal financial participation for the Department. It coordinates ACF's development and implementation of strategies and policies related to payment integrity, electronic benefits transfer, welfare systems integration, and related initiatives and programs. It directs state systems activities on partnership, collaborative efforts, and technical assistance activities.

KJ.10 *Organization*. The Office of Regional Operations and State Systems is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KJA)
- Regional Operations Staff (KJB)
- Office of State Systems/Child Support Information Systems (KJC)

KJ.20 *Functions.* A. Office of the Director provides executive leadership for administering the agency's programs and initiatives at the regional level. The Director provides direction to the Regional Operations Staff and the Office of State Systems. The Director also serves as the Associate Deputy Director of Child Support Enforcement Systems and reports directly to the Director, Child Support Enforcement, on matters related to child support information systems. The Director is the principal advisor to the Assistant Secretary for Children and Families on region-related and State systems matters.

The Director supervises and supports the Regional Administrators in administering Regional Office activities and establishing and implementing cross-cutting program initiatives. The Director establishes coordinative arrangements with program and staff office directors to assure that the Regional Administrators can oversee operations, fulfill program responsibilities, and have access to needed information. The Director advises the Assistant Secretary of problems that could prevent the Regional Offices from carrying out the mission of ACF and the Department.

The Director represents the Assistant Secretary in HHS and with other Federal agencies and task forces on Region-related and State systems activities.

In conjunction with Program and Regional Offices, the Director provides the leadership of ACF's partnership and monitoring activities. The Director is jointly responsible with the Office of Planning, Research and Evaluation for implementing performance measures for ACF's goals and objectives.

Within the Office of the Director, administrative staff assist the Director in managing the administrative, personnel, and salaries and expenses activities for the Office of Regional Operations and State Systems.

B. The Regional Operations Staff develops and manages processes for liaison between ACF Regional Offices and the Assistant Secretary and program and staff offices in headquarters. The Staff supports Regional Offices by implementing and overseeing systems and procedures for communicating with and managing the workload emanating from the varied and diverse ACF Program Offices. The Staff monitors and evaluates Regional Office operations and makes plans for the utilization of regional resources to accomplish approved objectives. The Staff works with program offices to develop strategies for delivery of services to States and grantees.

C. The Office of State Systems/Child Support Information Systems oversees the Department's responsibilities for Federal financial participation in the funding of State automated systems for ACF programs. It coordinates ACF's development and implementation of strategies and policies related to payment integrity, electronic benefits transfer, welfare systems integration, and related initiatives and programs. It directs State systems activities on partnership, collaborative efforts, and technical assistance activities. It is headed by a Director who reports to the Director, Office of Regional Operations and State Systems. The Office consists of:

- Office of the Director (KJC1)
- State Systems Policy Staff (KJC2)
- Division of State Systems Approvals (KJC3)
- Division of Child Support Information Systems (KJC4)

1. The Office of the Director provides leadership for provision of technical assistance to States on information systems projects; and advances the use of computer technology in the administration of welfare and social services programs by States.

2. The State Systems Policy Staff is responsible for developing departmental policies and procedures under which States obtain Federal financial participation in the cost of automated systems development to support programs funded under the Social Security Act. It serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity, welfare systems integration and related initiatives and programs; and provides leadership and guidance to interagency work groups in these areas for the Department.

3. The Division of State Systems Approvals reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the AFDC, JOBS, Child Care, Head Start, Child Welfare, Foster Care, Social Services, and Refugee Resettlement programs. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

4. The Division of Child Support Information Systems is a separate organizational unit which reports to the Associate Deputy Director for Child Support Enforcement, who reports to the Director of Child Support Enforcement. The Division reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the Child Support program. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

V. Delete Chapter KL. ''The Office of Management,'' retitle it as the ''Office of Staff Development and Employee Relations'' and replace with the following:

The Office of Staff Development and Employee Relations

KL.00 Mission
KL.10 Organization
KL.20 Functions

KL.00 *Mission.* The Office of Staff Development and Employee Relations (OSDER) serves as principal advisor to the Assistant Secretary and provides consultation, policy development, technical assistance and related services to all ACF components in the areas of training, staff development, organizational analysis, labor relations and employee relations.

KL.10 *Organization.* The Office of Staff Development and Employee Relations is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KL.20 *Functions.* The Office of Staff Development and Employee Relations provides leadership in directing and managing agency-wide staff development and training activities for ACF. The Office is responsible for the functional management of training and development in the agency, including policy development, guidance, and technical assistance and evaluation of all aspects of career, employee,

supervisory, management, executive and organization development. Provides leadership in implementing the recommendations of the Staff Development and Training Team, by creating, managing/overseeing and monitoring an ACF training resource center and institutionalizing long-term developmental training for ACF employees.

The Office serves as the principal source of advice through the Deputy Assistant Secretary for Program Operations to the Assistant Secretary on organizational design by collaborating with staff to develop high-leverage, tailored solutions to achieve measurable outcomes and to transform the agency to a quality organization that supports ACF's vision, values and goals. The Office advises the Assistant Secretary on all aspects of ACF organizational analysis including: Planning for new organizational elements; and planning, organizing and performing studies, analysis and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. Conducts the review process for ACF reorganization proposals. Acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organizational charts. Administers ACF's system for review, approval, and documentation of delegations of authority and maintains the guidelines related to the delegations of authority.

Provides management advisory service on all labor management relations issues, including coordination and liaison with the Department. Plans and coordinates ACF-wide employee relations and labor relations activities including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements and regulations. Pursues human relations innovations such as alternative dispute resolutions and serves as the focal point on all issues pertaining to the Labor-Management Partnership Council.

VI. Delete Chapter KM. ''The Office of Policy and Evaluation'' in its entirety, retitle it as the ''Office of Planning, Research and Evaluation,'' and replace it with the following:

KM.00 Mission
KM.10 Organization
KM.20 Functions

KM.00 *Mission*. The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

The Office provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: Strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Office oversees and manages the section 1110 and section 1115 social service research programs, including: Priority setting and analysis; processing waivers for welfare reform demonstrations; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family focused services, parental responsibility, employment, and economic independence; and providing coordination and leadership in implementing the Government Performance and Results Act (GPRA).

KM.10 *Organization*. The Office of Planning, Research and Evaluation is headed by a Director who reports to the Deputy Assistant Secretary for Policy and External Affairs. The Office is organized as follows:

- Office of the Director (KMA)
- Division of Economic Independence (KBM)
- Division of Child and Family Development (KMC)

KM.20 *Functions* A. The Office of the Director provides direction and executive leadership to OPRE in administering its responsibilities. It services as principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on all matters pertaining to: Improving the effectiveness and efficiency of ACF programs; strategic planning; performance measurement; program and policy evaluation; research and demonstrations; state and local innovations and progress; and public/private partnership initiatives of concern to the Assistant Secretary for Children and Families. It represents the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families at various planning, research, and evaluation forums and carries out special Departmental and Administration initiatives.

B. The Division of Economic Independence, in cooperation with ACF income support programs and others, works with Federal counterparts, states, community agencies, and the private sector to understand and overcome barriers to economic independence; promote parental responsibility; and assist in improving the effectiveness of programs that further economic independence.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for economic independence; statistical, policy and program analysis; surveys, research, and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to programs which promote employment, parental responsibility, and economic independence.

The Division analyzes, processes and coordinates Federal review and decision-making for all section 1115 state welfare reform waiver demonstration requests; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstrations, and evaluation studies; manages and conducts statistical, policy and program analyses on trends in employment, child support payments, and other income supports; and works in partnership with states, communities, and the private sector to promote employment, parental responsibility, and family economic independence.

C. The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, states, community agencies, and the private sector to: Improve the effectiveness and efficiency of programs; assure the protection of children and other vulnerable populations; strengthen and promote family stability; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for child and family development; statistical, policy and program analysis; surveys, research and evaluation methodologies;

demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division manages the section 1110 social service research budget; develops policy-relevant priorities; conducts, manages and coordinates statistical analyses on social trends and progress on major cross-program, leading-edge research, demonstration, and evaluation studies; manages and conducts statistical, policy and program analyses on social trends and behaviors which impact child and family well-being; and works in partnership with states, local communities, and the private sector to promote the well-being of children and families.

VII. Amend ''Chapter KN, Office of Public Affairs,'' as follows:

A. Under paragraph ''KN.00 Mission.'' delete in its entirety and replace with the following:

Mission. The Office of Public Affairs (OPA) develops, directs and coordinates public affairs and communication services for ACF. In concert with the Deputy Assistant Secretary for Policy and External Affairs, it provides leadership, direction and oversight in promoting ACF's public affairs policies, programs and initiatives. The Office of Public Affairs also provides printing and distribution services for ACF.

B. Under ''KN.20 Functions, paragraph C, Division of Publication Services,'' delete in its entirety and replace with the following:

Division of Publication Services in its entirety and replace with the following: Division of Publications Services directs the audio-visual, publication and printing management systems for ACF. It manages preparation and clearance of all ACF audio-visual product, publications, and graphic designs, including planning, budget oversight and technical support. It provides centralized graphics design services to ACF. It reviews requests for proposals for contracts and grants which involve publications, audio-visual materials and/or public information and education activity.

The Division also provides technical leadership and services in public information, printing, and mail distribution. Recommends approaches for meeting internal and external communications needs of the ACF. Acts as focal point for clearance of all publications and audio-visual projects whether produced in-house or by contract or grant.

VIII. Delete Chapter KP. ''The Office of Program Support'' in its entirety and replace with the following:

KP.00 Mission
KP.10 Organization
KP.20 Functions

KP.00 *Mission.* The Office of Program Support (OPS) advises the Assistant Secretary for Children and Families on information resource, financial, grants, procurement and materiel resource management activities, both internal and external to ACF. The Office develops, administers and coordinates financial, operational and budgetary policies, processes, and controls necessary to administer ACF programs and financial resources; directs discretionary and mandatory grant activities; oversees the utilization of information resources throughout ACF; directs ACF's information systems, computer centers and communications network activities; oversees telecommunications management; and, administers and coordinates ACF's internal control activities.

KP.10 *Organization.* The Office of Program Support (OPS) is headed by a Director who reports directly to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KPA)
- Office of Information Services (KPB)
- Office of Financial Services (KPC)
- Office of Management Services (KPD)
- Office of Customer Service and Administration (KPE)

KP.20 *Functions.* A. Office of the Director directs and coordinates all activities of the Office of Program Support. The Director serves as ACF's: Chief Financial Officer (CFO); ACF's Chief Grants Management Officer; Federal Managers' Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official; and, Reports Clearance Officer. The Director serves as the AFC liaison with the Assistant Secretary for Management and Budget, the General Accounting Office, the Office of the Inspector General, and the Office of Management and Budget for areas under OPS' purview. The Office of Program Support (OPS) advises the Assistant Secretary for Children and Families on information resource, financial, grants, procurement and materiel resource management activities, both internal and external to ACF. The Office develops, administers and coordinates financial, operational and budgetary policies, processes, and controls necessary to administer ACF programs and financial resources; directs discretionary and mandatory grant activities; oversees the utilization of information resources throughout ACF; directs ACF's information systems, computer centers and communications network activities; oversees telecommunications management; and, administers and coordinates ACF's internal control activities.

B. Office of Information Services (OIS) provides centralized information technology policy, procedures, standards and guidelines; develops long-range information resource management (IRM) plans; develops IRM policy, procurement plans and budget for OIS, develops and implements procurement strategies for ADP support services; reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy; coordinates technical assistance provided to program offices on ADP support services procurement; represents ACF on the Department's IRM Advisory Council; provides liaison and manages major interdepartmental IRM initiatives; conducts major information system reviews of ADP systems as required by the Department; directs and coordinates ACF's systems security and privacy responsibilities; maintains an ACF-wide program data inventory; coordinates mandated OMB approvals required under the Paperwork Reduction Act; and plans, directs and maintains ACF electronic records management system.

OIS manages the National Computer Center facility which provides services to ACF components and authorized state and country computer users for programs administered by ACF; plans, manages, maintains and operates ACF's local area networks (LANs), national wide-area network (WAN) and personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing; manages and maintains a Help Desk for ACF users and provides information technology and software training in coordination with ACF components, develops plans and places orders for data communications services; provides liaison with HHS, GSA and private firms on data telecommunications matters; and, provides assistance to ACF components to identify needs for and use of data telecommunications equipment and systems.

OIS designs, develops, implements and maintains application systems to support ACF administrative, budget and program systems; provides technical assistance to ACF program offices procuring system support services;

provides technical assistance on automated systems to state and local agencies who are users of ACF's Computer Center; and develops software policy, procedures, standards and guidelines.

C. Office of Financial Services (OFS) supports the Director, OPS in fulfilling ACF's Chief Financial Officer, Management Control Officer, and Chief Grants Officer responsibilities including preparation of the CFO 5 Year Plan; performs audit oversight and liaison activities, including preparing reports to Congress, Office of the General Counsel and the Office of the Inspector General. OFS writes/interprets financial policy and researches appropriation law issues; oversees and coordinates ACF's FMFIA activities; performs debt management functions and, develops and administers quality assurance, training and certification programs for grants management; and responsible for the annual preparation and audit of ACF's financial statement requirements.

OFS designs and develops budget estimating models and procedures, projects the five-year federal costs for ACF entitlement programs and analyzes the impact on ACF programs and customers of proposed changes to ACF entitlement programs. The Office provides requested updates of the projected cost estimates of the Office of Refugee Resettlement's (ORR) Cash and Medical Assistance Program and develops the means of making efficient use of related data collected by ACF. OFS facilitates the preparation of comprehensive administrative (salaries and expenses) budget for ACF; represents ACF in budget negotiations and other finance-related dealings with the Department; prepares apportionment requests and issues allotments and allowances; oversees reconciliation of accounting reports and monitors agency spending; develops and maintains budgetary controls and procedures to ensure observance of established ceilings on both funds and personnel; develops/interprets internal policies and procedures for OFS components; and, coordinates the management of ACF's interagency agreement activities.

OFS provides agency-wide guidance to program and regional office staff on grant related issues; including developing and interpreting financial and grants policy, coordinating strategic grants planning, facilitating policy advisory groups, and assuring consistent grant program announcements. OFS prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management issues; provides financial and grants administration training and technical assistance to ACF staff and grantees; and, in coordination with the Office of Management Services, directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs.

D. Office of Management Services (OMS) provides centralized management and administration of acquisitions for ACF headquarters components; assures that all contracts awarded conform to applicable statutes, regulations and policies; develops ACF policies, procedures and instructions for the award and administration of all ACF acquisitions; reviews and interprets proposed HHS and OMB regulations, circulars and directives pertaining to acquisition management; solicits, negotiates, awards, modifies, terminates and closes all acquisitions issued by ACF; conducts the Small and Disadvantaged Business Utilization Program; and provides training and technical assistance to program and staff components on significant acquisition policies and procedures. OMS serves as the lead for ACF in coordination and liaison within ACF and with the Department, OMB, GSA and other federal agencies on procurement management issues and activities.

OMS develops and implements ACF's facilities management programs and activities, including preparation and implementation of a budget for space acquisitions and changes; maintains space inventories; provides mail, records (paper), fleet, real property, personal property and reprographics management, occupational health and safety, and physical security programs and messenger and labor services; principal liaison with private and/or federal building managers for all facilities management activities; coordinates and/or develops telecommunications plans and provides assistance to ACF components to identify needs for and use of voice telecommunications equipment and systems; operates/coordinates parking and commuter services and programs including transit subsidies and ridesharing; provides travel policy and management; functions as payroll liaison; manages the automated timekeeping systems; controls/maintains equipment, supplies, and personal property inventories; manages equipment repair services; reviews, controls, monitors and tracks all small purchases of common use supplies, stationery and publications; oversees the Information Resource Center (library); manages contracts for facilities management services, including space design, building alteration and repair, telecommunications, physical security, moving, systems furniture acquisitions and assembly, library, property inventory; and updates and maintains databases for telephone directories, directory boards, signs and security identification systems. OMS serves as the lead for ACF in coordination and liaison with the Department, GSA and other federal agencies on facilities, telecommunications, property management, travel and automated timekeeping issues and activities.

OMS provides management and technical administration of ACF discretionary, formula, entitlement and block grants; assures that all grants awarded by ACF conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF grant systems and the Department's grant payment systems; and, provides technical assistance to ACF program and regional components on grant operations and technical grants management issues; and performs audit resolution activities for ACF grant programs. OMS serves as the lead for ACF in coordination and liaison with the Department and other federal agencies on grants management and administration operational issues and activities.

E. Office of Customer Service and Administration (OCSA) develops and maintains a customer service plan for the OPS and conducts customer surveys for OPS; facilitates and assists in developing and writing standard operating procedures for all components within OPS; assists in office-specific training of OPS staff; assists OPS components with the provision of office-specific and functional training to program and regional offices; coordinates permanent and temporary teams formed within OPS; develops and maintains OPS staff directory and users' guide for OPS services.

OCSA is responsible for overseeing OPS' salaries and expenses budget. Provides direction to meet the human resource management needs within OPS; coordinates with the office which handles ACF's human resources activities and the Department to provide OPS staff with personnel services

including position management, staffing, recruitment, employee and labor relations, employee assistance, payroll, staff development and training, and special hiring and placement programs; and, maintains systems to track personnel actions to keep the Director of OPS and, as appropriate, the Directors of offices within OPS informed about the status of personnel actions, current full-time equivalency usage and salaries and expenses resources, and employee programs and benefits. All OPS personnel related issues, performance management activities and other administrative functions within OPS are handled within this office.

IX. Establish a new ''Chapter KS,'' as follows:

The Office of Human Resources and Equal Employment Opportunity/Civil Rights.

KS.00 Mission
KS.10 Organization
KS.20 Functions

KS.00 Mission. The Office of Human Resources and Equal Employment Opportunity/Civil Rights (OHREEO/CR) provides oversight and direction to meet the human resource management needs of ACF components. The Office directs and manages the ACF Equal Employment Opportunity and Civil Rights program.

KS.10 *Organization.* The Office of Human Resources and Equal Employment Opportunity/Civil Rights is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KS.20 *Functions.* The Office of Human Resources and Equal Employment Opportunity serves as the principal advisor to the Assistant Secretary for Children and Families on all aspects of human resource management and the Equal Employment Opportunity and Civil Rights program. Provides leadership, oversight and coordination for the planning, analysis, and development of human resource policies and programs. Serves as the liaison between ACF, the Office of Assistant Secretary for Personnel Administration, and the HHS Office for Civil Rights. Formulates and interprets new human service programs and strategies. Plans, develops and interprets ACF human resource policies, procedures and manuals/systems. Performs employee utilization and assessment evaluations. Participates in pilot projects and represents ACF on committees which relate to the functions of the office. Manages the performance recognition systems and the responsibilities of the Executive Resources Board (ERB), the Performance Review Board (PRB), and the Performance Standards Review Board. Manages and coordinates all awards programs for ACF. Manages special hiring and placement programs. Administers ACF's Personnel Security responsibilities and ACF's ethics program. Coordinates the ethics program with the Department's Office of Special Counsel for Ethics. Supports the implementation of ACF's streamlining efforts.

OHREEO/CR directs and manages the ACF Equal Employment Opportunity and Civil Rights program in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. Immediate oversight is provided by a staff under the direction of the ACF EEO Officer. Plans, develops, and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. Responsible for implementing and evaluating a cost-effective, timely, and impartial system for processing individual complaints of discrimination under Title VII of the Civil Rights Act of 1964, as amended. Provides information, guidance, advice, and technical assistance to ACF supervisors and managers on Affirmative Employment planning and other means of achieving parity and promoting work force diversity. Responsible for ensuring that ACF-conducted programs do not discriminate against recipients on the basis of race, color, national origin, age or disability. Monitors and implements civil rights compliance actions under Title VI, Section 504 of the Rehabilitation Act of 1973, as amended, and the Age Discrimination Act of 1975, as amended. Implements the applicable provisions of the Americans with Disabilities Act of 1990.

X. Establish a new ''Chapter KT,'' as follows:

Office of Legislative Affairs and Budget

KT.00 Mission
KT.10 Organization
KT.20 Functions

KT.100 *Mission.* The Office of Legislative Affairs and Budget (OLAB) provides leadership in the development of legislation, budget, and policy, ensuring consistency in these areas among ACR program and staff offices, and with ACF and the Department's vision and goals. It advises the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact the agency's legislative program, budget development process, and regulatory agenda. The Office serves as the primary ACF contact, for the Department, the Executive Branch, and the Congress on all legislative, budget development and regulatory activities.

KT.10 *Organization.* The Office of Legislative Affairs and Budget is headed by a Director, who reports to the Deputy Assistant Secretary for Policy and External Affairs.

KT.20 *Functions.* The Office of Legislative Affairs and Budget serves as the principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on all policies and programmatic matters which substantially impact on legislative affairs, budget development, and the regulatory agenda; and represents the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary on budget, policy and legislative materials and activities.

Serves as the primary ACF contact for the Department, the Executive Branch, and Congress on all budget development activities; manages the development and presentation of ACF's budget; provides guidance to ACF program and staff components in preparing material in support of budget development.

Manages the ACF regulatory development process; negotiates regulatory policy positions with the Department and the Executive Branch; provides guidance to ACF programs and staff components on policy and programmatic matters which substantially impact the budget and regulatory development process; and reviews and analyzes other policy significant documents to ensure consistency with ACF's budget, vision and goals.

Serves as the focal point for congressional liaison in ACF and for the Office of Assistant Secretary for Legislation; counsels and advises the Assistant Secretary for Children and Families and senior ACF staff on congressional activities and relations; manages the preparation of testimony and briefings; negotiates clearance of testimony; monitors hearings and other congressional activities which affect ACF; and manages congressional inquiries.

Manages the ACF legislative planning cycle and the development of Reports to Congress; reviews and analyzes a wide range of Congressional policy documents, including legislative proposals, pending legislation, and bill reports; solicits and synthesizes internal ACF comments on such documents; negotiates legislative policy positions with the Department and the Executive

Branch; and reviews other policy significant documents to ensure consistency with statutory and congressional intent and the agency legislative agenda.

Dated: August 1, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–19570 Filed 8–8–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

Workers' Family Protection Task Force: Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Workers' Family Protection Task Force.

Times and Dates: 9 a.m.–4 p.m., August 24, 1995. 9 a.m.–3 p.m., August 25, 1995.

Place: Department of Labor, 200 Constitution Avenue, NW., Room S3215 A&B, Washington, DC 20210.

Status: Open to the public, limited only by the space available. The room will accommodate approximately 50 people.

Purpose: The Task Force will review and evaluate the report of a study to be conducted by NIOSH in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry, and heads of other Federal Government agencies as determined to be appropriate by the Director, NIOSH, on the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances. The Task Force will determine and advise the Director, NIOSH, about additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing additional data. The Task Force will develop a recommended investigative strategy for use in obtaining needed information.

Matters to be Discussed: Agenda items will include a review of the Workers' Family Protection Task Force charter; the Workers' Family Protection Act and the report required by this Act; the identification of additional information needs to protect workers' families from home contamination; and the development of procedures necessary to accomplish the mission of producing a National investigative strategy to obtain the needed information.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert W. Mason, Ph.D., Executive Secretary, Workers' Family Protection Task Force, NIOSH, CDC, 4676 Columbia Parkway, M/S C–16, Cincinnati, Ohio 45226, telephone 513/533–8390.

Dated: July 28, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–19379 Filed 8–8–95; 8:45 am]

BILLING CODE 4163–19–M

Health Care Financing Administration

[ORD–077–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: May 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the month of May 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can also be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Room C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of May 1995

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

A. Comprehensive Health Reform Programs

1. New Proposals

No new comprehensive health reform proposals were received during the month of May.

2. Pending Proposals

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to persons with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995.

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, Arizona 85034, (602) 271–4422.

Federal Project Officer: Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery

system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, Illinois 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a ''managed cooperation demonstration project'' in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll recipients currently eligible in the AFDC and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 Southwest Harrison Street, Topeka, Kansas 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–21–04, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level (FPL); those with incomes above 133 percent of the FPL would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, Louisiana 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, Missouri 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, New Hampshire 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 North Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105, (405) 530–3439.

Federal Project Officer: Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Health Access Plan Demonstration—Vermont.

Description: Vermont proposes to integrate Medicaid recipients into managed care plans and expand coverage to uninsured individuals up to 150 percent of the Federal poverty level. The State also proposes to provide pharmacy coverage to low income Medicare beneficiaries.

Date Received: February 24, 1995.

State Contact: Veronica Celani, Health Policy Director, Vermont Agency of Human Services, 103 State Street, Waterbury, Vermont 05671, (802) 828–2949.

Federal Project Officer: Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the month of May.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the month of May.

5. Approved Proposals

Demonstration Title/State: The Diamond State Health Plan—Delaware.

Description: Delaware plans to expand eligibility for Medicaid to persons with incomes up to 100 percent of the Federal poverty level and require that the Medicaid population enroll in managed care delivery systems. The State's current section 1115 demonstration project, the Delaware Health Care Partnership for Children, will be incorporated into the statewide program as an optional provider for eligible children.

Date Received: July 29, 1994.

Date Approved: May 16, 1995.

State Contact: Kay Holmes, DSHP Coordinator, DHSS Medicaid Unit, Biggs Building, P.O. Box 906, New Castle, Delaware 19720, (302) 577–4900.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security

Boulevard, Baltimore, Maryland 21244–1850.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the month of May.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

The following new proposal was received during the month of May.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact: Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, PO Box 8206, Columbia, South Carolina 29202–8206, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Room C3–24–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

2. Pending Proposals

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a Section 1115 proposal entitled ''Georgia Children's Benefit Plan'' to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, Georgia 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid recipients.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–5206.

Federal Project Officer: William Clark, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid coverage for family planning services to all women of childbearing age living in families with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, Michigan 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Room C3–24–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, PO Box 2348, Santa Fe, New Mexico 87504–2348, (505) 827–3106.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Room C3–24–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid recipients.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, PO Box 7850, Madison, Wisconsin 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–16–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the month of May.

4. Approved Proposals

No proposals were approved during the month of May.

5. Disapproved Proposals

No proposals were disapproved during the month of May.

6. Withdrawn Proposals

No proposals were withdrawn during the month of May.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to

the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: July 28, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–19648 Filed 8–8–95; 8:45 am]

BILLING CODE 4120–01–P

Office of Community Services

Potential Reallotment of Funds for FY 1994 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, Administration for Children and Families, (ACF), DHHS.

ACTION: Preliminary Determination Concerning Funds Available for Reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that FY 1994 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment. Section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8261 et seq.), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount allotted to a grantee for any fiscal year will not be used by that grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted. It has been determined that a total of $81,829 of FY 1994 funds may be available for reallotment. This determination is based on reports from the State of Alaska and the Seldovia Village Tribe (Alaska) which were submitted to the Office of Community Services as required by 45 CFR 96.81.

The statute allows grantees who have funds unobligated at the end of a fiscal year to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallotment to other grantees under section 2607(b)(1) of the LIHEAP statute. All of the amounts described in this notice were reported as unobligated FY 1994 funds in excess of the amount that the State and tribe named above could carry over to FY 1995.

The State of Alaska was notified by certified mail that $80,766 of its FY 1994 LIHEAP funds may be reallotted. The Seldovia Village Tribe was notified by certified mail that $1,063 of its FY 1994 LIHEAP funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers of the State and tribe have 30 days from the date of the letters to submit comments to: Donald Sykes, Director, Office of Community Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

That 30 day period will expire on September 8, 1995. After considering any comments submitted, the Chief Executive Officer will be notified of the decision, and the decision will also be published in the **Federal Register**. If funds are reallotted, they will be allocated in accordance with section 2604 and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 1995. As FY 1994 funds, they will be subject to all of the requirements of the LIHEAP statute, including Section 2607(b)(2), which requires that a grantee must obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 1995 for these funds.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; telephone (202) 401–9351.

Dated: August 2, 1995.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 95–19680 Filed 8–8–95; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3917–N–15]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a tool-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Approval as a Mortgage-Backed Securities Issuer.

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: This form is provided for use by applicants proposing to become Mortgage-Backed Securities issuers. It is designed to summarize their business background

and experience. The information is necessary in order for GNMA to determine whether the applicant meets all GNMA eligibility requirements contained in 24 CFR Part 390.

Form Number: HUD–11701.

Respondents: Business or Other For-Profit and the Federal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11701	50		1		.75		38

Total Estimated Burden Hours: 38.

Status: Extension, no changes.

Contact: Brenda Countee, HUD, (202) 708–2234; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated August 2, 1995.

[FR Doc. 95–19598 Filed 8–8–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. FR–3918–N–03]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: HUD is giving notice that it intends to amend the following Privacy Act system of records: Section 8 Program Research Data Files (HUD/PD&R–7).

EFFECTIVE DATE: This action will be effective without further notice on September 18, 1995, unless comments are received that dictate otherwise.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendment to the Rules Docket Clerk Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD is establishing new routine use disclosures for HUD/PD&R–7 to allow for the disclosure of information to authorized social science researchers participating in the Moving to Opportunities for Fair Housing Demonstration Program and in the Gautreaux Program in Chicago, the Social Security Administration, the Internal Revenue Service, and the Department of Employment Security. The new routine use will read as follows: (1) To authorized social science researchers participating in the Moving to Opportunities for Fair Housing Demonstration (MTO), and in the Chicago Gautreaux program, (2) To Abt Associates, and to other contractors selected by HUD to carry out the objectives of MTO-related research and evaluation, (3) To the Social Security Administration to verify income/wage data, (4) To the Internal Revenue Service to verify income data, and (5) To the Illinois Department of Employment Security to verify income/wage data for Section 8 certificate recipients in the Chicago CMSA.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the ''Federal Register Privacy Act Issuances, 1993 Compilation.''

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget (OMB), pursuant to paragraph 4c of Appendix I to OMB Circular A 130, ''Federal Agency Responsibilities for Maintaining Records about Individuals'' dated June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a 88 Stat. 1896; sec 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, August 2, 1995.

Donald C. Demitros,

Acting Deputy Assistant Secretary for Management.

HUD PD&R–7

SYSTEM NAME:

Section 8 Program Research Data Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

A. To authorized social science researchers participating in the Moving to Opportunities for Fair Housing Demonstration Program (MTO) and in the Chicago Gautreau Program.

B. To Abt Associates, and to other contractors selected by HUD to carry out the objectives of MTO-related research and evaluation.

C. To the Social Security Administration to verify income/wage data.

D. To the Internal Revenue Service to verify income data.

E. To the Illinois Department of Employment Security verify income/wage data for Section 8 certificate recipients in the Chicago CMSA.

[FR Doc. 95–19599 Filed 8–8–95; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020–05–1430–01; AZA–27340, AZA–27349]

Notice of Expiration of Segregation, Termination of Classification, Cancellation of Applications and Opening of Land, Hohokam Heritage Center, Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The segregation given to the land under Bureau of Land Management application, (AZA–27340), proposed withdrawal, expired on April 21, 1995. Notification of the proposed withdrawal was published in the **Federal Register**

on April 22, 1993, (Vol. 58 FR. pg 21592) and the segregation was issued for a two year period. Additionally this notice will terminate the classification, published in the **Federal Register** on December 23, 1992, (Vol 57 FR. pg 61094), for 960.00 acres of essentially the same land for the same purpose. Due to a variety of reasons the entire project was canceled; therefore, the need for the withdrawal and/or the classification for the project ceased to exist. This action will open the land to surface entry and use and location under the United States mining laws. It has been and will remain open to mineral leasing.

EFFECTIVE DATE: Expiration of the withdrawal segregation was effective on April 21, 1995. Expiration of the classification will be effective upon publication in the **Federal Register**. The land will be opened on August 9, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0518.

SUPPLEMENTARY INFORMATION: Pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, the following described land is hereby relieved of the segregative effect provided by **Federal Register** publication dated April 22, 1993, and opened to location and entry under the United States mining laws and surface uses as allowed by law to the public lands.

Gila and Salt River Meridian, Arizona

T. 6 N., R. 1 W.,
Sec. 24, Lots 1–4, W½E½, W½;
Sec. 25, Lots 1, 5, 7, 9 & 11, NW¼NE¼, N½NW¼.

The area described contains approximately 908.38 acres in Maricopa County. The classification is terminated from the following described lands (AZA–27349).

Gila and Salt River Meridian, Arizona

T. 6 N., R. 1 W.,
Sec. 24, all;
Sec. 25, N½.

The area described contains approximately 960.00 acres in Maricopa County.

Dated: July 31, 1995.

Mary Jo Yoas,

Chief, Lands and Minerals Operations Section.

[FR Doc. 95–19567 Filed 8–8–95; 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.*):

PRT–805303

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import scent samples from wild, captive-held and captive-born giant panda (*Ailuropoda melanoleuca*) from China (from the wild and Beijing Zoo, Wolong and Fuzhou Breeding Centers), Germany (Berlin Zoo), Mexico (Mexico City Zoo) and Spain (Madrid Zoo) for the purpose of enhancement of the species through scientific research. The scent samples collected from the wild will only be collected after having been naturally deposited. Samples collected from captive animals, may be collected incidental to other routine and necessary activities, such as veterinary examinations.

PRT–805160

Applicant: William L. Shores, Orlando, FL

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mr. Pine Louw, ''Bankfontein'' Springfontein, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–804082

Applicant: Dallas Zoo, Dallas, TX

The applicant requests a permit to import blood and tissue samples from no more than 20 Red uakari monkeys (*Cacajao calvus*) from Quebrada Blanco, Peru for the purpose of enhancement of the survival of the species through scientific research.

PRT–805165

Applicant: Chicago Zoo Park (Brookfield Zoo), Brookfield, IL

The applicant requests a permit to import 2 blood samples from 50 of the following wild animals: Black rhinoceros *(Diceros bicornis)*, African wild dogs (*Lycaon pictus*), and cheetah (*Acinonyx jubatus*). The samples are being collected by the Ministry of Environment and Tourism, Windhoek, Namibia for the purpose of enhancement of the survival of the species through scientific research.

PRT–805032

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase in interstate commerce 3 captive-held female Asian elephants (*Elephas maximus*) from K & M Corporation (Circus Vargas) for the purpose of enhancement of the survival of the species through conservation education and 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: August 4, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–19682 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Wednesday, August 16, 1995; 1:30 p.m. until 4:30 p.m.

ADDRESSES: Weatherly Borough Hall, 10 Wilbur Street, Weatherly, PA 18255.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integral strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal

National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Acting Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: July 28, 1995.

David B. Witwer,

Acting Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 95–19558 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Human Remains and Associated Funerary Objects in the Control of Glacier Bay National Park and Preserve, Gustavus, AK

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of inventory of human remains and associated funerary objects in the control of Glacier Bay National Park and Preserve, Gustavus, AK. The human remains and associated funerary objects are curated at Washington State University, Pullman, WA.

A detailed inventory and assessment of these human remains and associated funerary objects has been made by the National Park Service curatorial and anthropological staff in consultation with representatives of Hoonah Indian Association.

The cremated human bones and associated funerary objects were recovered in 1964 from a collapsed log grave house on the western shore of Excursion Inlet, AK, by Dr. Robert E. Ackerman. The cremated human remains and funerary objects were originally in bent wood boxes which were deteriorated when documented by Dr. Ackerman.

The human remains represent a minimum of three adults of unknown sex, stature, and age. No known individuals were identifiable. Associated funerary objects include two copper tube fragments, two white glass shirt buttons, several clay pipestem fragments, an eroded piece of metal with bits of woven fabric, four pieces of shaped wood (remains of the bent wood box or boxes that originally contained the remains), a bone socket containing a wooden plug, and several decayed bits of cordage.

Testimony of Tlingit elders recorded in Goldschmidt and Haas, ''*Possessory Rights of the Natives of Southeastern Alaska,*'' (1946), and testimony taken during recent consultation with Hoonah Tlingit elders identifies Excursion Inlet as within the traditional territory of the Hoonah Tlingit. Dr. Ackerman suggests that the practice of cremation among the Hoonah Tlingit became very rare after 1890. On that basis these human remains are believed to have been interred sometime prior to that time.

Based on the above mentioned information, officials of the National Park Service has determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Hoonah Indian Association. All of the objects are reasonably believed to have been placed with or near individual Native American human remains either at the time of death or later as part of a death rite or ceremony.

This notice has been sent to officials of the Hoonah Indian Association. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Superintendent Jim Brady, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, AK 99826–0140, telephone (907) 697–2230 before September 8, 1995. Repatriation of the human remains and associated funerary objects to the Hoonah Indian Association may begin after that date if no additional claimants come forward.

Dated: August 3, 1995

Veletta Canouts

Acting, Departmental Consulting Archeologist and

Acting Chief, Archeological Assistance Division

[FR Doc. 95-19607 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–F

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 29, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 24, 1995.

Carol D. Shull,

Keeper of the National Register.

MASSACHUSETTS

Worcester County

Blackstone Manufacturing Company Historic District, Roughly, area surrounding Butler, Canal, Church, County, Ives, Main, Mendon, Old Mendon, and School Sts., Blackstone, 95001038

East Blackstone Village Historic District, Roughly, area along Elm St. at the jct. with Summer St., Blackstone, 95001040

Farnum's Gate Historic District, Roughly, area surrounding the jct. of Main and Blackstone Sts., Blackstone, 95001039

MISSOURI

Perry County

St. Mary's of the Barrens Historic District, SW of the jct. of W. Saint Joseph St. and MO 51, Perryville, 95001041

N. MARIANA ISLANDS

Saipan Municipality

Japanese 20mm Cannon Blockhouse, NW of Puntan Opyan, Saipan Island vicinity, 95001048

NEW JERSEY

Bergen County

Cooper, Tunis R., House, 83 Cooper St., Bergenfield, 95001046

Cumberland County

Maurice River Lighthouse, Lighthouse Rd., near the jct. of East Point Rd., Maurice River Township, 95001047

Essex County

Church Street School, 65 Church St., Nutley Township, Nutley, 95001042

TENNESSEE

Davidson County

Miller, Dr. Cleo, House, 1431 Shelton Ave., Nashville, 95001045

Rutherford County

Jones, Enoch H. House, 6339 Halls Hill Pike, Murfreesboro vicinity, 95001043

Wilson County

Seay, William Washington, House, 10575 Trousdale Ferry Pike, Flat Rock vicinity, 95001044

WISCONSIN

Dane County

Forest Products Laboratory, 1 Gifford Pinchot Dr., Madison, 95001037

[FR Doc. 95–19559 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent to Repatriate Cultural Items in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate cultural items in the possession of the Phoebe A. Hearst Museum, University of California, Berkeley, CA that meet the definition of ''unassociated funerary object'' under 25 U.S.C. 3001 (3)(B).

The items consist of an olla (1–22476) and an amulet (1–255409) collected from sites in the Vallecitos Valley of San Diego County, CA.

The catalogue information for the olla (1–22476) states that it is a ''mortuary olla'' and that it was collected for the Heye Museum of American Indians, which subsequently exchanged it to the University of California in 1920. It was collected on October 26, 1920 by Edward H Davis from Vallecitos, San Diego County, California. The olla is whole, made of ceramic and is colored light brown with patches of black fired areas. It is approximately 30 centimeters tall. The shape of the vessel is stylistically similar to ollas found throughout the aboriginal territory of the Diegueño/Tipai-Ipai, as it is outlined in the Handbook of North American Indians, Vol. 8, pp 592–609.

Based on the above information, Museum Officials have determined pursuant to 25 U.S.C. 3001 (3) (B) that the olla is reasonably believed to have been intentionally placed with or near individual human remains at the time of death or later as part of the death rite or ceremony of a culture.

The amulet (1–266409) was found in a cremation in Vallecitos Valley, San Diego County, California and is part of the Ben L. Squier collection. The catalogue record for the amulet states that it is made of clay with mica inclusions into the shape of a thunderbird. Its dimensions are 6 cm long and 2 cm in width at its widest point. The amulet is cracked in three places at its base, has a black surface, was finished by burnishing and has a hole through the body for stringing. The catalogue card further states ''California, San Diego, Vallecito Valley'' ''Cremation assoc. w/ 16 small carved beads.'' The amulet was donated to the University of California in 1984 by the Oregon Historical Society without the cremation or beads.

Based on the above information museum officials have determined, pursuant to 25 U.S.C. 3001 (3)(B), that the amulet is reasonably believed to have been intentionally placed with or near individual human remains at the time of death or later as part of the death rite or ceremony of a culture.

Available evidence does not allow identification of a single Indian tribe as being culturally affiliated with these cultural objects. Recent assessment studies in consultation with Indian tribes indicate basic similarities in crematory practices, ceramics, and geographic location between known archaeological traditions from which similar objects have been recovered and groups believed to be ancestral to the contemporary Diegueño. Based on the above information museum officials have determined pursuant to 25 U.S.C. 3001 (2), that there is a relationship of shared group identity that can be reasonably traced between the olla and amulet and contemporary Diegueño descendants, including the San Pasqual Band of Indians, the Cuyapaipe Band of Mission Indians, Viejas Tribal Council, Manzanita General Council, Campo Band of Mission Indians, Jamul Band of Mission Indians, Sycuan Business Committee, Barona General Business, La Posta Band of Mission Indians, Inaja and Cosmit Band of Mission Indians, Mesa Grande Band of Mission Indians, and the Santa Ysabel Band of Mission Indians. The San Pasqual Band of Indians expressed an interest in repatriating these cultural items.

This notice has been sent to officials of the San Pasqual Band of Indians, the Cuyapaipe Band of Mission Indians, Viejas Tribal Council, Manzanita General Council, Campo Band of Mission Indians, Jamul Band of Mission Indians, Sycuan Business Committee, Barona General Business, La Posta Band of Mission Indians, Inaja and Cosmit Band of Mission Indians, Mesa Grande Band of Mission Indians, and the Santa Ysabel Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Fritz Stern, NAGPRA Project Coordinator, University of California, Phoebe A. Hearst Museum of Anthropology, 103 Kroeber Hall, Berkeley, CA 94720, telephone (510) 643–7833 before September 8, 1995. Repatriation of these cultural items to the San Pasqual Band of Indians may begin after that date if no additional claimants come forward.

Dated: August 3, 1995

Veletta Canouts

Acting, Departmental Consulting Archeologist, and

Acting Chief, Archeological Assistance Division

[FR Doc. 95-19606 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–F

National Park Service Reorganization

AGENCY: National Park Service Interior.

ACTION: Notice.

SUMMARY: This Secretarial Order restructures the National Park Service and describes its central and field organization and the places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals of requests, or obtain decisions.

DATES: August 2, 1995.

Roger G. Kennedy,

Director.

Order No. 3189

Subject: National Park Service Reorganization.

Sec. 1 *Purpose.* The purpose of this Order is to reorganize the National Park Service in the following ways:

a. Restructure the Headquarters office down to the level of the Associate Directors, reducing the number of Associate Directors from six to five.

b. Replace the ten Regional offices with seven Field Director Offices.

c. Establish the concept of ''clusters'' of park units that will provide a framework for decision making and sharing resources.

d. Maximize efficient use of limited resources through establishment of program-specific National Program Centers.

Sec. 2 *Authority.* This Order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 3 *Basic Organization.* The new organization consists of Washington, DC Headquarters Office, seven Field Director Offices, sixteen System Support Offices, elven National Program Centers, two Administrative Service Centers, and the National Park Service Field Units (such as but not limited to parks, recreational areas, sites, and monuments).

Sec. 4 *Headquarters Organization.* The Headquarters Office in Washington, DC, provides national level leadership and advocacy, policy and regulatory formulation and direction, program guidance, budget formulation, legislative support, and accountability for programs and activities managed by the field and key program offices. Administrative, technical and other professional support to park and other customers are provided by the National Program Centers described in Sec. 6 of this Order. The Headquarters Office consists of the Office of the Director and five Associate Directors.

a. The Office of the Director is composed of the following: the Director and Deputy Director, who set the strategic direction and provide leadership to the organization as a whole; the Assistant Director for External Affairs, with responsibility for legislative and Congressional Affairs, Public Affairs, and Tourism the Chief, Office of International Affairs; and other such staff as necessary to support the Office of Director.

b. The Associate Director, Park Operations and Education replaces the position of

Associate Director, Operations, with responsibility for the functions of that former position, except for land resources, which are the responsibility of the Associate Director, Professional Services. The Associate Director, Park Operations and Education supervises the Statistical Unit (Denver) and the following national program centers: Field Operations Technical Support Center (Denver, CO); NPS Office, National Interagency Fire Center (Boise, ID); and the Interpretive Design Center (Harpers Ferry, WV).

c. The Associate Director, Natural Resource Stewardship and Science replaces the position of Associate Director, Natural Resources, with responsibility for the function of that former position and for environmental quality. The Associate Director, Natural Resource Stewardship and Science supervises the Chief Scientist for the National Park Service and the Natural Resources Program Support Center (Denver and Ft. Collins, CO).

d. The Associate Director, Cultural Resource Stewardship and Partnerships replaces the position of Associate Director, Cultural Resources, with responsibility for the functions of that former position and for partnership programs; grants administration; rivers, trails and conservation assistance; and State program review. The Associate Director, Cultural Resource Stewardship and Partnerships supervises the following National Program Centers: Cultural Resources Program Support Center, Partnership Programs Service Center, and National Center for Preservation Technology and Training.

e. The Associate Director, Professional Services replaces the position of Associate Director, Planning and Development, with responsibility for the functions of that former position, with the following exceptions. Environmental quality is transferred to the Associate Director, Natural Resource Stewardship and Science. Rivers, trails, and conservation programs; grants administration; and State program review are transferred to the Associate Director, Cultural Resource Stewardship and Partnerships. The Associate Director, Professional Services is also responsible for land resources and strategic planning and supervises the Planning, Design and Construction Center (Denver, CO), and the Information and Telecommunications Center (Denver, CO and Washington, DC).

f. The Associate Director, Administration replaces the positions of Associate Director, Budget and Administration and the Associate Director, Management Systems, with responsibility for the functions of those former position, with the exception of tourism, which is transferred to the Assistant Director, External Affairs. The Associate Director, Administration is also responsible for Equal Employment Opportunity, is the Chief Financial Officer for the National Park Service and supervises two Administrative Service Centers in the Washington, DC and Denver, CO metropolitan areas and the following National Program Centers: Accounting Operations Center (Reston), VA); Employee Development Center (Grand Canyon National Park, AZ; Harpers Ferry, WV; and Glynco, GA). The Director, National Park Service, is authorized to establish additional Administrative Service Centers, with approval from the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary—Policy, Management and Budget.

Sec. 5 *Field Organization.* The National Park Service Field Units (parks) are organized into a maximum of sixteen ecological-cultural-geographical clusters of 10–35 units each. Parks in a cluster will cooperatively share staff to maximize support to all units in the cluster. The cluster serves as a framework for cooperation and decision-making rather than a staffed organizational entity.

a. Seven Field Director Offices replace the ten Regional offices and are headed by Field Directors. Field Directors supervise the field units and System Support Offices within their Field Director Office boundaries; provide direction, oversight, budget formulation, and assistance in media relations and serve as the principal policy interface for the area as a whole, ensuring consistency with national priorities. The Field Director Office boundaries are shown on the attached map. The Field Director Offices are located as follows: Northeast (Philadelphia, PA); Southeast (Atlanta, GA); Midwest (Omaha, NE); Intermountain (Denver, CO); Pacific West (San Francisco, CA); Alaska (Anchorage, AK) and National Capital (Washington, DC).

b. Sixteen System Support Offices are established, each to be headed by a Superintendent and supporting a specific cluster. Each System Support Office provides and obtains professional, technical, and administrative services; provides technical assistance to conservation partners; serves as a liaison with other agencies and interests; and participates in ecosystem management, planning and partnerships. System Support Offices are named and located as a follows: New England/Adirondack in Boston, MA; Allegheny and Chesapeake in Philadelphia, PA; National Capital in Washington, DC; Atlantic Coastal Plain, Appalachian, and Gulf Coast in Atlanta, GA; Great Lakes and Great Plains in Omaha, NE; Colorado Plateau and Rocky Mountains in Denver, CO; Desert Southwest in Sante Fe, NM; Pacific/Great Basin in San Francisco, CA; Columbia/Cascades in Seattle, WA; Alaska in Anchorage, AK; and Pacific Islands in Honolulu, HI. The Director, National Park Service, is authorized to change the names of these System Support Offices and to change their location as funding becomes available, with approval from the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary—Policy, Management and Budget.

Sec. 6 *National Program Centers.* National Program Centers are established to provide administrative, technical, and other professional support to parks and other customers. The following organizations are National Program Centers: Accounting Operations Center; Employee Development Center; Natural Resources Program Support Center; Cultural Resources Program Support Center; Partnership Programs Service Center; National Center for Preservation Technology and Training; Planning, Design and Construction Center; Information and Telecommunications Center; Field Operations Technical Support Center; Interpretive Design Center; and the NPS Office at the National Interagency Fire Center.

Sec. 7 *Administrative Provision.* The Director, National Park Service is responsible for effecting the transfer of personnel, funds, and property to implement the provisions of this order.

Sec. 8 *Effective Date.* This Order is May 31, 1995. Implementation will be in phases at the discretion of the Director, National Park Service and upon notification through the Assistant Secretary for Fish and Wildlife and Parks to the Assistant Secretary—Policy, Management and Budget. This Order will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first. In the absence of the foregoing action, the provisions of this Order will terminate and be considered obsolete on October 1, 1996.

Dated: May 31, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–19572 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32723]

Southern Pacific Transportation Co., The Denver and Rio Grande Western Railroad Co., St. Louis Southwestern Railway Co., and SPCSL Corp.—Construction and Operation Exemption—Stratford, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of conditional exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation of a line of railroad by Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP). The proposed line would be a 1,222-foot connection between the track of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and the track of SP at the Santa Fe/SP intersection at Stratford, TX. This decision will become effective, if appropriate, only upon completion of the Commission's environmental review concerning construction of the proposed rail line and issuance of a further decision.

DATES: Petitions to reopen must be filed by August 29, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32723 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, NW, Washington, DC 20036.

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.

Decided: July 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19514 Filed 8–8–95; 8:45 am]

BILLING CODE 7035–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment prepared by Quisto Energy Corporation (Quisto) to construct, operate, and maintain a gas well located on the Main Floodway of the Lower Rio Grande Flood Control Project (LRGFCP), the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC) finds that the proposed action to issue a license to Quisto for such works is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46FR44083–44094); the USIBWC hereby gives notice that an environmental impact statement will not be prepared for the proposed action.

ADDRESS: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone: 915/534–6704.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is for the USIBWC to issue a license to Quisto to construct, operate, and maintain a gas well and install related features within Meyerhoff No. 5. Drilling Unit, Lot 271, Kelly-Pharr Subdivision, Hidalgo County, Texas. The gas well is proposed to be located on privately owned land within the Main Floodway of the USIBWC LRGFCP approximately 8 kilometers southeast of the town of Pharr. Access to the drilling site is by way of existing county and private roads.

Alternatives Considered

Three alternatives were considered in the Environmental Assessment (EA):

The Proposed Action Alternative is for Quisto to construct, operate, and maintain a gas well is a cultivated field within the Main Floodway of the USIBWC LRGFCP. This proposed action will require the USIBWC to issue a license to ensure that such works do not cause an obstruction to flood flows within the floodway or interfere with the operation and maintenance of the LRGFCP.

The No Action Alternative is for Quisto to not construct, operate, and maintain a gas well within the Main Floodway of the LRGFCP. The no action alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The no action alternative will result in the denial of access to the mineral owner to rightfully owned minerals, loss of tax revenues to the State of Texas, and result in an unrecoverable clean energy source.

The Directional Well Alternative is for Quisto to drill a well from outside the Main Floodway to a depth below the proposed surface location. The directional well alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The directional well alternative is considered not workable because of a lack of an available surface drillsite outside the Main Floodway and technical problems associated with a bottomhole location some 457 meters or more from the surface location.

Environmental Assessment

The USIBWC received from Quisto a completed Environmental Assessment (EA) for the proposed gas well and related features. The EA is currently available for review and comment.

Finding of the Environmental Assessment

The EA finds that the proposed action for Quisto to construct, operate, and maintain a gas well within the Maine Floodway of the USIBWC LRGFCP (and the USIBWC to issue a license for such work) does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The United States Army Corps of Engineers has determined that no waters of the United States including wetlands will be impacted by the proposed gas well and related features.

2. The United States Fish and Wildlife Service has determined that federally listed endangered or threatened species are unlikely to be adversely affected by the proposed gas well and related features.

3. The Texas Historical Commission has determined that no survey is required and the project may proceed.

4. The USIBWC has determined that the proposed gas well and related features will have no significant effect upon the flood carrying capacity of the Main Floodway.

On the basis of the Quisto EA, the USIBWC has determined that an environmental impact statement is not required for the issuance of license to Quisto to construct, operate, and maintain a gas well and install related features within the Main Floodway of the USIBWC LRGFCP and hereby provides notice of a finding of no significant impact (FONSI). An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice. A limited number of copies of the EA and FONSI are available to fill single copy requests at the above address.

Dated: August 2, 1995.

Randall A. McMains,

Attorney.

[FR Doc. 95–19626 Filed 8–8–95; 8:45 am]

BILLING CODE 4810–03–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entires 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) Nonimmigrant Checkout Letter.

(2) Form C–146. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. This form is used in making inquiry of persons in the United States or abroad concerning the whereabouts of aliens and/or departure information wanted by the Immigration and Naturalization Service, when initial investigation to locate the alien or verify his/her departure has been unsuccessful.

(4) 20,000 annual respondents at .166 (10 minutes) per response.

(5) 3,320 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19611 Filed 8–8–95; 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) Standardized Supporting Letter for NATO Dependent Employment.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: Federal Government. The standardized supporting letter for NATO dependent employment will facilitate applications for employment by dependents of certain principal aliens classified as NATO–1, 2, 3, 4, 5, 6, and 7 nonimmigrants by ensuring that they are given proper consideration.

(4) 125 annual respondents at .25 hours per response.

(5) 31.25 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19612 Filed 8–8–95; 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) Emergency Federal Law Enforcement Assistance.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: State, Local or Tribal Governments. Others: None. The Immigration Act of 1990 added a new section which authorizes the Attorney General to expend up to $20 million of the Immigration Emergency Fund for the reimbursement of States and localities in three additional circumstances. This collection of information is needed for the States and localities to submit claims for reimbursement in connection with Immigration emergencies.

(4) 10 annual respondents at 30 hours per response.

(5) 306 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Office, United States Department of Justice.

[FR Doc. 95–19613 Filed 8–8–95; 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) Notice of Immigration Pilot Program.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: State, Local or Tribal Governments. Others: Individuals and households. The Immigration and Naturalization Service is seeking proposals from regional centers who wish to participate in a Pilot Immigration Program, provided for by Section 610 of the Appropriations Act of 1933. The Immigration Service will select a regional center(s) that is(are) responsible for promoting economic growth in a geographical area.

(4) 30 annual respondents at 40 hours per response.

(5) 1,200 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19614 Filed 8–8–95; 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) Dedicated Commuter Lane Usage Survey.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and Households. Others; None. Public Law 101–515 allows the Immigration and Naturalization Service to pilot test various fee-driven alternative inspection methods at land borders. This survey of the general public crossing the border will assist in the evaluation, planning and implementation of these pilot projects at selected locations.

(4) 100,000 annual respondents at .083 (5 minutes) per response.

(5) 8,300 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19615 Filed 8–8–95; 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) Systemic Alien Verification for Entitlements User Satisfaction Survey.

(2) INS Form M–398, Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: State, Local or Tribal Governments. Others—None. The Form M–398 is used by the Immigration and Naturalization Service (INS) to determine the satisfaction of the Systematic Alien Verification for Entitlements (SAVE) Program. The users of the SAVE system are the State Benefits Granting Agencies.

(4) 2,000 annual respondents at .025 (15 minutes) per response.

(5) 500 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19616 Filed 8–8–95; 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:

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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) Guidelines on Producing Master Exhibits for Asylum Applications.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Not-for-profit institutions. Others; None. Master Exhibits are one means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(4) 20 annual respondents at 80 per response.

(5) 1,600 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19617 Filed 8–8–95; 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) Arrival and Departure Record.

(2) Form I–94T. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–94T Form is used to aid the effectiveness of the Transit without Visa (TWOV) process and to enhance accuracy of TWOV collection. This form provides the most efficient means for collecting and processing the required TWOE data.

(4) 1,200,000 annual respondents at .07 (4 minutes) per response.

(5) 14,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19618 Filed 8–8–95; 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) Visa Waiver Nonimmigrant Arrival and Departure Document.

(2) Form I–94W. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–94W Form is used in making inquiry of persons in the United States or abroad concerning the whereabouts of aliens and/or departure information wanted by the Immigration and Naturalization Service, when initial investigations to locate the alien or verify alien's departure has been unsuccessful.

(4) 4,000,000 annual respondents at .105 (6 minutes) per response.

(5) 420,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19619 Filed 7–8–95; 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) Affidavit of Support.

(2) Form I–134. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information is used to determine if at the time of application for a visa, or admission into the United States, the applicant(s) are likely to become a public charge.

(4) 44,000 annual respondents at .332 per response.

(5) 14,608 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19620 Filed 8–8–95; 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 the 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 and Naturalization Service Applicnat Survey.

(2) Form G–942. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: Federal Government. The data collected on this form is needed to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicant for Federal employment in the Immigration and Naturalization Service.

(4) 75,000 annual respondents at 0.7 hours per response.

(5) 5,250 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19608 Filed 8–8–95; 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 provisions of 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) Application to Replace Alien Registration Card.

(2) Form I–90. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–90 Form is used as the collection instrument to obtain the information necessary to issue a alien Registration Card because no card has yet been issued, or the original has been lost, stolen, or mutilated, or the information on the original must be updated or corrected, or there is a requirement by law to replace the resident alien card.

(4) 1,300,000 annual respondents at .90 (55 minutes) per response.

(5) 1,170,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19609 Filed 8–8–95; 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) Telephone Verification System Pilot—Employer Assessment.

(2) Form G–897. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Business or other for-profit. Others: None. This assessment will be used to determine the satisfaction of the employers, who are participating in the Telephone Verification System Pilot Program. The users of the Telephone Verification System are various employers throughout the United States.

(4) 200 annual respondents at .166 (10 minutes) per response.

(5) 33 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19610 Filed 8–8–95; 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) Supplementary Statement for Graduate Medical Trainees.

(2) Form I–644. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–556 Form is used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(4) 3,000 annual respondents at .083 per response.

(5) 249 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19623 Filed 8–8–95; 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) Immigrant Petition by Alien Entrepreneur.

(2) Form I–526. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–526 Form is used to petition for classification as an alien entrepreneur as provided by sections 121(B)(5) and 162(B) of the Immigration Act of 1990. The data collected on this form will be used by the Immigration Service to determine eligibility for the requested immigration benefit.

(4) 2,000 annual respondents at 1.25 hours per response.

(5) 2,500 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19621 Filed 8–8–95; 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) Inter-agency Record of Individual Requesting Change/Adjustment to or from A or G Status; or Requesting A or G Dependent Employment Authorization.

(2) Form I–556. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–556 Form facilities processing applications for benefits filed by Diplomatic and international organizational personnel or by persons requesting such status. The information assists the Department of State and the Immigration and Naturalization Service in exercising joint adjudicative responsibility in such matters.

(4) 3,300 annual respondents at .250 per response.

(5) 825 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19622 Filed 8–8–95; 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 review *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) Guam Visa Waiver Information.

Form I–736. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The Immigration and Naturalization Alien Guam Visa Waiver, Public Law 99–396, provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into any stay on Guam as a visitor for a maximum stay of 15 days provided that no potential threat exists to the welfare, safety, and security of the United States, its territories, and the commonwealths.

(4) 60,000 annual respondents at .083 per response.

(5) 4,980 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19624 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of July, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 07/24/95]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
31,250	Ackerman Shirt Co., Inc (Comp)	Ackerman, MS	07/12/95	Men's Flannel Shirts, Ladies' Blouses.
31,251	Babcock Ultrapower (Wkrs)	West Enfield, ME	07/14/95	Electrical Energy.
31,252	Blue Eagle Exploration (Comp)	Lakewood, CO	06/21/95	Exploration and Production of Oil.
31,253	Crown Pacific (IAMAW)	Sandpoint, ID	07/10/95	Softwood Lumber.
31,254	Dexter Shoe Co (Wkrs)	Milo, ME	07/07/95	Leather Shoes.
31,255	Donkenny Apparel, Inc (Wkrs)	Christiansburg, VA	07/13/95	Ladies' Apparel.
31,256	EIS Brake Parts Division (UAW)	Berlin, CT	06/27/95	Automobile Brake Wheel Cylinders.
31,257	Husky Enterprises (Wkrs)	Jermyn, PA	07/03/95	Bridal Gowns.
31,258	Jessico Corp. (Wkrs)	Monterey, VA	07/13/95	Ladies' Apparel.
31,259	KGS Systems, Inc. (Comp)	Harlingen, TX	07/06/95	Trucking Operations.
31,260	IBM Corp. (Wkrs)	Endicott, NY	07/13/95	Bank Machines.
31,261	Locke Insulator's Inc. (Wkrs)	Baltimore, MD	06/30/95	Electrical Insulators.
31,262	Network Color Technology (ue)	St. Charles, MO	07/10/95	Comic Books, Catalogs, Brochures.
31,263	Cowlitz Stud Co (cja)	Randle, WA	07/12/95	Softwood Lumber.
31,264	Polk Audio, Inc. (Comp)	Baltimore, MD	07/10/95	Loudspeakers.
31,265	Power Cords & Cable Corp (Wkrs)	College Point, NY	07/12/95	Electrical Power Cords.
31,266	Weyerhaeuser Paper Co (awpp)	North Bend, OR	06/30/95	Corrugated Medium Paper.
31,267	Woolrich, Inc. (Comp)	Alliance, NE	07/12/95	Ladies' & Men's Sportswear.
31,268	Maxus Energy Corp. (Comp)	Dallas, TX	06/30/95	Crude Oil & Natural Gas.
31,269	.....do	Kearny, NJ	06/30/95	Do.
31,270	Maxus Exploration Co (Comp)	Amarillo, TX	06/30/95	Do.

APPENDIX—Continued

[Petitions Instituted On 07/24/95]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
31,271 ...	.....do	Canadian, TX	06/30/95	Do.
31,272 ...	.....do	Dumas, TX	06/30/95	Do.
31,273 ...	.....do	Jeanerette, LA	06/30/95	Do.
31,274 ...	.....do	Pampa, TX	06/30/95	Do.
31,275 ...	.....do	Perryton, TX	06/30/95	Do.
31,276 ...	.....do	Leedey, OK	06/30/95	Do.
31,277 ...	.....do	Spearman, TX	06/30/95	Do.
31,278 ...	.....do	Stinnett, TX	06/30/95	Do.
31,279 ...	Maxus Aviation Co (Comp)	Dallas, TX	06/30/95	Do.
31,280 ...	Riverside Farms (Comp)	Hamilton, TX	06/30/95	Do.
31,281 ...	.....do	Hamilton, TX	06/30/95	Do.
31,282 ...	Sunray Gas Plant (Comp)	Dumas, TX	06/30/95	Do.
31,283 ...	Chadco, Inc (Comp)	Corinth, MS	07/12/95	Knit Sportswear.
31,284 ...	Key Plastics (Wkrs)	Felton, PA	07/12/95	Injection Molding Parts for Automobile.
31,285 ...	Red Level Fashions (Wkrs)	Red Level, AL	07/07/95	Ladies' Apparel.

[FR Doc. 95–19660 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of July, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/17/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,230 ...	Hayward Pool Products (Comp)	Elizabeth, NJ	07/06/95	Plastic Valves, Lighting & Filter System.
31,231 ...	Allegheny Ludlum Corp. (USWA)	Pittsburgh, PA	07/03/95	Stainless Steel.
31,232 ...	Leff & Wolf (ILGWU)	New York, NY	06/26/95	Ladies' Skirts and Slacks.
31,233 ...	Pietrafesa (ACTWU)	Carrollton, GA	07/07/95	Ladies' & Men's Suits, Jackets, etc.
31,234 ...	Calvin Mfg. Co. (ACTWU)	Tallapoosa, GA	07/07/95	Men's & Boys' Clothing.
31,235 ...	Daphne Handbag & Mfg. Co. (Wkrs)	Scranton, PA	06/30/95	Handbags, Totebags, Knapsacks.
31,236 ...	Ford Electronics & Refrig. (UAW)	Lansdale, PA	06/29/95	Automobile Electrical Components.
31,237 ...	Keystone Lighting (Comp)	Hayden Lake, ID	06/29/95	Fluorescent Light Fixtures.
31,238 ...	NER Data Products Inc. (Comp)	Franklinville, NJ	06/09/95	Typewriter Ribbons.
31,239 ...	NU Quaker Dyeing, Inc. (Wrks)	Easton, PA	06/28/95	Dye Woven Textiles.
31,240 ...	National Garment Co. (Comp)	Fayette, MO	07/03/95	Children's Clothing.
31,241 ...	Tamara 3X (Wrks)	New York, NY	06/30/95	Children's & Ladies' Apparel.
31,242 ...	Fina Oil & Chemical Co. (Comp)	Dallas, TX	07/03/95	Oil & Natural Gas.
31,243 ...	.....do	Houston, TX	07/03/95	Do.
31,244 ...	.....do	.....do	07/03/95	Do.
31,245 ...	.....do	Tyler, TX	07/03/95	Do.
31,246 ...	.....do	Midland, TX	07/03/95	Do.
31,247 ...	.....do	Houston, TX	07/03/95	Do.
31,248 ...	Crown Pacific Ltd. (Comp)	Redmond, OR	07/03/95	Plywood.
31,249 ...	McDonnell Douglas (IAM)	Hunt. Beach, CA	05/30/95	Rockets (Launch Vehicle).

[FR Doc. 95–19661 Filed 8–8–95; 8:45 am]
BILLING CODE 4510–30–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,023; Hilco Coast Processing Co., Inc, Pepeekeo, HI

TA–W–31,030; Ulster Scientific, Inc., New Paltz, NY

TA–W–31,078; Penn Ventilator Co., Inc., Keyster, WV

In the following cases, the investigaion revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,226; American Steel Corp., Detroit, MI

TA–W–31,008; Magnox, Inc., Pulaski, VA

TA–W–31,141; Colorado Gas Compression, Inc (CGCI), Ingalls, OK

TA–W–30,950; International Business Machines Corp., Storage Systems Div. San Jose, CA

TA–W–31,129; Library Bureau, Inc., Herkimer, NY

TA–W–31,132; Chicago Laser Systems, Des Plaines, Il

TA–W–31,227; CMI Industries, Inc., Rolling Fork, MS

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,019; ERA Coats, Paterson, NJ

U.S. imports of women's and girls' coats and jackets declined both absolutely and as a percent of US comsumption in 1994 compared with 1993.

TA–W–31,221; M. Lidz, Inc., Wilkes Barre, PA

TA–W–31,047; Metrahealth Insurance Co., Inc., Voorhees, NJ (formerly the Travelers Insurance Companies, Inc)

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–31,070; Forster Manufacturing Co., Inc., Wilton ME

A certification was issued covering all workers separated on or after May 15, 1994.

TA–W–31,125; Market Manufacturing Co., Inc., Moxley, GA

A certification was issued covering all workers separated on or after May 24, 1994.

TA–W–31,155; Nicolette Fashions, Inc., West New York, NJ

A certification was issued covering all workers separated on or after June 2, 1994.

TA–W–31,198; Lavrelle Manufacturing, New York, NY

A certification was issued covering all workers separated on or after June 20, 1994.

TA–W–31,015; Casual Coat Co., Inc., Paterson, NJ

A certification was issued covering all workers separated on or after December 21, 1993.

TA–W–31,206 & TA–W–31,297; Anchor Glass Container Corp., Gurnee, IL Huntington Park, CA

A certification was issued covering all workers separated on or after June 16, 1994.

TA–W–31,064; Elegante Sleepwear, Inc., San German, PR

A certification was issued covering all workers separated on or after May 11, 1994.

TA–W–31,101; Purolator Products NA, Inc., Dexter, MO

A certification was issued covering all workers separated on or after May 24, 1994.

TA–W–31,173; Rielly Co., Inc., Valatie, NY

A certification was issued covering all workers separated on or after May 13, 1994.

TA–W–31,120; Occidental Chemical Corp., Durez Div. North Tonawanda, NY

A certification was issued covering all workers separated on or after May 19, 1994.

TA–W–31,124; Great Bear Industries, Cross City, FL

A certification was issued covering all workers separated on or after June 2, 1994.

TA–W–31,171; Heat Tech El Paso (Heater Wire, Inc.), El Paso, TX

A certification was issued covering all workers separated on or after June 5, 1994.

TA–W–31,082; Barco of California, Huntsville, TN

A certification was issued covering all workers separated on or after May 16, 1994.

TA–W–31,152; Lake Manufacturing Nazareth/Century Mills, Inc., Lake, MS

A certification was issued covering all workers separated on or after June 13, 1994.

TA–W–31,154; Summit Timber Co., Darrington, WA

A certification was issued covering all workers separated on or after June 7, 1994.

TA–W–31,143; Levi Strauss & Co., El Paso, TX

A certification was issued covering all workers separated on or after May 23, 1994.

TA–W–31,175 & A; General Electric Co., 1427 Broadway, (Motor Div) Fort Wayne, IN & 1701 College St. (Transformer Div) Fort Wayne, IN

A certification was issued covering all workers separated on or after June 14, 1994.

TA–W–31,056; Phillips Laser Magnetic Storage, Colorado Springs, CO

A certification was issued covering all workers separated on or after May 8, 1994.

TA–W–31,061; Strand Lighting, Inc., Rancho Dominquez, CA

A certification was issued covering all workers separated on or after May 12, 1994.

TA–W–31,092; Paragon Dye & Finishing, Paterson, NJ

A certification was issued covering all workers separated on or after May 18, 1994.

TA–W–31,186; Shana Knitwear, Inc., Asheboro, NC

A certification was issued covering all workers separated on or after May 30, 1994.

TA–W–31,134; Farah Manufacturing Co., Farah USA, Inc., El Paso, TX

A certification was issued covering all workers separated on or after June 5, 1994.

TA–W–31,073; Softhard Systems, Inc., Houston, TX

A certification was issued covering all workers separated on or after April 11, 1994.

TA–W–31,200, TA–W–31,201, TA–W–31,202; The Louisiana Land & Exploration Co., New Orleans, LA, Houston, TX, Denver, CO

A certification was issued covering all workers separated on or after June 27, 1994.

TA–W–31,200A, TA–W–31,200B, TA–W–31,203; The Louisiana Land & Exploration Co., Lafayette, LA, Houma, LA, Saraland, AL

A certification was issued covering all workers separated on or after June 23, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00480; Peerless Corp., Tigard, OR

The investigation revealed that criteria (3) and (4) were not met. A departmental survey conducted with major customers revealed that they continued to purchase products form the subject firm during the relevant period—not from Mexico or Canada or any other foreign source.

Affirmative Determinations NAFTA-TAA

NAFTA–TAA–00524; Dura Convertible Systems, Adrian, MI

A certification was issued covering all workers separated on or after July 11, 1994.

NAFTA–TAA–00489; Heat Tech, Inc., AKA Heater Wire, El Paso, TX

A certification was issued covering all workers separated on or after June 19, 1994.

NAFTA–TAA–00493; Waltec American Forging, Inc., Tool Room, Waterbury, CT

A certification was issued covering all workers separated on or after June 15, 1994.

I hereby certify that the aforementioned determinations were issued during the months of July, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 25, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19662 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,331]

Kerr-McGee Corporation, Headquartered in Oklahoma City, Oklahoma Operating Out of the Following Field Offices; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10, 1994, applicable to all workers of Kerr-McGee Corporation headquartered in Oklahoma City, Oklahoma and operating out of various field offices in Wyoming, Oklahoma and Texas. The notice was published in the **Federal Register** on December 9, 1994 (59 FR 63823).

At the request of the Company, the Department reviewed the subject certification. New findings show worker separations have occurred at the Kerr-McGee Corporation offshore oil and gas production operations. These workers report out of the Kerr-McGee office located in Lafayette, Louisiana. Accordingly, the Department is amending the certification to cover these workers.

The intent of the Department's certification is to include all workers of Kerr-McGee Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,331 is hereby issued as follows:

''All workers of Kerr-McGee Corporation, headquartered in Oklahoma City, Oklahoma (TA–W–30,331) and Casper, Wyoming (TA–W–30,331A) engaged in the production of crude oil and natural gas who become totally or partially separated from employment on or after July 31, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

''All workers of Kerr-McGee Corporation, at the below cited locations engaged in the production of crude oil and natural gas who become totally or partially separated from employment on or after August 17, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–30,331B El Reno, Oklahoma
TA–W–30,331C Kilgore, Texas
TA–W–30,331D Amarillo, Texas
TA–W–30,331E Odessa, Texas
TA–W–30,331F Sunray, Texas
TA–W–30,331G Canadian, Texas
TA–W–30,331H Lafayette, Louisiana''

Signed at Washington, D.C. this 21st day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19657 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,744]

Xerox Corporation a/k/a EDS Webster, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 21, 1994, applicable to all workers for Xerox Corporation engaged in employment related to the production of copiers and printers in Webster, New York. The notice was published in the **Federal Register** on October 21, 1994 (59 FR 53211).

The Department has been notified by the State Agency that Xerox Corporation was sold to EDS. Some Xerox workers were transferred to EDS for a limited period of time to train the new company's new employees.

The intent of the Department's certification is to include all workers of Xerox Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,744 is hereby issued as follows:

''All workers of Xerox Corporation, a/k/a EDS, Webster, New York engaged in employment related to the production of copiers and printers who became totally or partially separated from employment on or after March 29, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19658 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–30,961]

Zenith Distributing Corporation a/k/a Texlokla Division Plano, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register**, on July 7, 1995 (60 FR 35435).

New information received from the State Agency show that some of the workers at the Zenith Distributing, Plano, Texas, had their unemployment insurance (UI) taxes paid to Texlokla Division.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,961 is hereby issued as follows:

''All workers of Zenith Distributing Corporation, a/k/a Texlokla Division, Plano, Texas engaged in employment related to sales and distribution of Zenith electronic products who became totally or partially separated from employment on or after April 24, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19659 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–13–M

Pension and Welfare Benefits Administration

[Application No. D–09981, et al.]

Proposed Exemptions; Boston Safe Deposit

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) The nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Boston Safe Deposit and Trust Company Located in Boston, Massachusetts; Proposed Exemption

[Application No. D–9981]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of January 12, 1995, to the cash sale of certain commercial paper notes (the Notes) for $25,031,269 by the Common Trust Cash Investment Fund (the Fund) to Boston Safe Deposit and Trust Company (Boston Safe), a party in interest with respect to employee benefit plans invested in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the greater of either (i) the amortized cost of the Notes, plus accrued but unpaid interest, as of the date of sale, or (ii) the fair market value of the Notes, as determined by an independent pricing service at the time of sale;

(c) The Fund did not pay any commissions or other expenses in connection with the sale;

(d) Boston Safe, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction;

(e) Boston Safe took all appropriate actions necessary to safeguard the interests of the Fund, and the employee benefit plans invested in the Fund, in connection with the transactions; and

(f) If the exercise of any of Boston Safe's rights, claims or causes of action in connection with its ownership of the Notes results in Boston Safe recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the sum of:

(1) the purchase price paid for the Notes by Boston Safe (i.e. $25,031,269);

(2) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes from the Fund; and

(3) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes, Boston Safe will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of January 12, 1995.

Summary of Facts and Representations

1. Boston Safe is a Massachusetts trust company which provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act. The Fund is a common trust fund established and maintained by Boston Safe as trustee for the collective investment and reinvestment of assets contributed thereto by Boston Safe and its affiliates on behalf of their trust services clients, including employee benefit plans. The Fund is exempt from federal income tax pursuant to section 584 of the Code. As of December 6, 1994, the value of the Fund's portfolio (including the Notes) was approximately $935 million. As of such date, participating investors in the Fund included seventeen employee benefit plans (primarily voluntary employees' beneficiary associations).

2. The Fund purchased the Notes on August 1, 1994 for $24,988,375. The Notes were one year debentures with a par value of $25 million, issued by Orange County, California (the Issuer) on July 8, 1994 with a maturity date of July 10, 1995. The aggregate principal amount of the entire series of the Notes was $600 million. Interest on the Notes was taxable and payable monthly at a variable rate which was reset on the first day of each month. The interest rate was equal to the one-month London Interbank Offered Rate (LIBOR) set forth on the second business day prior to the reset date. The interest on the Notes was payable on the first business day of every month and at maturity. The principal of and unpaid accrued interest on the Notes were payable at maturity.

The Notes were secured by a repayment fund (the Repayment Fund) established by the Issuer at the time the Notes were issued. The assets of the Repayment Fund were invested in the Orange County Investment Pool (the Orange County Pool), an investment fund established by the Issuer for the collective investment of the assets of the Issuer and its several governmental sub-divisions.

3. The decision to invest Fund assets in the Notes was made by Boston Safe as trustee of the Fund. Prior to the investment, Boston Safe conducted an investigation of the potential investment, including an examination of the financial condition of the Issuer. Boston Safe represents that the Fund's investment in the Notes was consistent with the Fund's investment policies and objectives.[1] At the time the Fund acquired the Notes, the Notes were rated ''A–1 plus'' by Standard & Poor's Corporation and ''P–1'' by Moody's Investor Services, Inc.

4. On December 6, 1994, due to large trading losses in the Orange County Pool, the Issuer filed two voluntary petitions under Chapter 9 of the Bankruptcy Code—one on behalf of the Issuer and the other on behalf of the Orange County Pool. Responding to these events, after written notice to participating investors, Boston Safe transferred the Notes to a liquidating account (the Liquidating Account) maintained on behalf of the participating investors then having an interest in the Fund. This transfer was effective December 6, 1994. As of such date, the seventeen employee benefit plans held approximately 15% of the interests in the Liquidating Account.

Boston Safe states that placing the Notes in the Liquidating Account allowed for the continued operation of the Fund because the segregation of the Notes from the other assets in the Fund confined the potential investment losses resulting from the Notes to those investors participating in the Fund as of December 6, 1994. Boston Safe was able

[1] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Notes by the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

to continue to permit additions and withdrawals from the Fund at $1.00 per share and investments in the Fund after December 6, 1994 were not affected by the Notes.

5. Boston Safe determined that, as a result of the trading losses incurred by the Orange County Pool and the subsequent bankruptcy filing by the Issuer, the security for the Notes had become inadequate and that full repayment of the Notes was questionable. Boston Safe also determined that the purchase of the Notes by Boston Safe would be permissible under the regulations of the Office of the Comptroller of Currency relating to common trust funds. Therefore, in order to protect the Fund and the participating investors (including the employee benefit plans) having an interest in the Liquidating Account from potential investment losses, Boston Safe decided to purchase the Notes from the Fund. Notice of this resolution was given to the appropriate representative of each of the participating investors having an interest in the Liquidating Account by telephone prior to the date of the transaction.

6. The purchase of the Notes was consummated on January 12, 1995 when Boston Safe purchased the Notes from the Fund for a lump sum cash payment of $25,031,269. This sum represented the amortized cost of the Notes (i.e. $24,993,915) plus the accrued interest owing on the Notes (i.e. $37,354) as of January 12, 1995, the date of the transaction. Therefore, Boston Safe states that the amount received by the Fund for the Notes represented the book value of the Notes on the date of the sale. This amount reflected the discounts received by the Fund when it purchased the Notes at a price that was slightly less than the par value of the Notes. The amortized cost of the Notes was determined by Boston Safe using the standard accounting methods employed by the Fund.

In this regard, Boston Safe used the straight-line method of amortization in calculating the amortized cost of the Notes as of January 12, 1995, the date of sale. The amortized cost of the Notes was determined using a series of computations.

First, the discount on the Notes at purchase was calculated as the difference between the par value of the Notes (i.e., the principal amount which the Issuer is obligated to repay upon the maturity of the Notes) and the price at which the Fund originally purchased the Notes on August 1, 1994. Thus, $25,000,000 (par value) − $24,988,375 (purchase price) = $11,625 (discount).

Second, in order to accrete the discount equally over the life of the Notes, Boston Safe computed the amount of the discount to be accreted on a daily basis by dividing the discount by the number of days the Fund anticipated holding the Notes (i.e., from August 1, 1994, the date of purchase, until maturity on July 10, 1995). Thus, $11,625 (discount) divided by 342 (number of days)[2] = $33.99123 (daily accretion factor).

Third, the accreted discount on the Notes as of January 12, 1995, the date of sale, was calculated by multiplying the daily accretion factor by the number of days the Fund had actually held the Notes on such date. Thus, $33.99123 (daily accretion factor) × 163 (number of days) = $5,540 (accreted discount).

Finally, the accreted discount was then added to the purchase price paid by the Fund for the Notes, with the final figure being the amortized cost of the Notes as of January 12, 1995. Thus, $5,540 (accreted discount) + $24,988,375 (purchase price) = $24,993,915 (amortized cost).

7. Prior to the consummation of the transaction, Boston Safe obtained valuations of the Notes as of the date of the sale from two independent pricing services, Kenny S&P Evaluation Services, Inc., and Muller Data Corporation. Boston Safe states that these pricing services are the industry standards with respect to the pricing of municipal bonds. The valuations of the Notes obtained from these independent pricing services were 85.50 percent of par value and 86.40 percent of par value, respectively. On the basis of these valuations, Boston Safe determined that the purchase price paid by Boston Safe to the Fund exceeded the aggregate fair market value of the Notes as of the date of the transaction. The purchase price was paid to the Liquidating Account and then distributed to participating investors holding interests in the Liquidating Account.

Boston Safe represents that the purchase price paid for the Notes was distributed to each of the participating investors in the Liquidating Account, including the employee benefit plans, based on their respective interests in that account. Such interests were determined based solely upon the relative values, including accrued interest on the Notes, of the investors' interests in the Fund on December 6, 1994. The value of an investor's interest in the Fund on December 6, 1994 was equal to the amounts deposited by or on behalf of the investor as of such date, plus its allocable share of the income of the Fund, less any withdrawals or distributions.

8. Boston Safe, as trustee of the Fund, believed that the sale of the Notes to Boston Safe was in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction. Boston Safe states that any sale of the Notes on the open market would have produced significant losses for the Fund and for the individual employee benefit plan investors involved. Boston Safe represents that the sale of the Notes by the Fund to Boston Safe benefitted the participating investors in the Fund having an interest in the Liquidating Account by placing such investors, including the employee benefit plans, in the same economic position they would have occupied absent the insolvency of the Issuer. The participating investors in the Fund benefitted further because the purchase price paid by Boston Safe for the Notes substantially exceeded the aggregate fair market value of the Notes, as determined by the two independent pricing services from whom valuations were obtained. In addition, Boston Safe states that the transaction was a one-time sale for cash in connection with which the Fund did not bear any brokerage commissions, fees, or other expenses.

9. Boston Safe represents that it took all appropriate actions necessary to safeguard the interests of the Fund investors, including the employee benefit plans, in connection with the sale of the Notes. Boston Safe ensured that each Fund investor with interests in the Liquidating Account received the appropriate amount of cash from Boston Safe representing its respective interest in the Liquidating Account.

10. Boston Safe states that the sale of the Notes by the Fund to Boston Safe resulted in an assignment of all of the Fund's rights, claims, and causes of action against the Issuer or any third party arising in connection with or out of the issuance of the Notes or the purchase of the Notes by the Fund. Boston Safe states further that if the exercise of any of the foregoing rights, claims or causes of action results in Boston Safe recovering from the Issuer or any third party an aggregate amount that is more than the sum of: (a) the purchase price paid for the Notes by Boston Safe (i.e. $25,031,269); (b) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes

[2] For this purpose, Boston Safe represents that it is standard practice to determine the number of days by excluding the date of purchase and the date of maturity on the Notes.

from the Fund (i.e. $6085);[3] and (c) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes, Boston Safe will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

11. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) The sale of the Notes by the Fund was a one-time transaction for cash; (b) the Fund received an amount equal to the amortized cost of the Notes, plus accrued but unpaid interest, at the time of sale, which was greater than the aggregate fair market value of the Notes as determined by independent pricing services at the time of sale; (c) the Fund did not pay any commissions or other expenses with respect to the sale; (d) Boston Safe, as trustee of the Fund, determined that the sale of the Notes was in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction; (e) Boston Safe took all appropriate actions necessary to safeguard the interests of the Fund in connection with the transactions and ensured that each Fund investor having an interest in the Liquidating Account received the appropriate amount of cash representing its respective interest in the Liquidating Account; and (f) Boston Safe will promptly refund to the Fund any amounts recovered from the Issuer or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Notes, if such amounts are in excess of: (i) The purchase price paid for the Notes by Boston Safe (i.e. $25,031,269); plus (ii) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes from the Fund (i.e. $6085); plus (iii) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate plan fiduciaries for each employee benefit plan that was a Fund investor with an interest in the Liquidating Account at the time of the transaction. Notice to the plan fiduciaries shall be made within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Times Mirror Savings Plus Plan (the Plan) Located in Los Angeles, California; Proposed Exemption

[Application No. D–10019]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed extensions of credit (the Loans) to the Plan by the Times Mirror Company (the Employer), the sponsor of the Plan, with respect to three guaranteed investment contracts issued by Confederation Life Insurance Company of Canada (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan could receive in arm's-length transactions with unrelated parties;

(b) No interest and/or expenses are paid by the Plan in connection with the transactions;

(c) Repayment of the Loans will be restricted to the GIC Proceeds, defined as cash proceeds obtained by the Plan from Confederation, state guaranty funds, any successor to Confederation, or any other third party making payments with respect to the obligations of Confederation under the GICs;

(d) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(e) In any sale of the GICs to the Employer, the Plan will receive a purchase price which is the higher of (1) the fair market value of the GIC less any amounts previously received by the Plan with respect to the GIC, or (2) the value of the GIC as set forth in paragraph 6 of this Proposed Exemption, with such purchase price determination to be made by the Bank of America, the Plan's Trustee (the Trustee).

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which includes a cash or deferred arrangement which is intended to qualify under sections 401(a) and 401(k) of the Code. In addition to salary deferral contributions, the Plan provides for voluntary participant contributions and Employer matching contributions from company profits. The employees eligible to participate in the Plan are employees of the Employer and seventeen subsidiaries including the Baltimore Sun Company, Matthew Bender & Company, Newsday, Inc., and the Sporting News Publishing Company. The Plan currently has approximately 17,600 participants, and Plan assets totalled $397.9 million as of December 31, 1994.

Individual participant accounts are maintained within the Plan. The Plan also holds accounts attributable to a payroll-based tax credit employee stock ownership plan on behalf of certain participants (PAYSOP Accounts), although no contributions have been made to the PAYSOP Accounts with respect to participant compensation paid after December 31, 1986. The PAYSOP Accounts are invested in Employer stock. All other accounts are invested at the direction of individual Plan participants among five investment funds, one of which is the Income Fund. The Income Fund invests in fixed income contracts, including the GICs, and short-term marketable securities. As of December 31, 1994, the Income Fund had assets of $103.4 million, and 9,473 Plan participants had a portion of their account balances invested in the Income Fund.

The Employer is the Plan administrator and named fiduciary under the Act. The Employer's authority to control and manage the Plan is delegated to the Retirement Plan Administrative Committee, the members of which are appointed by the Retirement Plan Committee, a sub-committee of the Board of Directors of the Employer. The assets of the Plan are held in Trust by the Bank of America. Investment authority is held by the

[3] This amount represents the difference between the original discount received by the Fund on the purchase of the Notes ($11,625) and the accreted discount received by the Fund for purposes of the sale of the Notes to Boston Safe at the amortized cost ($5,540). Thus, $11,625 − $5,540 = $6085.

Retirement Plan Committee which may invest Plan assets or may appoint an investment manager or managers. In any event, the Retirement Plan Committee is charged with the responsibility to monitor the investment performance of Plan assets.

2. The Employer is organized under the laws of the state of Delaware with its principal offices located in Los Angeles, California. It is publicly owned, and its shares are traded on the New York Stock Exchange. The Employer's primary business activities are newspaper publishing and the publication of professional information.

3. Among the assets of the Income Fund are the three GICs issued by Confederation. The GICs were purchased in April 1990, June 1990 and April 1991. Each of the GICs has a length of five years, and have interest rates of 9.43%, 9.21%, and 8.38% respectively. The GICs purchased in June 1990 and April 1991 permit benefit responsive withdrawals to fund benefit payments, investment fund transfers and hardship and other in-service withdrawals. The GIC purchased in April 1990 does not permit withdrawals without penalty. The terms of each GIC provide that a payment is to be made to the Plan each year consisting of the interest earned for the year less any withdrawals during the year. All interest payments due from Confederation through 1994 have been paid to the Plan. A final payment of principal and interest is due on the maturity date of each GIC. The final payment on the GIC purchased in April of 1990 was due on April 12, 1995, and the final payment on the GIC purchased in June of 1990 was due on July 1, 1995. Such payments have not been made by Confederation, nor has Confederation paid the April 1995 interest payment due on the GIC purchased in April 1991. As of August 12, 1994 the three GICs had a total book value (principal payments plus accrued interest) of $7.14 million.

4. On August 11, 1994, Canadian insurance company regulators seized the assets of Confederation. On the following day, the State of Michigan Insurance Commissioner seized the U.S. assets of Confederation and commenced legal action to place the U.S. operations of Confederation in a rehabilitation proceeding.[4] As a result of these actions, withdrawals and interest payments have been suspended, except to the extent the Plan holds a benefit-responsive contract. In the latter case, the Plan may withdraw up to 1.5% of the contract value each year for the purpose of making participant-requested withdrawals. A Special Deputy Rehabilitator (the Rehabilitator) has been appointed by the State of Michigan to oversee the rehabilitation of Confederation. The Rehabilitator will set the interest rate to be paid on Confederation contracts following the seizure by the Michigan authorities. The applicant represents that it is not possible to determine the extent to which earnings under the Rehabilitation Plan will fall short of the interest rates stated in each GIC, when interest and maturity payments will resume, and the extent to which the Plan will suffer a loss of principal. In order to relieve the uncertainty with respect to the GICs, and to prevent losses that may result from the Rehabilitation of Confederation, the Employer proposes to enter into the transactions described below.

5. The Employer proposes to make Loans to the Plan pursuant to a written agreement (the Agreement) under which the Loans will be non-interest bearing and non-recourse against the Plan and its participants and beneficiaries, except for the GIC Proceeds. In addition, the Plan will incur no expenses related to the Loans. The Loans will be made over at least the remaining terms of the GICs to fund any withdrawals, including investment fund transfers, and hardship and other in-service withdrawals, (offset by amounts paid for withdrawals by Confederation, see 4 above). In addition, the Employer will make Loans to enable the Income Fund to receive the interest payments due under the GICs. Interest through October 31, 1994, will be calculated at the rate specified in each GIC. Interest from November 1, 1994 until the date the Rehabilitator announces an interest rate for the GICs will be a Market Rate of interest described below. Interest for the period following the Rehabilitator's announcement will be at the rate set by the Rehabilitator. The Market Rate of interest for each month will be the rate reported for one year GICs in the Wall Street Journal on the last business day of the prior month. If the interest rate announced by the Rehabilitator exceeds the Market Rate, the Employer will advance the difference for the period the Market Rate was used. Further, the Employer may, at any time, lend the Plan the entire amount of principal and interest, as computed above, due under the GICs to allow the Plan to reinvest the proceeds and increase the return to Plan participants.

The Agreement also provides that repayment may only be made from the GIC Proceeds. To the extent the GIC proceeds are insufficient to repay the Loans, repayment will be waived by the Employer.

6. In addition to the Loans, the Agreement provides that Employer may purchase the GICs from the Plan. Upon the maturity date of each GIC, the Employer has the option of continuing to make the Loans to fund withdrawals and interest payments or to purchase the GICs as described herein. Within 60 days of the latest of: (a) The maturity date of the GIC; (b) the announcement of the Rehabilitation interest rate, or (c) the date of grant of this proposed exemption; the Employer may purchase each GIC from the Plan for the principal amount of each GIC plus interest at the contract rate through October 31, 1994, and the higher of the Market Rate or the Rehabilitation Rate from November 1, 1994 through the date of sale, less previous withdrawals and outstanding Loans (exclusive of Loans made to fund withdrawals) with respect to that GIC. In no event will the sales price for each GIC be less than the fair market value of the GIC less amounts previously received by the Plan with respect to the GIC.

7. The Trustee has determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries. Further, should the Employer decide to purchase the GICs, such purchase price will be the higher of (a) the fair market value of the GICs (less amounts previously received by the Plan), or (b) the value as computed in 6. above, as determined by the Trustee.

8. In summary, the Employer represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The transactions will enable the Plan to recover all amounts due with respect to the GICs; (b) the Loans will able the Plan to resume the ability to fund benefit payments, participant loans, hardship withdrawals and investment fund transfers within the Plan; (c) repayment of the Loans will be restricted to the GIC proceeds; (d) repayment will be waived to the extent the Loans exceed the GIC proceeds; (e) no interest or expenses will be incurred by the Plan with respect to the transactions; and (f) the Trustee has determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries, and in the event of a

[4] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs.

sale of the GICs to the Employer, the price will be determined by the Trustee.

NOTICE TO INTERESTED PERSONS: Notice to interested persons will be provided within 30 days of the date of publication of this Notice in the **Federal Register**. Comments and requests for a hearing are due 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, (202) 219–8881. (This is not a toll-free number.)

Acushnet Company Employee Savings Plan (the Plan) Located in Fairhaven, Massachusetts; Proposed Exemption

[Application No. D–10026]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of guaranteed investment contract No. GA–5244 (the GIC) issued by Mutual Life Insurance Company of New Jersey (Mutual Benefit), to the Acushnet Company (the Employer), a Delaware corporation and a party in interest with respect to the Plan, provided the following conditions are met: (1) The sale is a one-time transaction for cash; (2) the Plan experiences no loss and incurs no expense from the sale; (3) the Plan receives as consideration for the sale the greater of either (a) the fair market value of the GIC on the date of the sale, or (b) the accumulated book value of the GIC as set forth in paragraph 3 of this Notice, with such determination to be made by the State Street Bank and Trust Company, the Plan fiduciary with respect to the GIC.

Summary of Facts and Representations

1. The Employer is a Delaware corporation with its principal offices in Fairhaven, Massachusetts. It is a wholly-owned subsidiary of American Brands, Inc. a publicly held corporation whose stock is traded on the New York Stock Exchange. The Employer is engaged in the manufacture and distribution of golf balls, golf shoes, gloves and related products.

2. The Plan is a defined contribution plan with individual accounts for Plan participants which is intended to qualify under sections 401(a) and 401(k) of the Code. Participants have the right to self direct the investment of the assets in their individual accounts. Plan assets totaled $70.6 million as of February 28, 1995. Also as of February 28, 1995, there were 2,183 Plan participants and beneficiaries who will be affected by the proposed transaction.

Prior to July 1, 1991, the Plan permitted investments in two investment funds. One of the investment funds, the Fixed Fund, was invested in several guaranteed investment contracts including the GIC issued by Mutual Benefit. The GIC was purchased effective December 1, 1990, with a maturity date of September 30, 1992, and an interest rate of 8%. The GIC was to be paid in full by Mutual Benefit on its maturity date. The GIC represented approximately 10% of the Fixed Fund's assets. Effective July 1, 1991, the Plan was amended to transfer the GIC from the Fixed Fund to a new investment fund called the Frozen Mutual Benefit GIC Fund (the Frozen GIC Fund). The sole asset of the Frozen GIC Fund is the GIC which is the subject of this proposed exemption. The Plan was also amended to prohibit: (1) Investments into the Frozen GIC Fund; (2) investment transfers from the Frozen GIC Fund into other investment funds; and (3) withdrawals from the Frozen GIC Fund for loan requests. On April 1, 1992, the Fixed Fund was discontinued and six new funds were made available to Plan participants for the investment of their individual accounts.

3. On July 16, 1991, the New Jersey Department of Insurance took control of Mutual Benefit pursuant to an order of the Superior Court of New Jersey. The court imposed a moratorium on cash withdrawals from Mutual Benefit's GICs.[5] On November 10, 1993, the New Jersey Superior Court approved a rehabilitation plan for Mutual Benefit (the Rehabilitation Plan). On April 29, 1994, the GIC was restructured and transferred to MBL Life Assurance Corporation (MBLLAC). Pursuant to the Rehabilitation Plan, principal payments with respect to the GIC will generally not be made until December 31, 1999, a lower rate of interest will be credited on the GIC for periods after December 31, 1991 than is guaranteed under the terms of the GIC and interest will be credited each year after 1994 based on MBLLAC's investment performance.

In lieu of subjecting participants of the Plan to the investment risks associated with retaining the GIC, and to permit the participants to redirect the funds invested in the Mutual Benefit GIC to safer investments without loss to the individual accounts of the participants in the Plan, the Employer proposes to purchase the GIC from the Plan.[6] In this regard, the Employer proposes to pay the Plan, in a one-time cash sale transaction, an amount that is not less than the accumulated book value of the GIC, which was $3,722,435 as of May 31, 1995. The accumulated book value is the total amount paid by the Plan for the GIC plus interest, less prior withdrawals. Interest will be calculated at the contract rate of 8% until September 30, 1992 which was the maturity date of the GIC. For the period beginning on October 1, 1992 through December 31, 1992, interest will be credited at a rate equal to 4%. For the period beginning on January 1, 1993 through December 31, 1994, interest will be credited at an annual rate equal to 3.5%. For 1995, interest will be credited at 3.55%. The rates of interest for periods after the maturity date of the GIC are the rates applicable to the GIC for those periods according to the Rehabilitation Plan. No expenses will be incurred by the Plan for the proposed transaction. In no event will the purchase price be less than the fair market value of the GIC on the date of sale.

4. The State Street Bank and Trust Company of Boston, Massachusetts, (State Street) which was the Plan trustee at the time the GIC was purchased, is the current Plan fiduciary with respect to the GIC. At the time of the consummation of the transaction, State Street as Plan fiduciary will determine the purchase price for the GIC with such price to be the higher of (a) The fair market value of the GIC, or (b) the accumulated book value of the GIC as described in 3. above.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a)

[5] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[6] The applicant previously applied for an administrative exemption to permit the Employer to make interest-free loans to the Plan which would enable the Plan to make benefit distributions to Plan participants (Exemption Application D–9146). The Department responded by letter dated August 5, 1992, that such loans may be encompassed by Prohibited Transaction Class Exemption (PTCE) 80–26 (45 FR 28545, April 29, 1980), and thus to the extent the transactions satisfy the conditions of PTCE 80–26, an administrative exemption is not necessary. The applicant represents that the Employer has not implemented the interest-free loan program described in application D–9146.

of the Act because: (a) The proposed transaction is a one-time transaction for cash; (b) the proposed transaction will enable the Plan and its participants and beneficiaries to avoid any risks associated with the continued holding of the GIC; (c) the Plan will receive the higher of: (1) The fair market value of the GIC or (2) the accumulated book value of the GIC, with such determination be made by State Street; and (d) the Plan will not incur any expenses or loss from the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

New Bedford Institution for Savings Employee Stock Ownership Plan (the Plan) Located in New Bedford, Massachusetts; Proposed Exemption

[Application No. D–10033]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past acquisition and holding by the plan of certain stock warrants (the Warrants) in connection with a merger (the Merger) of NBB Bancorp, Inc. (NBB), the parent company of the Plan's sponsor, New Bedford Institution for Savings (NBB Bank), with Fleet Financial Group, Inc. (Fleet), provided the following conditions were satisfied: (a) The Plan's acquisition and holding of the Warrants occurred in connection with the Merger pursuant to which (i) all shares of common stock of NBB (NBB Stock) were converted, at the election of the shareholder, into cash or shares of common stock of Fleet (Fleet Stock) and (ii) each shareholder received 0.28 Warrants for each share of NBB Stock; (b) the acquisition and holding of the Warrants resulted from the independent action of NBB as a corporate entity, and all holders of NBB Stock, including the Plan, were treated in the same manner with respect to the Merger; and (c) the Warrants were automatically issued to the Plan, which made no affirmative election to acquire the Warrants.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 27, 1995.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan which, prior to the Merger, was maintained by NBB Bank, a Massachusetts savings bank and wholly owned subsidiary of NBB, a Delaware corporation. As of September 30, 1994, the Plan had 349 participants and total assets of approximately $7 million. As of that date, the assets of the Plan consisted of NBB Stock and cash.[7] The Plan is administered by a committee (the ESOP Committee) which, prior to the Merger, was appointed by the Board of Directors of NBB Bank and is currently composed of members appointed by Fleet Bank of Massachusetts, N.A. (Fleet Bank). The trustee of the Plan is Investors Bank and Trust Company (the Trustee), a Massachusetts trust company.

2. Fleet is a Rhode Island corporation which is parent company to a number of direct and indirect wholly-owned subsidiary banks, including Fleet Bank. On May 9, 1994, Fleet entered into an Agreement and Plan of Merger with NBB (the Agreement), providing for the Merger. As part of the Merger, Fleet Bank and NBB Bank entered into a separate merger agreement providing for the merger of NBB Bank with and into Fleet Bank. As a result of the Merger, Fleet Bank became the sponsor of the Plan.[8]

3. Under the terms of the Agreement, on the effective date of the Merger, January 27, 1995 (the Effective Date), each share of NBB Stock issued and outstanding immediately prior to the Effective Date (except treasury shares, shares held by NBB, Fleet or any of their subsidiaries in a fiduciary capacity or as collateral for a debt, and certain dissenting shares) was converted, at the election of the shareholder, into either cash in the amount of $48.50 or 1.457 shares of Fleet Stock. Each shareholder also received 0.28 Warrants for each share of NBB Stock. Each Warrant confers upon its holder the right to acquire one share of Fleet Stock at a purchase price of $43.875. Warrants may be exercised at any time during the five-year period commencing on the first anniversary of the Effective Date. The Warrants are treated as separate securities under federal securities laws and are traded on the New York Stock Exchange separately from Fleet Stock. The applicant represents that the Warrants and Fleet Stock issued in connection with the Merger were issued pursuant to an appropriate registration statement filed with the U.S. Securities and Exchange Commission prior to the Effective Date.

4. The applicant represents that immediately prior to the Effective Date, the Plan held 126,061 shares of NBB Stock, all of which were allocated to participants' accounts under the Plan. The Plan's holdings represented approximately 1.3% of the total issued and outstanding shares of NBB Stock.

5. The terms of the Agreement required the termination of the Plan upon the consummation of the Merger.[9] In preparation for the termination of the Plan, and the subsequent distribution of the participants' accounts, NBB Bank amended the Plan to permit the participants to direct the Trustee to exchange the NBB Stock allocated to their Plan accounts for cash, Fleet Stock or a combination thereof in accordance with the terms of the Agreement. The applicant represents that in order to avoid a prohibited transaction under section 406(a)(2) of the Act, the Plan was also amended to direct the Trustee to sell the Warrants received by the Plan as soon as practicable.[10]

6. Prior to the Effective Date, each participant in the Plan received written information concerning his/her right to elect cash or Fleet Stock in exchange for the NBB Stock allocated to his/her account, and an election form to be returned to the ESOP Committee.[11] The

[7] The applicant represents that the NBB Stock constituted ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act, and therefore, the Plan's ownership of such stock satisfied the requirements of section 407(a) of the Act. In this proposed exemption, the Department expresses no opinion as to whether the requirements of section 407 of the Act were satisfied.

[8] The applicant represents that each shareholder of NBB Bank, including the Plan, was entitled to vote on the Merger. The right to vote the Plan's NBB Stock was passed through to the participants.

[9] The applicant represents that the Plan was terminated effective September 30, 1994. The termination was approved by the Internal Revenue Service by letter dated June 12, 1995. The Plan currently is in the process of distributing its assets to the participants and beneficiaries.

[10] In this regard, we note that although Plan provisions directed the Trustee to sell the Warrants, the Department has taken the position that a trustee may follow such plan provisions only to the extent permitted by section 404(a)(1)(D) of the Act, i.e., insofar as such plan provisions are consistent with the provisions of Titles I and IV of the Act. For example, if a conflict between the prudence standard and plan provisions occurs, section 404(a)(1)(D) requires that plan provisions give way to the statutory requirements. Thus, in this case, the Trustee was responsible for determining, among other things, whether following such provisions would result in an investment decision which would be prudent for the Plan and would produce a result which would be for the exclusive purpose of providing benefits to the Plan participants and beneficiaries.

[11] Out of over 300 Plan participants, only 14 failed to make an election. As to these participants, the ESOP Committee directed that they be treated in the same manner as non-Plan holders of NBB Stock who made no election. Accordingly, like the

Continued

Plan acquired 51,116 shares of Fleet Stock and cash in the amount of $4,412,384 as a result of the Merger.[12] The Plan also acquired 35,295 Warrants. The applicant represents that the Warrants were automatically issued to each shareholder of NBB Stock in connection with the Merger on January 27, 1995. Thus, the Plan did not make any affirmative decision to accept the Warrants. Pursuant to the terms of the Plan as amended, the Warrants were sold by the Trustee in a blind transaction on the open market on April 7, 1995, for a price equal to $4.428 per Warrant or $156,301.50 in the aggregate. This amount was allocated among the Plan participants' accounts in the same proportion as the NBB Stock held in a participant's account immediately prior to the Effective Date bore to the total NBB Stock held by the Plan at such time.

7. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The Plan's acquisition and holding of the Warrants resulted from an independent action of NBB as a corporate entity; (b) all holders of NBB Stock, including the Plan, were treated in the same manner in connection with the Merger; and (c) the Warrants were automatically issued to the Plan, which made no affirmative election to acquire the Warrants.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–19663 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–67; Exemption Application No. D–09869, et al.]

Grant of Individual Exemptions; Bankers Trust Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bankers Trust Company (Bankers Trust) Located in New York, NY; Exemption

[Prohibited Transaction Exemption 95–67; Exemption Application No. D–09869]

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of October 28, 1994, to the cash sale of certain structured notes (the Notes) for $432,131,250 by three collective investment funds for which Bankers Trust acts as trustee (the Funds) to

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non-Plan holders of ''no election'' shares, these participants received Fleet Stock in connection with the Merger pursuant to provisions in the Agreement requiring that a minimum amount of Fleet Stock be issued in connection with the Merger and establishing a procedure for allocating such Stock among the holders of NBB Stock.

[12] The applicant represents that the Fleet Stock constitutes ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act and, therefore, the Plan's ownership of Fleet Stock satisfies the requirements of section 407(a) of the Act. In this proposed exemption, the Department expresses no opinion as to whether the requirements of section 407(a) of the Act are satisfied.

Bankers Trust New York Corporation (BTNY), a party in interest with respect to employee benefit plans invested in the Funds, provided that the following conditions were met:

(a) Each sale was a one-time transaction for cash;

(b) Each Fund received an amount which was equal to the greater of either: (i) the par value of the Notes owned by the Fund at the time of sale, (ii) the purchase price paid by the Fund for its interest in each of the Notes, or (iii) the fair market value of the Notes owned by the Fund, as determined by bid quotations for the Notes obtained from independent broker-dealers at the time of sale;

(c) The Funds did not pay any commissions or other expenses with respect to the sale;

(d) Bankers Trust, as trustee of the Funds, determined that the sale of the Notes was in the best interests of each Fund, and the employee benefit plans invested in the Fund, at the time of the transactions;

(e) Bankers Trust took all appropriate actions necessary to safeguard the interests of the Funds, and the employee benefit plans invested in the Funds, in connection with the transactions; and

(f) The Funds received a reasonable rate of return during the period of time that the Funds held the Notes.

EFFECTIVE DATE: This exemption is effective as of October 28, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 15, 1995, at 60 FR 31508.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Masik Tool and Die Corporation Profit Sharing Plan (the Plan) Located in Cudahy, Wisconsin; Exemption

[Prohibited Transaction Exemption 95–68; Application No. D–09899]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The past leasing (the Lease) of a lathe (the Lathe) owned by the Plan and certain individually-directed accounts in the Plan (the Accounts) to Masik Tool and Die Corporation (Masik), a party in interest with respect to the Plan; and (2) the proposed cash sale (the Sale) of the Lathe by the Accounts to Masik.

This exemption is conditioned on the following requirements: (1) With respect to the past Lease—

(a) the terms and conditions of the Lease have been at least as favorable to the Plan and the Accounts as those obtainable in an arm's length transaction with an unrelated party; (b) the value of the Lathe did not exceed twenty-five percent of the assets of the Plan or of any of the Accounts at any time during the duration of the Lease; (c) an independent, qualified fiduciary approved of the Lease on behalf of the Plan and the Accounts and has monitored the Lease throughout its entirety; (d) the rental amount received by the Plan and the Accounts was based upon the fair market rental value of the Lathe; and (e) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik files Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

(2) With respect to the prospective Sale—

(a) the terms and conditions of the Sale are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale is a one-time cash transaction; (c) the Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (d) the Sale price for the Lathe is based upon its fair market value on the date of the Sale as determined by an independent, qualified appraiser; and (e) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik files Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

EFFECTIVE DATE: This exemption is effective as of June 1, 1988 with respect to the Lease. The exemption is effective as of the date of the grant of the exemption with respect to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption Notice published on April 27, 1995 at 60 FR 20767.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

The Amended and Restated Profit Sharing Retirement Plan for Employees of 84 Lumber Company (the Profit Sharing Plan) and The Amended and Restated Savings Fund Plan for Employees of 84 Lumber Company (the Savings Plan; together, the Plans) Located in Eighty Four, Pennsylvania; Exemption

[Prohibited Transaction Exemption 95–69; Exemption Application Nos. D–09945 and D–09946]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The extension of credit by 84 Lumber Company (Lumber) to the Plans in the form of loans (the Loans) with respect to Guaranteed Investment Contract, Number CG0124601A issued by Executive Life Insurance Company (ELIC) to the Profit Sharing Plan and Guaranteed Investment Contract No. CG0124701A (both Contracts together, the GICs) issued by ELIC to the Savings Plan; and (2) the Plans' potential repayment of the Loans (the Repayments), provided: (a) All terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plans; (c) the Loans are made with respect to amounts invested by the Plans in the GICs; (d) the Repayments are restricted to the amounts, if any, paid to the Plans after the date of the Loans by ELIC or other responsible third parties with respect to the GICs (the GIC Proceeds); (e) the Repayments under each Loan will not exceed the total amount of the Loan; and (f) the Repayments are waived with respect to the amount by which any Loan exceeds the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 15, 1995 at 60 FR 31515.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Universal Underwriters Group Thrift Plan (the Plan) Located in Overland Park, Kansas; Exemption

[Prohibited Transaction Exemption 95–70; Application No. D–09947]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application

of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The extensions of credit (the Loans) to the Plan from Universal Underwriters Insurance Company (the Employer), with respect to a guaranteed investment contract (the GIC) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans upon the receipt by the Plan of payments under the GIC; and (3) the assignment by the Plan to the Employer of all claims or causes of action it may have against the Plan's former GIC placement advisor for recommending that the Plan purchase the GIC; provided the following conditions are satisfied:

(A) All terms and conditions of such transaction are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(C) The Loans will be repaid only out of amounts paid to the Plan by Confederation, its successors, or any other responsible third party;

(D) Repayment of the Loans will be waived to the extent that the Loans exceed GIC proceeds;

(E) A qualified independent fiduciary will represent the interests of the Plan throughout the duration of the proposed transaction; and

(F) The Employer's recovery resulting from a cause of action assigned to the Employer by the Plan will be limited to the amount necessary to pay for litigation expenses and to pay off the Plan's outstanding Loan balance and any excess recovery will be transferred back to the Plan.

WRITTEN COMMENTS: The Department received a total of 6 written comments. All 6 commentators urged the Department to grant the exemption. No commentators requested a hearing.

After giving full consideration to the entire record, including the written comments, the Department has determined to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on June 7, 1995, at 60 FR 30109.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–19664 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–56]

Mellon Bank, N.A., and its Affiliates (Mellon)

AGENCY: Department of Labor.

ACTION: Notice of Technical Correction.

On July 12, 1995, the Department of Labor (the Department) published in the **Federal Register** (60 FR 35933) an individual exemption which permits: (1) the purchase and sale of securities, including the common stock of Mellon Bank Corporation (MBC Stock), between various Indexed Accounts, as defined therein, which are sponsored, maintained, trusteed, or managed by Mellon; (2) the purchase and sale of securities, including MBC Stock, between Indexed Accounts and various large accounts (the Large Accounts), as defined therein, pursuant to portfolio restructuring programs for the Large Accounts; and (3) the acquisition, holding or disposition of MBC Stock by Indexed Accounts for the purpose of maintaining strict quantitative conformity with the relevant index upon which the Indexed Account is based.

With respect to Section IV(e), the first full sentence in the second column on 60 FR 35935, relating to the definition of a ''Large Account'' for purposes of the exemption, should read as follows:

''. . . As noted in Section I(h)(4), a ''Large Account'' shall only be an account . . . etc.''

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams, of the Department, at (202) 219–8194.

Signed at Washington, D.C., this 4th day of August, 1995.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 95–19665 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Record Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before September 25, 1995. Once the appraisal of the records is completed, NARA will

send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Consolidated Farm Services Agency (N1–145–95–1). Administrative Management records.

2. Department of the Army (N1–AU–95–5). Accelerated destruction of temporary indexes and related files relating to investigative activities.

3. Department of Health and Human Services, Administration for Children and Families (N1–102–93–1). Program evaluation working files of the Office of Child Development, 1971–74.

4. Department of the Interior, Bureau of Reclamation (N1–115–94–1, N1–115–94–2, N1–115–94–3, and N1–115–94–9). General records pertaining to administrative, financial, and personnel management.

5. Department of Justice (N1–60–95–5). Swine flu administrative claim file case tracking system.

6. Department of Justice, Bureau of Prisons (N1–129–95–3). Requests by Federal agencies to waive purchases from Federal Prison Industries.

7. Department of State, Bureau of Politico-Military Affairs (N1–59–95–13). Routine, facilitative, and duplicative records relating to export policy.

8. Department of State, Bureau of Economic and Business Affairs (N1–59–94–25, –27, and –28). Routine, facilitative, and duplicative records relating to trade and commercial affairs.

9. Department of State, Office of the Legal Adviser (N1–76–95–1). Records relating to the Heathrow arbitration.

10. Department of Transportation, Office of the Secretary (N1–398–93–1). Employee fitness center data information system.

11. Department of Transportation, Office of the Secretary (N1–398–94–4). Routine and facilitative files concerning commercial space program activities. Substantial program records are proposed for permanent retention.

12. Department of Treasury of the Office of Federal Financing Bank. (N1–56–94–1). Loan Administration Files and Office Administration Files.

12. Department of Treasury, Internal Revenue Service (N1–58–95–1). Applications to participate in the tax return electronic filing programs.

14. Census Bureau, Geography Division (N1–29–95–1). Cronaflex (mylar) county, Place, and metropolitan maps of the 1980 decennial census. Microform maps are scheduled as permanent.

15. Environmental Protection Agency (N1–412–94–2). Electronic records, pollution enforcement and removal actions, and revised dispositions of various agencywide textual records.

16. National Archives and records Administration (N2–30–92–1). Accessioned records of the Bureau of Public Roads relating to road construction and war material surplus that were reappraised as temporary.

17. Peach Corps (N1–490–95–11). Trainee Request Handbooks.

18. Small Business Administration, Office of Disaster Assistance (N1–309–95–1). Listings of employment history of disaster employees.

19. Tennessee Valley Authority (N1–142–94–5). Records from the Division of Air and Water Resources determined during archival processing to lack sufficient archivial value to warrant permanent retention.

20. United States Information Agency (N1–306–94–5). Routine, facilitative, and duplicative records relating to overseas broadcasting.

Dated: August 1, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–19569 Filed 8–8–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336]

Northeast Nuclear Energy Co. (Millstone Nuclear Power Plant), (License Nos. DPR–21, DPR–65); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petitions filed by Mr. Anthony J. Ross (Petitioner) on August 7, 1993 and May 23, 1994, as supplemented by a letter from Petitioner on August 17, 1994. The Petition dated August 7, 1993 requested that the Executive Director for Operations take escalated enforcement action with regard to alleged violations at Millstone Nuclear Power Station. Specifically, Petitioner requested that a Severity Level II violation be issued against his department manager and a Severity Level III violation be issued against his first-line supervisor for apparent violation of the provisions of 10 CFR 50.7, that sanctions be instituted against these individuals for engaging in deliberate misconduct as described in 10 CFR 50.5, and that the first-line supervisor be removed from his position until a satisfactory solution to the problem can be achieved.

On May 23, 1994, Petitioner filed another Petition, requesting that the NRC issue a Severity Level II violation and other sanctions against the Maintenance Manager at the Millstone plant (Unit 1) and remove the Maintenance Manager from his position until resolution of the issues raised in his complaint. This additional Petition was supplemented on August 17, 1994 in which Petitioner requested that Severity Level I violations and other sanctions be issued against the Senior Vice President and the Chief Executive Officer at Millstone and that these individuals be removed from their

positions until a satisfactory solution to the problem can be achieved.

Based on a review of Petitioner's request and supplemental submission, the Licensee's responses dated October 12, 1993, August 4, 1994, and March 15, 1995, the report of NRC's Office of Investigations (OI Report No. 1–93–044), and the decisions of the Department of Labor on complaints filed by the Petitioner in these cases, the Director, Office of Enforcement, has denied these Petitions. The reasons for the denial are explained in the ''Director's Decision under 10 CFR 2.206'' (DD–95–17) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 2nd day of August, 1995.

James Lieberman, Director,

Office of Enforcement.

[FR Doc. 95–19636 Filed 8–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; (Millstone Nuclear Power Station, Unit 1) (License No. DRP–21); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. Clarence O. Reynolds (Petitioner) dated August 22, 1993, as supplemented by letters dated October 19, 1993, June 29, 1994, and August 17, 1994. The Petition requested that the Executive Director for Operations take immediate escalated enforcement action with regard to Millstone Nuclear Power Station Unit 1. Specifically, Mr. Reynolds requested that multiple Severity Level II and III violations be issued against the Millstone Unit 1 Maintenance Department, that suspensions of Maintenance Department Management be instituted pending a complete investigation, and that the Executive Director for Operations' (EDO's) office insist that Mr. Reynolds be immediately reinstated as maintenance mechanics pending this investigation.

Based on a review of Petitioner's request and supplemental submission, the Licnesee's responses dated October 25, 1993, August 16, 1964, and January 27 and March 16, 1995. the report officer of investigations (OI Report No. 1–93–047R), and the decision of the Department of Labor on Petitioner's complaint, the Director, Office of Enforcement, has denied these Petitions. The reasons for the denial are explained in the ''Director' Decision under 10 CFR 2.206'' (DD–95–16) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filled with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, MD this 2nd day of August 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 95–19635 Filed 8–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–9 (50–267)]

Public Service Company of Colorado, Fort St. Vrain Independent Spent Fuel Storage Installation; Issuance of Amendment to Materials License SNM–2504

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Materials License No. SNM–2504 held by the Public Service Company of Colorado (PSC) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) Nuclear Power Plant site in an Independent Spent Fuel Storage Installation (ISFSI), located on the high plains in Weld County, Colorado, 55 kilometers (35 miles) north of Denver, Colorado. The amendment is effective as of the date of issuance.

By applications dated July 21, and August 24, 1994, PSC requested amendments to its license for the ISFSI to allow (1) the construction of new gas lines for the purpose of repowering the FSV power station and (2) the drilling of new gas wells near the ISFSI. These amendments are required by ISFSI License Condition 16, which states:

—No new gas or oil pipelines shall be installed within one-half mile of the ISFSI without prior approval as evidenced by a license amendment.'' Therefore, this amendment allows construction of gas pipelines and new wells as described in the PSC applications dated July 21, and August 24, 1994.

A safety evaluation report prepared by NRC staff concludes that there is reasonable assurance that the public health and safety will remain protected by activities authorized by this license amendment and that the environmental impact will remain insignificant.

The Commission has determined that the amendment applications comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chap. I, which are set forth in the license amendment.

The Commission has determined that the amendment does not involve significant new safety information of a type that differs from any evaluated by previous Commission safety review. It does not involve a significant increase in the probability or consequences of an accident. It does not involve a significant decrease in a safety margin. Thus, it does not involve a significant hazards consideration. Therefore, the Commission has determined that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected and that prior public notice of the amendment is not required under 10 CFR 72.46(b)(2). Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has also determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.21, an environmental assessment need not be prepared in connection with issuance of the amendment. In support thereof, the Commission has concluded that this revision of the Materials License does not involve any changes in the scope or type of operations presently authorized by the license. Further, the Commission notes that (1) the integrity of the ISFSI is not threatened as a result of the activities to be conducted under the amendment, and (2) the work authorized under the amendment is to take place within the owner-controlled area, an area previously disturbed as part of construction and subsequent

decommissioning of FSV as well as the ISFSI. In light of the foregoing, this amendment meets the conditions that (i) there is no significant change in the types or significant increase in the amounts of any effluent that may be released offsite, (ii) there is no significant increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no significant increase in the potential for, or consequences from radiological accidents. Therefore, the categorical exclusion in 10 CFR 51.22(c)(11) applies and neither an environmental assessment nor an environmental impact statement is required for this action.

For further details with respect to this action, see (1) the amendment applications amendment dated July 21, and August 24, 1994, and (2) additional information dated July 12, 1995. These items are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room at the Weld County District Public Library, 23rd Avenue Branch, Greeley, Colorado 80631.

Dated at Rockville, MD, this 31st day of July 1995.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–19637 Filed 8–8–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on June 22, 1995 (60 FR 32568). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1, 1995, and June 30, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked in June 1995.

Schedule B

No Schedule B authorities were established or revoked in June 1995.

Schedule C

The following Schedule C authorities were established in June in 1995.

Consumer Product Safety Commission

Special Assistant to the Commissioner. Effective June 2, 1995.

Special Assistant to the Commissioner. Effective June 2, 1995.

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective June 22, 1995.

Department of the Army (DOD)

Special Assistant for Policy to the Secretary of the Army. Effective June 8, 1995.

Department of Commerce

Director of Congressional Affairs to the Under Secretary for International Trade, International Trade Administration. Effective June 2, 1995.

Speechwriter to the Director, Office of Public Affairs. Effective June 8, 1995.

Confidential Assistant to the Counselor to the Department of Commerce. Effective June 22, 1995.

Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison. Effective June 22, 1995.

Special Assistant to the Director, Office or Business Liaison. Effective June 29, 1995.

Department of Defense

Special Assistant to the Assistant Secretary of Defense, International Security Policy. Effective June 5, 1995.

Department of Education

Confidential Assistant to the Special Assistant, Office of the Secretary. Effective June 22, 1995.

Department of Energy

Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective June 5, 1995.

Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective June 5, 1995.

Staff Assistant to the Director, Office of Nuclear Energy. Effective June 9, 1995.

Staff Assistant to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 9, 1995.

Staff Assistant to the Assistant Secretary for Policy. Effective June 9, 1995.

Department of Health and Human Services

Staff Assistant for Liaison to the Associate Commissioner for Legislative Affairs. Effective June 5, 1995.

Department of Housing and Urban Development

Staff Assistant to the Secretary of Housing and Urban Development. Effective June 2, 1995.

Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 5, 1995.

Staff Assistant to the General Counsel. Effective June 8, 1995.

Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs. Effective June 22, 1995.

Special Projects Officer to the Secretary's Representative, Mid-Atlantic Office. Effective June 22, 1995.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective June 22, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective June 22, 1995.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 29, 1995.

Department of Justice

Special Assistant to the Director, Violence Against Women Program. Effective June 12, 1995.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective June 29, 1995.

Department of Labor

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 29, 1995.

Department of Transportation

Congressional Liaison Officer to the Assistant Administrator for Government and Indian Affairs. Effective June 8, 1995.

Department of the Treasury

Deputy to the Assistant Secretary (Legislative Affairs and Public Liaison). Effective June 29, 1995.

Senior Advisor to the Deputy Assistant Secretary (Federal Finance). Effective June 29, 1995.

General Services Administration

Speical Assistant to the Associate Administrator for FTS 2000. Effective June 12, 1995.

Office of the United States Trade Representative

Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative for Congressional Affairs. Effective June 22, 1995.

Securities and Exchange Commission

Confidential Assistant to the Chief of Staff. Effective June 22, 1995.

U.S. International Trade Commission

Staff Assistant to the Commissioner. Effective June 22, 1995.

United States Information Agency

Deputy Director to the Director, Office of Arts America. Effective June 21, 1995.

United States Tax Court

Secretary (confidential Assistant) to the Judge. Effective June 30, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorriane A. Green,

Deputy Director.

[FR Doc. 95–19630 Filed 8–8–95; 8:45 am]

BILLING CODE 6325–01–M

Series Consolidation

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is proposing to simplify the Federal position classification structure by reducing the number of occupational series from 442 to about 74.

DATES: Written comments must be received on or before October 10, 1995.

ADDRESSES: Send written comments to Michael D. Clogston, Assistant Director for Classification, Office of Personnel Management, Room 7H29, 1900 E Street NW., Washington, DC 20415 (FAX 202–606–4891).

FOR FURTHER INFORMATION CONTACT: Terri Jurkofsky on 202–606–1721 or Raymond E. Moran on 202–606–2970, or FAX 202–606–4891.

SUPPLEMENTARY INFORMATION: The General Schedule comprises 442 occupational series within 22 occupational groups (job families.) An example of an occupational group is the GS–400, Biological Sciences Group; within the GS–400 group, there are 34 occupational series such as the Microbiology Series, Forestry Series, Range Technician Series, etc. To simplify the Federal position classification structure, the NPR recommended reducing the number of occupational series by one-half or more.

Over the past year and a half, an ad hoc discussion group of OPM staff, representatives of the Interagency Advisory Group executive committee, and Federal unions met to explore issues and approaches to series consolidation. The group generally agreed that we should simplify the structure and that we should look at significant, not incremental, consolidation. The discussion group considered a number of approaches using the NPR goals, and concepts such as equity, clarity, and utility as guiding principles.

OPM Proposal

Retain 20 of the current 22 occupational groups and merge the series within each of the occupational groups into one of four categories: Professional, Administrative, Technical, and Clerical. For example, under the proposal we would merge the 34 professional and technical series within the Biological Sciences Group into two: Biological Sciences Professional and Biological Sciences Technical. (There are no administrative or clerical occupations in this group.)

This reduces the number of series from 442 to about 74. It treats occupations similarly and provides an occupational breakout that remains familiar and understandable to Federal managers and employees. When set up, agencies would be required to use the series structure for *official classification actions.* Under the proposal, however, agencies can retain indefinitely some or all of the 442 occupational series designations and titles for internal use if it suits their needs.

The current occupational series codes will be provisionally retained as ''job codes.'' Agencies will be required to report *job codes* in Governmentwide data collection efforts, including submissions to the Central Personnel Data File. The detailed information available from these job codes is needed for workforce analysis, pay comparability, and special rate determinations. Meanwhile, we will explore the issue of alternate means of storing and collecting occupational data for these purposes with staff of the various agencies.

We are also proposing to abolish the GS–000, Miscellaneous Occupations Group and the GS–700, Veterinary Medical Science Group. The series currently classified in the GS–000 miscellaneous group would be placed in one of the remaining 20 occupational groups; two of the three GS–700 veterinary occupational series would be placed under the renamed GS–600 Medical and Health Group and the GS–799 student trainee series would be abolished (See Administrative Items below).

We expect to retain most of the existing *functional* classification guides such as the Research Grade Evaluation Guide, the General Schedule Supervisory Guide, and the Office Automation Guide, and to develop new classification standards that comport with the revised group and series structure. In the future, when OPM issues a new broad standard, it will cancel and supersede any existing occupationally specific standards covering the same work. For example, when we issue a new standard in final form for the GS–400 Biological Sciences Professional Series it will cancel and supersede all specific standards in the GS–400 Biological Sciences Group such as the standards covering the Forester Series, the Wildlife Biologist Series, etc.

Administrative Items

1. Several occupational group titles would result in awkward, vague, or inappropriate group and series titles. We are proposing the following changes:

Current occupational group name	Proposed occupational group name
GS–100 Social Science, Psychology, and Welfare.	GS–100 Social Science.
GS–200 Personnel Management and Industrial Relations.	GS–200 Human Resources Management.
GS–300 General Administration, Clerical, and Office Services.	GS–300 Management and Office Services Support.
GS–500 Accounting and Budget.	GS–500 Financial Management.
GS–600 Medical, Hospital, Dental, and Public Health.	GS–600 Medical and Health.
GS–900 Legal and Kindred.	GS–900 Legal.
GS–1600 Equipment, Facilities, and Services.	GS–1600 Equipment and Facilities.
GS–1800 Investigations.	GS–1800 Protective Service.
GS–1900 Quality Assurance, Inspection, and Grading.	GS–1900 Quality Assurance.

2. We are proposing to abolish the GS–000 Miscellaneous Occupations

Group and to place each of the 26 miscellaneous series in an occupational group that best covers its work. The exact placement of each series is as follows:

GS–100 Special Science Group: Community Planning, Community Planning Technician; Outdoor Recreation Planning; Sports Specialist; Chaplain.

GS–900 Legal Group: Foreign Law Specialist.

GS–1000 Information and Arts Group: Clothing Design; Guide.

GS–1100 Business and Industry Group: Bond Sales; Funeral Directing.

GS–1800 Protective Service Group: Correctional Institution Administration Series; Correctional Officer; Safety and Occupational Health Management; Safety Technician; Park Ranger; Environmental Protection Specialist; Environmental Assistant; Fingerprint Identification Series; Security Administration; Fire Protection and Prevention; United States Marshal; Police; Nuclear Materials Courier Service; Security Guard; Security Clerical and Assistance.

3. There are a few occupations and grade levels that are difficult to categorize because of an anomaly in the current PATC identifier, i.e., some occupations are identified as clerical up to a certain grade and technical above the grade. We will study this issue and provide instructions at a later date.

4. We plan to time the implementation of changes in classification that will result from series consolidation to coincide with another mass change (e.g., locality pay increases). This will eliminate the need to issue a *separate* personnel action to effect the change in classification. We propose that blocks 7 and 15 of the Standard Form 50, Notification of Personnel Action to be used to reflect the new classification title and that blocks 9 and 17 be used to record the job code. Block 45, the remarks section of personnel action form, would be used to identify the new implementing instructions that explain how to process the action. This approach minimizes the work required by agencies and, at the same time, serves to notify employees of changes in the classification of their positions as a result of series consolidation.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–19631 Filed 8–8–95; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, August 10, 1995, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: July 27, 1995.

Anthony P. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–19632 Filed 8–8–95; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Order No. 1070; Docket No. A95–17]

Prosser, Nebraska 68868 (Faye B. Kral, et al., Petitioners; Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued August 3, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A94–17

Name of Affected Post Office: Prosser, Nebraska 68868

Names(s) of Petitioner(s): Faye B. Kral, et al.

Type of Determination: Closing

Date of Filing of Appeal Papers: July 31, 1995

Categoires of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administration record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(B)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by August 15, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

July 31, 1995
  Filing of Appeal letter
August 3, 1995
  Commission Notice and Order of Filing of Appeal
August 25, 1995
  Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)]
September 5, 1995
  Petitioners' Participate Statement or Initial Brief [*see* 39 C.F.R. 3001.115 (a) and (b)]
September 25, 1995
  Postal Service's Answering Brief [*see* 39 C.F.R. 3001.115(C)]
October 10, 1995
  Petitioners' Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. 3001.115(d)]
October 17, 1995
  Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. 3001.116]
November 28, 1995
  Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 95–19596 Filed 8–8–95; 8:45 am]

BILLING CODE 7710–FW–P–M

[Order No. 1069; Docket No. A95–16]

Strang, Nebraska 68444: (Ruth E. Hobbs, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued August 3, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A95–16
Name of Affected Post Office: Strang, Nebraska 68444
Name(s) of Petitioner(s): Ruth E. Hobbs
Type of Determination: Consolidation
Date of Filing of Appeal Papers: July 26, 1995
Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by August 10, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

July 26, 1995
Filing of Appeal letter
August 3, 1995
Commission Notice and Order of Filing of Appeal
August 21, 1995
Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)]
August 30, 1995
Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. 3001.115 (a) and (b)]
September 19, 1995
Postal Service's Answering Brief [*see* 39 C.F.R. 3001.115(c)]
October 4, 1995
Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. 3001.115(d)]
October 11, 1995
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]
November 23, 1995
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–19595 Filed 8–8–95; 8:45 am]
BILLING CODE 7710–FW–P–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21266; 812–9700]

Stifel Nicolaus & Company, Incorporated; Notice of Application and Temporary Order

August 3, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Temporary order and notice of filing of application for permanent order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Stifel Nicolaus & Company, Incorporated (''Stifel'').

RELEVANT INVESTMENT COMPANY ACT SECTIONS: Permanent order requested, and temporary order granted, under section 9(c) of the Act for an exemption from the provisions of section 9(a) of the Act.

SUMMARY OF APPLICATION: Applicant has been granted a temporary order, and has requested a permanent order, under section 9(c) exempting it from the disqualification provisions of section 9(a).

FILING DATE: The application was filed on August 3, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 28, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 500 N. Broadway Street, St. Louis, Missouri 63102.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, 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 at the SEC's Public Reference Branch.

Applicant's Representations

1. Stifel, a subsidiary of Stifel Finance Corp., is registered as a broker dealer and a municipal securities dealer under the Securities Exchange Act of 1934 (''Exchange Act''), and as an investment adviser under the Investment Advisers Act of 1940. Stifel acts from time to time as principal underwriter for unit investment trusts.

2. On August 3, 1995, the Commission filed a complaint in the United States District Court for the Western District of Oklahoma alleging violations of section 17(a) of the Securities Act of 1933, sections 10(b), 17(a)(1), and 15B(c)(1) of the Exchange Act and rules 10b–5, 17a–3, and 17a–4 thereunder, and Rules G–8, G–9, and G–17 of the Municipal Securities Rulemaking Board. The complaint related to undisclosed compensation received by Stifel in connection with municipal bond issues. On the same date as the complaint, Stifel entered into a related consent in which Stifel neither admitted nor denied any of the allegations in the complaint, except as to jurisdiction. Pursuant to the consent, the District Court entered a Final Judgment of Permanent Injunction, permanently enjoining Stifel from violating the above-named provisions. Stifel also agreed to disgorge $922,741 and pay prejudgment interest on that amount of $263,637, and to pay a penalty of $250,000.

3. In making the application, applicant acknowledges, understands and agrees that the application and any temporary exemption issued by the Commission shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of the instant application for a permanent exemption pursuant to section 9(c) or the revocation or removal of any temporary exemption granted in connection with the application.

Applicant's Legal Analysis

1. Applicant seeks relief exempting it from the provisions of section 9(a) of the Act solely with respect to the proposed injunction, for itself and any future entity that may become an affiliated person of Stifel.

2. Section 9(a) provides, in pertinent part, that it is unlawful for any person, or any affiliated person of such person, to serve or act in the capacity of investment advisor or depositor of any registered investment company, or principal underwriter of any registered open-end investment company or unit investment trust, if such person has been permanently or temporarily enjoined from engaging in any conduct in connection with its activities as an underwriter, broker, dealer, or investment adviser, or in connection with the purchase or sale of any security.

3. Section 9(c) provides that, upon application, the Commission shall by order grant an exemption from the provisions of section 9(a), either unconditionally or on a temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant the exemption.

4. As a result of the injunction, Stifel is subject to the disqualification provisions of section 9(a). Applicant asserts that the application of such provisions to it is unduly and disproportionately severe. Applicant further asserts that Stifel's conduct has been such as not to make it against the public interest or protection of investors to grant the requested relief.

5. Applicant states that the conduct that gave rise to the injunction involved Stifel's Oklahoma Public Finance Office, which is now closed, and was not in any way related to activities of application as underwriter for unit investment trusts. In addition, none of the individuals who acted improperly were involved in Stifel's underwriting of unit investment trusts.

6. Stifel has taken the following remedial actions in response to the events that led to the injunction:

a. Stifel formed a special committee of outside directors to conduct an investigation into the matters that formed the basis of the injunction. Stifel hired the law firm of Bryan Cave to assist the company in that regard. Bryan Cave hired the accounting firm of Coopers & Lybrand to assist them with the investigation.

b. As a result of the investigation mentioned above, Stifel has implemented new procedures regarding the disclosure and the prior review of certain fees.

c. The Stifel officer responsible for the majority of the illegal conduct, and his supervisor, have been terminated by the firm. The firm's assets in Oklahoma have been sold.

d. Stifel has hired a former Wisconsin State Securities Commissioner as its Director of Compliance and an attorney formerly in the Commission's Pacific Regional Office as General Counsel. The firm also has replaced the head of its municipal securities operations.

7. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to applicant because, if the exemption were not granted, the prohibitions would unfairly and unreasonably deprive applicant of its ability to provide uninterrupted services to the unit investment trusts for which it provides distribution services. Such inability would have an adverse effect on applicant's business. Applicant makes a market in the units of the unit investment trusts that it underwrites, which it no longer would be able to do absent the requested relief. In addition, applicant would be unable to render distribution services to registered unit investment trusts that may be organized in the future.

8. Applicant represents that it has not previously filed an application for relief pursuant to section 9(c), has no prior record of Commission enforcement proceedings, and is not subject to any judgment that would disqualify it under section 9(a).

9. Applicant believes that its ability to serve as principal underwriter for any registered unit investment trust, and to comply with the requirements of the Investment Company Act, are not impaired by the injunction.

Applicant's Condition

Applicant agrees that any order granted by the Commission pursuant to the application will be subject to the condition that Stifel will comply with the Final Judgment of Permanent Injunction.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicant, finds that the issuance of a temporary order under section 9(c) of the Investment Company Act, subject to the foregoing condition, is not inconsistent with the public interest or the protection of investors.

Accordingly, it is ordered, under section 9(c) of the Investment Company Act, that the applicant be, and hereby is, granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the injunction specifically described in the application, subject to the condition contained in the application, which condition is expressly incorporated herein.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19650 Filed 8–8–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Honolulu District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting on Thursday, September 7, 1995 at 9:30 a.m. at the Business Information and Counseling Center, 130 Merchant Street, Suite 1030, Honolulu, HI 96813; to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Blvd., Room 2314, Honolulu, Hawaii 96850, (808) 541–2965.

Dated: August 3, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–19602 Filed 8–8–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–066]

National Environmental Policy Act Environmental Assessment for U.S. Coast Guard Activities Along the U.S. Atlantic Coast

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments. .

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations, and the Coast Guard National Environmental Policy Act

(NEPA) Implementing Procedures, the Coast Guard gives notice of the availability of an Environmental Assessment (EA) and a proposed Finding of No Significant Impact (FONSI) for public review and comment. The EA and proposed FONSI have been prepared for Coast Guard operations in the marine environment of the Atlantic coast from the northern tip of Maine south to Puerto Rico. The EA focuses on six whale and five turtle endangered or threatened species.

DATES: Comments must be received on or before September 8, 1995.

ADDRESSES: Comments, questions, or requests for copies of the EA and the proposed FONSI should be mailed or delivered to LCDR Wesley Marquardt, U.S. Coast Guard, Commandant (G–NIO), 2100 Second Street SW., Room 1201–A, Washington, DC 20593–0001. The comments will be available for inspection and copying in room 1201–A at the address listed above. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Wesley C. Marquardt, U.S. Coast Guard, Office of Navigation Safety and Waterway Services, (202) 267–1454.

SUPPLEMENTARY INFORMATION:

Discussion of Environmental Assessment

The EA and proposed FONSI address the impact of continuing to perform the missions assigned to U.S. Coast Guard along the Atlantic coast. These missions include but are not limited to: search and rescue; providing and maintaining aids to navigation; law enforcement; treaty enforcement; migrant interdiction; disaster relief; vessel traffic control; marine safety and environmental protection.

In order to perform all of these missions, it is necessary for U.S. Coast Guard vessels and aircraft to share the same areas along the Atlantic coast that are frequented by six whale and five turtle species which are listed as protected species.

The Environmental Assessment discusses the alternatives considered and selects the alternative most likely to result in no significant impact to the listed species. That alternative would modify methods of performance of USCG activities to provide protection for endangered or threatened species of whales and sea turtles and their critical habitats in U.S. waters of the Atlantic Ocean. Changes in USCG methods of performance would be limited to those that do not significantly increase risks to human health, property, and the environment. The modifications proposed would include increased training and awareness of Coast Guard personnel and decreased operating speeds for vessels in the areas frequented by the endangered or threatened species.

Request for Comments

The Coast Guard has prepared an Environmental Assessment (EA) and proposed Finding of No Significant Impact (FONSI) on U.S. Coast Guard activities along the U.S. Atlantic Coast. This notice announces the availability of the EA and proposed FONSI for public review and comment. In accordance with NEPA, as amended, and Coast Guard Policy, the Coast Guard encourages all interested or affected parties to participate in the public review process for this EA. Comments should specifically identify the environmental issues, topics, or information in the EA to which the comment applies. Comments, questions, or requests for copies of the EA and the proposed FONSI should be mailed or delivered to LCDR Wesley Marquardt at the address contained in **ADDRESSES.**

Dated: August 3, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–19560 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; Standards for Airport Security Access Control; Notice of Special Committee 186 Meeting To Be Held August 16–17, 1995; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction.

SUMMARY: In notice document 95–18735 on page 39069 in the issue of July 31, 1995, make the following correction:

In the heading, correct the committee name by removing ''Standards for Airport Security Access Control'' and adding instead ''Automatic Dependent Surveillance-Broadcast (ADS–B).''

Dated: August 3, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–19603 Filed 8–8–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Aviation Systems Design Guidelines for Open Systems Interconnection; Notice of Meeting To Be Held August 15–17, 1995; Correction

AGENCY: Federal Aviation Administration.

ACTION: Correction.

SUMMARY: In notice document 95–18589 on page 38887 in the issue of Friday, July 28, 1995, make the following corrections:

In the heading, after ''RTCA, Inc.,'' add ''Special Committee 162.'' After the name of the Committee, ''Aviation Systems Design Guidelines for Open Systems Interconnection,'' remove the incorrect acronym ''OST'' and add ''OSI'' instead.

Dated: August 3, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–19604 Filed 8–8–95; 8:45 am]

BILLING CODE 4810–13–M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3359

Applicant: Utah Railway Company, Mr. William Callor, Jr., Division Engineer, P. O. Box 57040, Salt Lake City, Utah 84157

The Utah Railway Company, seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between milepost 1.4 and milepost 4.3, near Martin, Utah, and between milepost 17.8 and milepost 18.4, near Wattis, Utah, consisting of the discontinuance and removal of nine signals, No.'s 14, 16, 21, 28, 35, 38, 43, 178 and 184.

The reason given for the proposed changes is that the signals are obsolete, delaying trains, and no longer needed to protect out of service branch lines.

BS–AP–No. 3360

Applicant: Norfolk Southern Railway Company, Mr. J. W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303

The Norfolk Southern Railway Company, Central of Georgia Railroad seeks approval of the proposed discontinuance and removal of the automatic block signal and traffic control signal systems, on the single main track ''P'' Line and sidings between Columbus, Georgia, milepost P–291.8 and Leeds, Alabama, milepost P–423.8, Alabama Division, Columbus and Norris Yard District, a distance of approximately 132 miles.

The reason given for the proposed changes is that through traffic has been rerouted off this line segment several months ago and to save costs of testing, maintenance, and materials.

Rules Standards & Instructions Application (RS&I–AP) No. 1097

Applicant: Metro North Commuter Railroad Company, Mr. G. F. Walker, Assistant Vice President-Operations, 347 Madison Avenue, New York, New York 10017

Metro North Commuter Railroad Company (MNCW) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, Part 236, Section 236.566, to the extent that MNCW be permitted to operate, one non-equipped N.Y.C.T.A. Locomotive No. 64, to perform switching and transfer service, within automatic cab signal and train control territory, between Grand Central Terminal, milepost 0.0 and CP 7, milepost 6.4, on the Hudson Line, in New York, New York.

The reason given for the proposed changes is that Locomotive No. 64 would be operated at restricted speed not exceeding 15 mph under protection and authority of an absolute block, and considering a budgetary crisis, it is not cost effective to equip the locomotive.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590, within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on August 4, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–19681 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held September 27 and 28, 1995.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 27 and 28, 1995 in room 118, beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4 901 D Street, SW., Washington, DC 20024. Telephone (202) 401–4128, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 27 and 28, 1995 in Room 118 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19557 Filed 8–8–95; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

August 2, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

OMB Number: 1550–0041

Form Number: Not Applicable

Type of Review: Extension of a currently approved collection

Title: Procedures for Monitoring Bank Secrecy Act

Description: This collection is necessary to enable OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal statute and the U.S. Department of Treasury regulations.

Respondents: Savings and Loan Associations and Savings Banks

Estimated Number of Recordkeepers: 1,512

Estimated Burden Hours Per Recordkeeper: 2 Hrs. Avg

Frequency of Response: Recordkeeping

Estimated Total Recordkeeping Burden: 3,024 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street NW., Washington, DC. 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive

Office Building, Washington, DC 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–19594 Filed 8–08–95; 8:45 am]

BILLING CODE 6720–01–P

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

August 2, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: New

Form Number: 1604

Type of Review: New Collection

Title: Customer Survey—Consumer Complaints

Description: This information collection will be used to obtain feedback from consumers who have filed a complaint against a thrift. This information collection is part of OTS' efforts under the National Performance Review

Respondents: Individuals, businesses and non-for profits who are a thrift's customer

Estimated Number of Respondents: 1000

Estimated Burden Hours Per Respondent: 5 Minutes Avg.

Frequency of Response: Once

Estimated Total Reporting Burden: 83 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–19593 Filed 8–8–95; 8:45 am]

BILLING CODE 6720–01–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 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''The Art of Louis-Leopold Boilly: Modern Life in Napoleonic France'' (See list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum, Fort Worth, TX, from on or about November 4, 1995, to on or about January 12, 1996, and at the National Gallery of Art, Washington, D.C., from on or about February 4, 1996, to on or about April 28, 1996, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 4, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–19683 Filed 8–8–95; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''The Butcher, the Baker, the Candlestick-Maker'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Hofstra Museum, Hempstead, New York, from on or about September 1, 1995, to on or about October 31, 1995, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 1, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–19685 Filed 8–8–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained in contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Certificate Showing Residence and Heirs of Deceased Veterans or Beneficiary, VA Form 29–541

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0469.

Title and Form Number: Certificate Showing Residence and Heirs of Deceased Veterans or Beneficiary, VA Form 29–541.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The form is used to establish entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required. The information is used by VBA to determine entitlement to Government Life Insurance proceeds.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,039 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,078.

ADDRESSES: Requests for copies of the form, the request for clearance, and supporting documentation may be

obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

DATES: Comments on the collection of information should be directed to the OMB Desk Officer on or before September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–4412.

Dated: July 31, 1995.

By direction of the Secretary.

William T. Morgan,

Management Analyst Officer.

[FR Doc. 95–19697 Filed 8–8–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: None assigned.

Titles and Form Numbers: State Cemetery Data, VA Form 40–0241.

Type of Information Collection: Existing collection in use without an OMB control Number.

Needs and Uses: The information collection is used in conjunction with data gained from the national cemeteries to consider where to place national or state cemeteries.

Affected Public: State, Local or Tribal Governments.

Estimated Annual Burden: 52 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 52 respondents.

ADDRESSES: A copy of the submission may be obtained from Sonja McCombs, National Cemetery System (402B2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–5185.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do Not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 8, 1995.

Dated: July 31, 1995.

By direction of the Secretary.

William T. Morgan,

Management Analyst Officer.

[FR Doc. 95–19698 Filed 8–8–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 153

Wednesday, August 9, 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).

U.S. RAILROAD RETIREMENT BOARD NOTICE OF PUBLIC MEETING

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 16, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Field Service Structure—Recommendations 4, 5, 6, 7, 8, 13, 17, 18, 20, 21 and 31 from Task Force Report
(2) Open Audit Follow-up:
  A. OIG Report No. 94–16 (Supplemental Annuity Tax Rate)
  B. Status Report on Open Audit Recommendations Assigned to the Board
(3) Medicare Carrier Incentive Contract
(4) Travel to Washington, D.C. for Title II SSA Redesign
(5) Reduction in Prepayment Verification Period
(6) Unfunded Employment Credits
(7) Coverage Determinations:
  A. Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company
  B. Port Railroads, Inc.
  C. Hollidaysburg & Roaring Spring Railroad Company
  D. Semo Port Railroad, Inc.
(8) Regulations:
  A. Parts 211 and 261—Proposed Rule—Administrative Finality and Finality of Returns of Compensation
  B. Part 255, Recovery of Overpayments
  C. Part 328, Voluntary Leaving of Work

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: August 4, 1995.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 95–19772 Filed 8–7–95; 12:16 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register

Vol. 60, No. 153

Wednesday, August 9, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

Form Under Review by the Office of Management and Budget

Correction

In notice document 95–18657 appearing on page 39028 in the issue of Monday, July 31, 1995, in the first column, in the ninth line, ''Rule 103f-3'' should read ''Rule 10f-3''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36029; File No. SR-NYSE-95-07]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

Correction

In notice document 95–19161 beginning on page 39774 in the issue of Thursday, August 3, 1995, make the following correction:

On page 39778, in the the third column, above the FR document line, the signature line should appear as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[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

July 20, 1995.

Correction

In notice document 95–18340 beginning on page 38387 in the issue of Wednesday, July 26, 1995, in the first column, the date line was omitted and should read as set forth above.

BILLING CODE 1505–01–D

federal register

Wednesday
August 9, 1995

Part II

Department of Housing and Urban Development

Office of Policy Development and Research

Submission of Proposed Information Collection to OMB; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Policy Development and Research

[Docket No. FR–3917–N–14]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 23, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 14 days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone no. (202) 708–0050. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB for processing an information collection package related to the National Survey of Homeless Assistance Providers and Clients (hereinafter ''survey''). HUD is requesting a review of this information collection on or before September 8, 1995.

The survey will provide estimates of the number and characteristics of service providers and an assessment of the types of programs and services available to people who are homeless. It will also provide detailed characteristics of persons using services. Under the auspices of the Interagency Council on the Homeless, the survey is being co-sponsored by 11 Federal agencies:

Department of Housing and Urban Development
Department of Health and Human Services
Department of Veterans Affairs
Department of Agriculture
Department of Commerce
Department of Education
Department of Energy
Department of Labor
Department of Transportation
Social Security Administration
Federal Emergency Management Agency

The survey includes two phases: the collection of information on service providers and the collection of information on service users (clients). In Phase 1, the Census Bureau will:

(1) Select a sample of geographic areas;

(2) Development a comprehensive list of service providers in the survey sample areas;

(3) Collect basic information from all service providers within the sample areas on programs offered, via a computer-assisted telephone interview; and

(4) Select a subsample of providers and collect detailed information on programs and services by mail, with telephone follow-up.

Phase 1 of the national survey is planned to be conducted starting in October 1995 and conclude by January 1996.

In phase 2, the Census Bureau will:

(1) Select a sample of service users (clients) within the sample areas:

(2) Select a sample of providers in designated programs; and

(3) Select clients and conduct personal visit interviews at selected service provider facilities.

This request is for clearance to conduct Phase 1 of the survey. A second package will be submitted to OMB later for Phase 2.

This request is for the following questionnaires:

- NSHAPC–100A Service Provider Core Data.
- NSHAPC–100B Emergency Shelter Programs; 100C Transitional Housing Programs; 100D Voucher Programs; and 100E Permanent Housing for the Homeless Programs. Note: Each of these surveys is identical except for its title and modest wording differences under the Voucher instrument.
- NSHAPC–100F Alcohol/Drug Programs; 100G Mental Health Care Programs; 100H Physical Health Care Programs; 100I Drop-In Center Programs; 100J HIV/AIDS Programs; and 100L Other Programs. Note: Each of these surveys is a shortened version of the Emergency Shelter Program survey and each is identical to the other.
- NSHAPC–100K Outreach Program.

NSHAPC–100M List of Providers Offering Homeless Programs.

A pre-test of the survey was conducted in April 1995 in three areas: Atlanta, GA; Pittsburgh, PA (including Allegheny, Fayette, Washington, and Westmoreland Counties); and the Armstrong County Community Action Agency Catchment area (a rural Community Action Agency service area outside Pittsburgh). The survey instruments have been revised to reflect the experience gained in the pre-test. The Census Bureau sought and obtained substantial expert input over a two-year period to develop the survey instruments.

The Department has submitted the proposal for the collection of information, as described below to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the infromation submission including numbers of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

Notice of Submission of Proposed Information Collection to OMB

Proposal: National Survey of Homeless Assistance Providers and Clients (NSHAPC).

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This national survey would provide up-to-date information about the providers of homeless assistance and the characteristics of homeless persons who use services. The survey will be conducted in 76 areas including metropolitan and nonmetropolitan settings. The data will:

(1) be compared with the findings of a 1987 Urban Institute survey of homeless characteristics to understand reported changes in the nature of homelessness, especially those related to families with children;

(2) provide a basis for assessing local efforts to construct ''continuums of care'' for homeless people;

(3) be used to develop measures to assess the impact and performance of current homeless programs;

(4) will assist local governments and nonprofit organizations in designing more effective local programs; and

(5) provide a baseline for examining the effects on the homeless population of proposed changes to the McKinney homeless assistance programs, and America's ''safety net'' programs for the poor (e.g., Section 8, AFDC, JTPA, and Medicaid programs).

Form Number: None.

Respondents: Homeless service providers and homeless persons.

Frequency of Submission: One-time.

Reporting Burden: See attachment.

Total Estimated Burden Hours: Phase 1, Provider Surveys 17,500.

Status: New Survey.

Contact: James E. Hoben, HUD, (202) 708–0574 X132, George A. Ferguson, HUD, (202) 708–1480, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: July 27, 1995.

Supporting Statement

A. Justification

1. Necessity of Information Collection

The National Survey of Homeless Assistance Providers and Clients (NSHAPC) includes two phases: the collection of information on service providers (providers) and the collection of information on service users (clients).

Phase 1: In Phase 1, the Census Bureau will:

(1) Select a sample of geographic areas

(2) Develop a comprehensive list of service providers in the survey sample areas.

(3) Collect basic information from all service providers within the sample areas on programs offered, via a computer-assisted telephone interview.

(4) Select a subsample of providers and collect detailed information on programs and services by mail, with telephone follow-up.

Note: Steps 1 and 2 must be completed if Phase 2 is conducted.

Phase 2: In Phase 2, the Census Bureau will:

(1) Select a sample of service users (clients) within the sample areas in two other stages.

(2) Select a sample of providers in designated programs.

(3) Select clients and conduct personal visit interviews at selected service provider facilities.

This request is for clearance to conduct Phase 1 of the survey. A second OMB package will be submitted later for Phase 2. This request is for the following questionnaires listed by title and code number.

Data to be collected from all providers:

- NSHAPC—100A, Service Provider Core Data Questionnaire.

Data to be collected from major shelter providers: (Note: Each of these instruments is essentially identical, except for the title. Therefore, review of one satisfies review of the others.)

- NSHAPC–100B, Emergency Shelter Programs.
- NSHAPC–100C, Transitional Housing Programs.
- NSHAPC–100D, Voucher Programs.
- NSHAPC–100E, Permanent Housing for the Homeless Programs.

Data to be collected from special service providers: (Note: Each of these instruments is essentially identical, except for the title. Therefore, review of one satisfies review of the others.)

- NSHAPC–100F, Alcohol/Drug Programs.
- NSHAPC–100G, Mental Health Care Programs.
- NSHAPC–100H, Physical Health Care Programs.
- NSHAPC–100I, Drop-In Center Programs.
- NSHAPC–100J, HIV/AIDS Programs.
- NSHAPC–100L, Other Programs.

Data to be collected from homeless outreach programs:

- NSHAPC–100K, Outreach Programs.

Instrument for updating list of providers in a geographic area:

- NSHAPC–100M, List of Providers Offering Homeless Programs.

The national survey will provide estimates of the number and characteristics of service providers, and an assessment of the types of programs and services available to people who are homeless. The survey will also provide (in Phase 2) detailed characteristics of persons using services.

The national survey is being sponsored by the following Federal agencies:

- Department of Housing and Urban Development (HUD).
- Department of Health and Human Services (HHS).
- Department of Veterans Affairs (VA).
- Department of Agriculture (USDA).
- Department of Commerce (DOC).
- Department of Education (ED).
- Department of Energy (DOE).
- Department of Labor (DOL).
- Department of Transportation (DOT).
- Social Security Administration (SSA).
- Federal Emergency Management Agency (FEMA).

Data will be collected under HUD's data collection authority.

As part of the 1990 Census, the Census Bureau enumerated persons residing in homeless shelters and pre-identified street locations. However, this operation was not designed to provide the full range of information needed for guiding policy decisions related to homelessness. With this understanding, in September of 1993, the Bureau of the Census convened a conference of researchers, representatives of public interest groups, and government representatives to discuss ways of improving data collection on the homeless population. The consensus among this group was that the decennial census is not the appropriate vehicle for gathering information on the homeless population. They suggested that a new national survey using updated methodologies to obtain an accurate and useful picture of those homeless people who use services in the United States is needed.

2. Needs and Uses

The information the new survey would provide is critical for developing the kinds of effective public policy responses needed to break the cycle of homelessness, both through targeted programs and the leveraging of mainstream resources. This survey would provide up-to-date information about the characteristics of today's providers of homeless services and the homeless population who use services. The last comparable national study was in 1987 when the Urban Institute completed a survey of homeless persons. Also, included in the NSHAPC would be the first national examination of the characteristics of homelessness in rural America, fulfilling a Congressional mandate for a report on this subject.

The national NSHAPC survey would:

1. Provide information on the types of programs and services available to homeless persons, including population groups primarily served (e.g., veterans, people with mental illness); days of operation, occupancy levels, and sources of funding.

2. Provide national information on the types of services available to homeless persons in both urban and rural communities.

3. Provide information not addressed by the last national study in 1987 such

as: What are the triggering events that precipitate homelessness? Where were homeless people living before they became homeless? How prevalent is AIDS among homeless persons? What impact does rural homelessness have on urban homelessness? What differences are there among homeless persons found in cities, suburbs, and rural areas?

4. Tell us what characteristics of the homeless population have changed since the 1987 study.

5. Collect additional information related to drug use, mental illness, AIDS, tuberculosis, and previous episodes of homelessness.

6. Include smaller cities, nonmetropolitan and rural areas in order to more accurately and fully reflect homelessness in the United States. The survey would interview a sufficient number of people using services in 76 geographic areas to ensure reliability of the national estimates. Of these 76 geographic areas, 28 would be large metropolitan areas, 24 would be medium and small metropolitan areas, and 24 would be nonmetropolitan areas (small cities and rural areas).

Discussion of Phase 1 Activities

Phase 1 will be on-going from October 1, 1995 through January 1996. Three steps occur in Phase 1.

Step 1: Completing the CATI Interview

1. Beginning on October 1, 1995, Census Bureau staff will use a computer-assisted telephone interview (CATI) to contact all service providers in the 76 sample communities. Service providers interviewed would include those with programs specifically targeted to the homeless (e.g., homeless shelters, soup kitchens, homeless outreach programs) as well as other community service providers with programs for which homeless individuals are eligible. The purpose of the survey of service providers would be to assess the types of programs and services available to homeless persons in these metropolitan, suburban, and rural areas. All service providers in the areas will be asked about the types of programs offered and basic information about each program offered, such as source of funding, days of operation, and population group primarily served (e.g., veterans, people with mental illness). Prior to the CATI calls, an advance letter, NSHAPC L(1)l, will be mailed to each provider.

Providers will be asked via the CATI the questions contained in the NSHAPC Form 100A, Service Provider Core Data Questionnaire. The following information about the service provider and programs offered at that address will be collected:

- Name.
- Contact for the facility.
- Address.
- Telephone number.
- Type of facility.
- Programs provided.

The following information will be collected for each program offered:

- Average number of adults and children participating in programs on a daily basis, and percent homeless.
- Average number of adults and children the facility serves on a daily basis.
- Familial status of persons the facility serves on a daily basis.
- Public or private affiliation.
- Source of funding.
- If the program is targeted to a specific subpopulation group.
- Number of facilities under contract to, or accepting vouchers.
- Expected days of operation for each program in February, 1996.
- Contact person for each program.

Step 2: Reviewing the List of Service Providers

Once the CATI interview is completed, service providers will be mailed a comprehensive list of service providers in the sample areas. Service providers asked to review the list for completeness and accuracy, will be asked to correct any incorrect entries, and to identify service providers that are omitted from the list. The updated lists are to be mailed back to the Census Bureau. After receipt of the reviewed list, Census Bureau personnel will remove duplicate entries from the list and prepare a master list of service providers for a geographic area. New service providers added to the list will then be contacted and Census Bureau staff will administer the CATI interview.

The Census Bureau plans to generate listings of service providers for each of the sample areas in the survey and mail, NSHAPC Form 100–M, List of Providers Offering Homeless Programs and the NSHAPC–L(2) letter to all service providers shown on the comprehensive list and all knowledgeable local persons. The knowledgeable local persons and service providers will be asked to review the listing of all service providers in their area for completeness, and to add any missed service providers to the list. **Note:** A sample of providers will be asked to provide additional information about the services they offer. This is discussed below under Phase 1, Step 3.

The Census Bureau is obtaining copies of national files of service providers from national organizations, Federal agencies, and from Community Action Program (CAP) coordinators. The Census Bureau has obtained a copy of lists of service providers from the following Federal agencies: FEMA, Health and Human Services, Veterans Affairs, and Labor, and it will obtain lists from Housing and Urban Development. National organizations, such as the National Coalition for the Homeless, National Alliance to End Homelessness, National Law Center on Homelessness and Poverty, National Network of Runaway and Youth Services, Catholic Charities, Better Homes Foundation, and Volunteers of America, Inc., have provided lists to the Census Bureau. The Census Bureau plans to unduplicate and merge these files into one comprehensive listing of service providers. This comprehensive list will be used as the initial sampling frame for identifying and interviewing service providers in the sample areas.

The local update may also provide the Census Bureau with additional names of service providers and local persons or organizations knowledgeable about homeless services. (Federal, State, and Local Agencies may not have the name of a service provider if the provider does not receive any federal, state, or local funding.)

Census Bureau personnel also will contact the state homeless coordinator designated in accordance with the McKinney Homeless Assistance Act. The Census Bureau will tell them about the survey, indicate which counties in their state are included in the survey, and provide them with a list of service providers in each of the sample areas. The state coordinators will be asked to review the list of service providers and note any additions or changes.

Note: Census Bureau personnel have already completed some initial contacts with Federal and state government offices, agencies, organizations, and knowledgeable local persons to begin compiling a national list of service providers.

Shelters for abused women and runaway youths will not be on the listings to be reviewed by service providers but are included in the sampling frame. This is to preserve the confidential locations of shelters for abused women and runaway youth.

The Census Bureau will use the master list of service providers as the frame to select the sample of service providers who will receive the detailed program questionnaires and to select the sample of provider facilities where client interviewing will be conducted.

Step 3: Completing the Detailed Information on Programs and Services

Once the CATI interviews are completed, a subsample of service providers will be asked to provide more detailed information about the specific

programs and services offered at their facility. Separate questionnaires for each program (e.g., NSHAPC Forms 100B to 100L) have been developed. Program managers will be asked to complete a questionnaire by mail for each program they administer. For each program offered, program managers will receive a copy of the appropriate program questionnaire and the NSHAPC L(3) L-letter. Census Bureau staff will follow up by telephone all nonresponding providers.

Discussion of Phase 2 Activities

The second phase of the survey consists of interviewing a sample of persons using services at homeless shelters, soup kitchens, and other service locations where homeless people are found. Interviews will take place continuously over a four-week period in order to obtain a representative sample. In addition to providing data on characteristics of the portion of the homeless population who use services, this phase of the survey would identify homeless subgroups and help determine their use of various types of assistance programs. It would also collect limited comparative data on housed persons with very low incomes who also rely on soup kitchens and other emergency assistance.

The survey will estimate characteristics at the national level only. The sample size is not large enough to produce estimates of client characteristics at the regional or local levels.

In 1987, the Urban Institute completed a survey of homeless persons. Data from the 1987 Urban Institute study represent the only national level data specific to homeless persons. Since the 1987 study, no significant national studies have been conducted to provide national information about the characteristics of homeless persons using services for homeless people.

NSHAPC data will be used to plan future programs and services funded via the McKinney Homeless Assistance Act and other programs to prevent homelessness as well as ameliorate it. Understanding the causes of homelessness can help guide the development of preventive strategies. Data from the NSHAPC will be used by the participating agencies to prepare reports in accordance with the requirements of the McKinney Homeless Assistance Act and other homeless assistance programs.

The following programs will benefit from the data collected in the NSHAPC.

Emergency/Temporary Shelter Assistance

Emergency Food and Shelter Program (FEMA)—Assistance directed toward temporary shelter
Emergency Shelter Grants Program (HUD)
Shelter for the Homeless [Department of Defense (DOD)]
Homeless Support Initiatives—Surplus Blankets (DOD)

Food and Nutrition Assistance

Commodities for Soup Kitchens (USDA)
Emergency Food and Shelter Program—Food Assistance (FEMA)
Commissary/Food Bank Initiatives (DOD) and (Department of Transportation (DOT)]
Federal Grain Inspection Service—Donation of Surplus Samples (USDA)

General Health Assistance

Health Care for the Homeless Grant Program (HHS)

General Health Assistance

Health Care for the Homeless Grant Program (HHS)
Domiciliary Care for Homeless Veterans Program (VA)

Assistance to Homeless Persons with Disabilities

Shelter Plus Care Program (HUD)
Supportive Housing Program (HUD)
Projects for Assistance in Transition from Homelessness (PATH) (HHS)
Access to Community Care and Effective Services and Supports (ACCESS) (HHS)
Community Support Program—homeless-specific portion (HHS)
National Institutes of Health (NIH) Research on Homelessness (HHS)
Homeless Chronically Mentally Ill Veterans Program (VA)
Safe Havens (HUD)
National Institute on Alcohol Abuse and Alcoholism (NIAAA) Research Demonstration on Homelessness (HHS)
Drug Abuse Prevention for Runaway & Homeless Youth (HHS)

Education, Training, and Employment Assistance

Education for Homeless Children & Youth State Grants Prog. (ED)
Examplory Projects Program—Homeless Children (ED)
Adult Education for the Homeless (ED)
Job Training for the Homeless Demonstration Program (DOL)
Homeless Veterans Reintegration Project (DOL)

Housing Assistance

Supportive Housing Program (HUD)
Section 8 Assistance for SROs (HUD)
Single Family Property Disposition Initiative (HUD)
Transitional Housing Demonstration Program (HHS)
Transitional Living Program for Homeless Youth (HHS)
Farmer's Home Administration (FMHA) Homes for the Homeless (USDA)
Shelter for Homeless Vets—Acquired Property Sales (VA)
Base Closure Properties (DOD, HUD)

Homeless Prevention

Emergency Food and Shelter Program (FEMA)—Prevention Assistance
Emergency Community Services Homeless Grant Program (HHS)
Emergency Shelter Grants program (HUD)

General/Misc. Aid to Homeless Providers

Emergency Community Services Homeless Grant Program (HHS)
Excess & Surplus Federal Real Property (GSA)/(HUD)/(HHS)
Runaway and Homeless Youth Program (HHS)

Programs for Homeless Children/Youth/Families

Family Support Centers (HHS)
Transitional Housing Demonstration Program (HHS)
Supportive Housing Program (HUD)
Education for Homeless Children & Youth State Grants Program (ED)
Exemplary Projects Program—Homeless Children (ED)
Runaway and Homeless Youth Program (HHS)
Transitional Living Program for Homeless Youth (HHS)
Drug Abuse Prevention for Runaway & Homeless Youth (HHS)

Programs for Homeless Veterans

Domiciliary Care for Homeless Veterans Program (VA)
Homeless Chronically Mentally Ill Veterans program (VA)
Shelter for Homeless Vets—Acquired Property Sales (VA)
Homeless Veterans Reintegration Project (DOL)

Information collected in Phase 1 will be used to: (1) develop a comprehensive listing of service providers nationwide and to develop a national profile of the types of programs offered to homeless people; (2) to select a sample of providers that will be asked more detailed information about services offered; and (3) to select the sample providers where client interviewing will be conducted.

3. Efforts to Minimize Burden

Not applicable. Respondents are individuals at provider facilities who

cannot respond with computer tapes or disks. We are also minimizing the burden of the FEMA Local Board Contact Persons, government contacts, service providers and knowledgeable local persons by giving them the combined listing of service providers to review as opposed to asking them to list all service providers in their area.

4. Efforts to Identify Duplication, and Use of Available Information

HUD consulted with other government agencies and outside experts and determined that the proposed national NSHAPC will be the only current, national data source with detailed information on the types and availability of programs and services offered and on the characteristics of literally homeless persons who use services. The most recent national data is the 1987 Urban Institute Study.

In March 1987, the Urban Institute conducted a survey of homeless persons who used services in cities of 100,000 or more. The NSHAPC is intended to parallel and extend the methodology used by the Urban Institute in the 1987 survey to capture a higher proportion of the literally homeless population who use services.

a. The NSHAPC will include additional geographical coverage. Cities with populations of 100,000 or less and areas outside of cities will be included in the survey sample. (The 1987 Urban Institute survey only included cities with populations over 100,000.)

b. The NSHAPC will include additional topic coverage. The client questionnaire covers more topics and in greater depth than was covered in the 1987 Urban Institute Survey. There are also some questions similar to those in the 1987 survey so that a comparison may be made between the results of the two surveys. (The 1987 Urban Institute survey only asked about drug treatment. The NSHAPC asks about drug treatment, as well as, types and frequencies of drugs used, and information about mental health.—

c. The interview period for client interviews for the national survey will be one month. The interview period for the Urban Institute's 1987 survey was one week.

While the results from the Urban Institute's 1987 survey provide characteristics of homeless persons who used services, it does not include the NSHAPC's additional emphasis on geographical and topic coverage as described in A.4. The 1987 study did not provide any information on the types of programs and services offered. The Urban Institute survey is also almost 10 years old. More recent information is needed. Thus, there is no similar information available that could be used or modified for use for the purposes described.

5. Minimizing Burden on Small Businesses

The Census Bureau plans on using the combined files from Federal agencies and national organizations and advocacy groups to generate listings of service providers for each sample area in the survey and mail the listings to all service providers contacted by telephone and all knowledgeable local persons. The knowledgeable local persons and service providers will be asked to review the listing for completeness of all service providers in their area and to add any missed service providers to the list. The state homeless coordinator will only be asked to review the listing of service providers (Form NSHAPC 100M). The Census Bureau believes the file will provide an initial comprehensive listing of service providers currently offering services to the homeless, thus reducing the burden of the service providers, government contacts, and knowledgeable local persons. No small businesses will be contacted.

6. Consequences of Less Frequent Collection

Not applicable. This is a one-time survey. Phase 1 will be conducted from October 2, 1995 to January 15, 1996, and Phase 2 from January 21 to March 30, 1996.

7. Consistency with 5 CFR 1320.6

The Census Bureau will collect these data in a manner consistent with the guidelines in 5 CFR 1320.6.

8. Consultations Outside the Agency

Consultations have been made with the following people:

Dr. Martha Burt, The Urban Institute, 2100 M Street, NW., Washington, DC 20037, Tel: (202) 857–8551

Ms. Lorraine Reilly (formerly of) The Urban Institute, 2100 M Street, NW., Washington, DC 20037, Tel: (202) 857–8551

Dr. Michael Dennis, Research Triangle Institute, Center for Social Research and Policy Analysis, P.O. Box 12194, Research Triangle Park, NC 27709–2194, Tel: (919) 541–6429

Dr. Greg Owen, Wilder Foundation, Wilder Research Center, 1295 Bandana Blvd., North—Suite 210, St. Paul, MN 55108–5197, Tel: (612) 647–4612

Ms. Joanne Wiggins, U.S. Dept. of Education, 600 Independence Avenue, SW—Room 4143, Washington, DC 20202, Tel: (202) 401–1958

Mr. Tom Fagan, U.S. Dept. of Education, 400 Maryland Avenue, SW—Room 2043, Washington, DC 20202, Tel: (202) 401–0039

Mr. John Pentecost, USDA–FmHA, Room 5345–South, MFHD–PD, Washington, DC 20250, Tel: (202) 720–8983

Mr. Tom Sanders, USDA–FmHA, Room 5343–South, MFHD–PD, Washington, DC 20250, Tel: (202) 720–1626

Ms. Amy Donoghue, USDA–FmHA–PAS, 3101 Park Center Drive—Room 1130, Alexandria, VA 22302, Tel: (703) 305–2920

Ms. Jean Whaley, Dept. of Housing and Urban Development, 451 Seventh Street, SW—Room 7267, Washington, DC 20410, Tel: (202) 708–1234

Ms. Jane Karadbil, Dept. of Housing and Urban Development, 451 Seventh Street, SW—Room 8112, Washington, DC 20410, Tel: (202) 708–1537

Mr. Lafayette Grisby (formerly of) Dept. of Labor, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, Tel: (202) 535–0677

Mr. John Heinberg, Dept. of Labor, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210 Tel: (202) 535–0682

Mr. David Lah, Dept. of Labor, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, Tel: (202) 535–0682

Mr. Pete Dougherty, Homeless Programs Specialist, Dept. of Veterans Affairs, 801 Vermont Avenue, NW., Washington, DC 20420, Tel: (202) 273–5716

Mr. Eric Lindblom (IIIC) (formerly of) Office of Mental Health, Dept. of Veterans Affairs, 801 Vermont Avenue, NW., Washington, DC 20420, Tel: (202) 535–7311

Dr. Robert Rosenheck, MD, VA Medical Center, NEPEC–182, 950 Campbell Avenue, West Haven, CT 06516, Tel: (203) 937–3850

Ms. Cynthia Taeuber, Office of the Deputy Director, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4358

Ms. Annetta Clark, Special Places/Group Quarters Team, Office of the Assistant Division Chief, Population Division, Bureau of the Census Washington, DC 20233, Tel: (301) 457–2378

Ms. Denise Smith, Special places/Group Quarters Team, Office of the Assistant Division Chief, Population Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–2378

Dr. Charles H. Alexander, Demographic Statistical Methods Division, Bureau

of the Census, Washington, DC 20233, Tel: (301) 457–4290

Mr. David Hubble, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4239

Ms. Marjorie Dauphin, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4190

Ms. Miriam Rosenthal (formerly of) Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4270

Mr. David Hornick, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4190

Mr. John Bushery, Quality Assurance and Evaluation Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–1915

Ms. Andrea Meier, Quality Assurance and Evaluation Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–1983

Mr. Michael McMahon, Field Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4901

Mr. Chester Bowie, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–3773

Mr. Steven Tourkin, Methods, Procedures and Quality Control Branch, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–3791

Ms. Jacquie Lawing, Deputy Assistance Secretary for Economic Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 7204, Washington, DC 20410, Tel: (202) 708–0270

Mr. Mark Johnston, Senior Advisor on Homelessness, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 7274, Washington, DC 20410, Tel: (202) 708–5528

Mr. Mike Roanhouse, Office of Special Needs Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7258, Washington, DC 20410, Tel: (202) 708–1234

Mr. James Hoben, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Tel: (202) 708–0574

Mr. Keith Lively, Acting Deputy Assistance Secretary for Program Systems, Department of Health and Human Services, 200 Independence Avenue, SW, Room 447D, Washington, DC 20201, Tel: (202) 690–8774

Mr. Gerald Britten (formerly of) Deputy Assistant Secretary for Program Systems, Department of Health and Human Services, 200 Independence Avenue, SW, Room 447D, Washington, DC 20201, Tel: (202) 690–8774

Ms. Mary Ellen O'Connell, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW, Room 447D, Washington, DC 20201, Tel: (202) 260–0391

Mr. Fred Osher (formerly of) Office of Programs for the Homeless Mentally Ill, National Institute of Mental Health, Dept. of Health and Human Services, Parklawn Bldg., Room 3C06, 5600 Fishers Lane, Rockville, MD 20857, Tel: (301) 443–3706

Mr. Walter Leginski, Homeless Programs Branch, Center for Mental Health Services, Parklawn Building, room 11c–05, Rockville, MD 20857

Dr. Robert Huebner, Ph.D., Health Services Research Branch, National Institute of Alcohol Abuse and Alcoholism, Dept. of Health and Human Services, Willow Building, Suite 505, 600 Executive Boulevard, Rockville, MD 20892–7003, Tel: (301) 443–0786

Mr. Steve Bartolomei-Hill, Human Service Policy, Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 410E, 200 Independence Avenue, SW, Washington, DC 20201, Tel: (202) 690–7148

Ms. Rhoda Davis, Office of Supplemental Security Income, Dept. of Health and Human Services, Altmeyer Building, 6401 Security Blvd. Baltimore, MD 21235, Tel: (410) 965–6210

Ms. Terry Lewis, Administration on Children, Youth, and Families, Administration for Children and Families, Dept. of Health and Human Services, Mary E. Switzer Bldg., Room 2426, 330 C Street, SW, Washington, DC 20201, Tel: (202) 205–8051

Dr. Joan Turek Brezina, Ph.D., Program Systems, Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 444F, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 690–6141

Mr. Mike Jewell (formerly of) Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg—Room 447D, 200 Independence Avenue, SW, Washington, DC 20201, Tel: (202) 690–7316

Ms. Peg Washnitzer, Office of Community Services, Administration for Children and Families, Dept. of Health and Human Services, Aerospace Bldg., 7th Floor, 370 L'Enfant Promenade, SW, Washington, DC 20447, Tel: (202) 401–2333

Mr. Richard Chambers, Division of Intergovernmental Affairs, Health Care Financing Administration, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 410B, 200 Independence Avenue, SW, Washington, DC 20201, Tel: (202) 690–6257

Ms. Joan Holloway, Health Resources and Services Administration, Public Health Services, Dept. of Health and Human Services, Parklawn Bldg., Room 9–12, 5600 Fishers Lane, Rockville, MD 20857, Tel: (301) 443–8134

Ms. Marsha A. Martin (formerly of) Executive Director, Interagency Council on the Homeless, 457 Seventh Street, NW, Washington, DC, Tel: (202) 708–1480

Mr. George Ferguson, Interagency Council on the Homeless, 457 Seventh Street, NW, Washington, DC, Tel: (202) 708–1480

Ms. Della Hughes, National Network of Runaway and Youth Services, 1319 F Street, N.W., Suite 401, Washington, D.C. 20004, Tel: (202) 783–7949

Ms. Vera Johnson, SASHA Bruce Center Runaway Shelter, 1022 Maryland Avenue, N.E., Washington, D.C. 20002, Tel: (202) 675–9340

As a result of these consultations, all issues were resolved.

9. Assurance of Confidentiality

The provisions of the Privacy Act of 1974 (5 USC 552a) assure the confidentiality of the data from this survey.

During Phase 1 of the national survey, service providers contacted by telephone will receive an advance letter explaining the survey and the confidentiality of their responses and the voluntary nature of the NSHAPC along with other information required by the Privacy Act of 1974 at the time of initial contact. Service providers will also receive NSHAPC L(3)—letter with

the NSHAPC Form N List of Providers, and with the detailed program questionnaires, NSHAPC Forms 100B to 100L, (Attachments B to L, respectively) explaining the survey and the confidentiality of their responses. As can be seen on the NSHAPC questionnaire cover sheets (Attachments B through M respectively), a statement of confidentiality assurance is printed at the top of the form. Careful procedures are followed by the Bureau of the Census to assure privacy during the interview, and to protect the confidentiality of materials generated during the course of the interview. Every Bureau of the Census employee takes an oath and is subject to a jail sentence and a fine for improperly disclosing any information that would identify an individual or household. All field representatives are trained to interview respondents in private. All questionnaires associated with the national survey will be kept under secured conditions by the Bureau of the Census.

10. Justification for Sensitive Questions

The NSHAPC–100A to NSHAPC–100M questionnaires do not include any questions of a sensitive nature.

11. Cost

The total estimated cost for Phase 1 of the national survey is $1,950,000. Cost for Phase 1, Steps 1 and 2 is $1,500,000. Cost to collect detailed program and service level data (Step 3) is $450,000. We compiled this estimate using individual estimates developed within each Census Bureau division involved in this survey. Estimates are based on the size of the sample and the length of the questionnaires. Administrative overheads, design, printing, and mailing costs are included.

The total estimated cost for Phase 2 is $2,200,000.

The only cost to the service providers and the service users (clients) is the time it takes to complete the questionnaire.

12. Estimate of Respondent Burden

The projected number of government contacts, service providers and clients to be contacted and the estimated burden for the survey are indicated below:

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	FORM	Estimated Number of Contacts/Service Providers/Clients	Time - (Minutes)	Total Hours
Phase 1	NSHAPC 100A, Service Provider Core Data Questionnaire	25,000	15	6,250
Phase 1	NSHAPC 100M, List of Providers Offering Homeless Programs	25,000	15	6,250
Phase 1	NSHAPC 100B to NSHAPC 100K, NOTE, Detailed Program Questionnaires	10,000	30	5,000
Phase 2	NSHAPC 100N, Client Questionnaire - To be Completed in Phase 2 of the survey. Client burden hours are not requested in this package.	3,800	45	2,850
	Total Hours for Phase 1			17,500
	Total Hours for Phase 2			2,850
	Total Hours for the National Survey			20,350

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We estimate the average time to complete the NSHAPC–100A, Service Provider Core Data Questionnaire (refer to Attachment A) to be 15 minutes; the review of the combined list of service providers to be 15 minutes, and the detailed program level questionnaire (refer to Attachments B to L) to be 30 minutes. These estimates are based on in-house testing of the questionnaires by the Census Bureau. We estimate the information burden for these forms to be 20,350 hours. This includes:

- 6,250 hours for the CATI interview.
- 6,250 hours for review of the combined list of service providers.
- 5,000 hours for the detailed program level questionnaire.
- 2,850 hours for the Client Questionnaire.

13. Reason for Change in Burden

Not Applicable. This is a new survey. There are, therefore, 0 hours in the current OMB inventory.

14. Project Schedule

Beginning in October 1, 1995, the Census Bureau plans on telephoning all service providers within sample areas to collect basic information about programs offered. After the phone calls are completed, the Census Bureau will mail the listings of service providers by sample area and the NSHAPC—L(2)L letter to providers contacted by telephone. A subsample of providers will also be asked to provide more detailed information about the services they offer. After conducting the CATI interviews, the Census Bureau will mail the appropriate questionnaires, NSHAPC Form 100B to 100L, to the providers in sample.

Census Bureau personnel also will contact individuals from federal and state governments, agencies, organizations and knowledgeable local persons and ask them to review the lists of service providers. The Census Bureau will conduct these operations during October 1995 to January 1996.

B. Collection of Information Employing Statistical Methods

1. Universe and Respondent Selection

The Census Bureau will conduct the national survey in 76 primary sampling areas. The Census Bureau will interview all service providers in the sample areas to collect basic information about the programs offered. This is a total of 25,000 interviews. The Census Bureau will select a subsample of providers within those areas and conduct detailed mail interviews for the programs and services offered by the provider. This is a total of a 5,000 providers.

Phase 1 of the survey will provide information on the types of programs and services available to homeless people. Phase 2 of the survey will provide detailed characteristics about homeless service users (clients), including the literally homeless. Most research to date has been conducted in urban and suburban areas. For such areas, there is a growing consensus among researchers that a service-based survey design with sampling over time (vs. one-time sampling) will give a good representation of the homeless population. For nonmetropolitan areas, the consensus is that an expansion of the types of service providers is needed to cover the homeless adequately. The Department of Agriculture requested an increase in the number of sample areas and the Census Bureau identified ways to design the survey to produce reasonably precise estimates of rural homelessness. However, it should be noted that the procedures for measuring rural homelessness will be less sophisticated than our procedures in urban areas. There is much to learn about rural areas and the NSHAPC is an excellent opportunity to collect information about rural homelessness. In the nonmetroplitan areas the sampling frame is the set of Community Assistance Program (CAP) ''Catchment Areas'', wherever they exist. CAP catchment areas are counties or local areas grouped together to receive funding and provide services to the needy and are served by a CAP agency. Our preliminary research indicates that CAP agencies are a good source for lists of services in the nonmetropolitan areas they cover. In a few nonmetropolitan areas where CAPs do not exist, the sampling frame is the set of counties or groups of counties.

2. Procedures for Collecting Information

Sampled Service Providers

The Census Bureau will conduct the survey in 76 sample areas; this is the first stage of sampling. Within each sample area, a comprehensive list of service providers will be developed. All providers will furnish basic, core information on programs offered. Phase 1, also includes a second stage of sampling where a subset of service providers will be selected within each sample area to be asked more detailed information about their programs and services.

Sample of Clients (Service Users)

In Phase 2, a sample of clients will be selected for interviewing. This is a three-stage sample, where the first-stage sample corresponds to the same 76 geographic areas discussed above for the provider-interview sample. In the second stage, a sample of providers will be selected in each sample area but only in designated programs. In the third stage, a sample of the clients at each of the sample provider facilities will be selected.

Estimation

In Phase 1, the estimates needed are proportions of providers falling in different categories.

The estimates needed for Phase 2 consist of proportions of clients falling in different categories. The base for these proportions can be derived in two ways:

a. Weighted estimates of the average number of persons using services on any given day in February;

b. Weighted estimates of the total number of persons using services at any time during February.

Other estimates can be derived from these. For example, the weights applied to obtain estimates (a) or (b) could be used for estimates only of those service-using persons who are homeless according to different definitions of homelessness. For the national survey, it is likely that a range of estimates will be provided, corresponding to different assumptions about coverage and multiplicity biases.

The weights for (a) will be standard survey weights based on the selection probability, with adjustments for nonresponse. There will be a ''multiplicity'' adjustment to reduce the relative weight of people who have more than one change of selection because they use more than one type of program, for example, both shelters and soup kitchens, as determined from the questionnaire.

For (b) three estimation methods are under consideration. One purpose of the pretest was to get information to evaluate these methods.

METHOD 1: *The weight will be proportional to the number of consecutive days prior to the interview (up to 28 days) that the person did not use a shelter (for the shelter sample) or soup kitchen (for the soup kitchen sample), and likewise for other types of programs.* For example, a person who says this is their first night in any shelter in the last 28 days will be given a weight 28 times the typical weight of a person who was in a shelter the night before. (Intuitively, the method assumes that for every person we find who is just entering homelessness, there are 27 others whom we miss because we did not happen to interview them on their first day.) There is a precise mathematical justification for the

method as given an unbiased estimate of the total number of service users during 28-day periods centered around February, making some assumptions that overall patterns of service use are fairly constant throughout the month.

This is intended to be our primary method. The potential drawback of this method would be if the pretest finds too many people who are just starting to use services after a long absence, resulting in too many large weights. Limited research from 1990 census evaluation projects suggests that this should not be a problem. However, if this turns out to be a problem we would either use the Method 2 or use Method 1 with a 7-day ''window'' instead of a 28-day ''window''.

METHOD 2: *The weight will be inversely proportional to the number of days in the last week the client used a shelter (for the shelter sample) or soup kitchen (for the soup kitchen sample), and likewise for other types of programs.* This is the procedure used in the 1987 Urban Institute study. We will ask this question for comparability with that survey. This approach has two disadvantages. First, even if the questions are answered accurately, the method has a mathematical bias unless each person has the same pattern of service use each week. Second, it is not reasonable to ask a person for his/her average shelter use for an entire month, so the method cannot give direct estimates for the total number using services during a period longer than a week.

METHOD 3: *Capture-recapture.* We are not using capture-recapture estimation. It would require selecting the sample independently each day, so that there would be a chance that a person or small shelter might come into sample numerous times.

The Urban Institute and the Census Bureau developed the survey design. As part of Joint Statistical Agreements between the Urban Institute and the Census Bureau, the following operational papers and references were developed. Each are available from the Census Bureau on request.

Joint Statistical Agreement 91–30

—Developing a Provider List—November 27, 1991
—Methodological Issues and Options—November 27, 1991
—Options for Evaluating Coverage in Urban Areas—December 10, 1991
—Ranking of Data Items by Federal Agencies—December 10, 1991

Joint Statistical Agreement 92–01

—Draft Questionnaire and Agency Data Needs—March 26, 1992
—Developing Provider Lists for a National Homeless Survey—March 26, 1992
—Proposed Methodology for a National Homeless Survey—March 26, 1992
—Questions for Unduplicating and for Estimating a Month-Long Point Prevalence and Annual Prevalence—March 26, 1992
—Developing Estimates of the Number of Service Providers in Different Strata—April 10, 1992
—Options for Evaluating Survey Coverage in Urban Areas, and Preliminary
—Information on Rural Areas—April 10, 1992

Joint Statistical Agreement 92–04

—Mechanics of List Development and Additional Field and Survey Procedures—August 14, 1992
—Estimates of Service Providers and Users in Non-MSA Areas, and Options for
—Evaluating Survey Coverage in These Areas—August 4, 1992

List of References

3. Methods to Maximize Response

a. Survey Frame for Client Interviews

New research indicates the greatest improvement in coverage of the homeless population is through sampling this population over time, (e.g., soup kitchens and shelters) and outreach programs during a four-week period. The NSHAPC survey design uses a service-based methodology. A ''service user'' is anyone who uses generic services or shelters, soup kitchens, or other services for the homeless. The survey frame will include shelters, soup kitchens, outreach programs, and possibly other programs. A ''non-service user'' is anyone who does not use any of these services.

According to the 1987 Urban Institute study, the shelter frame covers homeless people who use shelters, which may be 35 to 40 percent of the homeless on any given night, and about 50 percent over the course of a week. If conducted on a one-night basis, the shelters' sampling frame taken by itself will miss many homeless who use shelters infrequently, homeless service users who do not use shelters but do use soup kitchens and other services, and homeless people who do not use any services. If data collection involves repeated samples from the same shelters over the course of a week or a month, a considerably higher proportion of the homeless (perhaps as high as 70 percent) is likely to be captured through a methodology based on shelters.

The soup kitchen sampling frame, taken by itself over the course of a week, will capture a proportion of very poor people residing in conventional dwellings who may turn out to be at imminent risk of hopelessness. According to the 1987 Urban Institute study, 43 percent of soup kitchen users are not literally homeless. When shelter and soup kitchen frames are combined during the course of a week, the shelter and soup kitchen frames will probably cover about 70 percent of the literally homeless and a small but unknown proportion of the service-using at-risk population. When data collection covers a month (as planned for the national survey), the coverage will be even greater—perhaps as high as 85–90 percent of the literally homeless.

In many cities, the array of services for the homeless include one or more outreach programs. These programs may be operated by a shelter, soup kitchen, drop-in center, health care center, neighborhood center, or other service facility. Their target population is homeless people who do not routinely use shelters or soup kitchens. The outreach programs typically distribute food, and sometimes blankets or warm clothing. Outreach teams typically follow a route that covers the known locations frequented by homeless street people, or where homeless street people assemble at the time they know the ''food wagon'' will come by. Including outreach programs in a design as a sampling frame allows one to maintain the control and efficiency associated with sampling service programs and their users, while still reaching the ''reachable'' proportion of the street homeless population. Outreach programs are probably the best single source of information about the hidden street population and the most cost effective opportunity to make contact with the street population. Additional enumeration of street locations and encampments yields little overall coverage improvement when shelters, soup kitchens, and outreach programs are interviewed over time.

The NSHAPC is designed to cover as much of the literally homeless population as possible and still meet the cost considerations of the sponsors. From previous research, it appears that up to 90 percent coverage of the literally homeless population is achievable with the shelter/soup kitchen/outreach programs methodology conducted during a winter month. This service-based methodology will be considerably cheaper and easier than implementing a street enumeration to attempt to get the last 10 percent. In addition, even if the resources were committed to achieve

full coverage, there is not guarantee we would get the last 10 percent.

b. Incentives to Participate in the Survey

The letters and information on the survey have been written to explain the benefits of the survey so that respondents will be encouraged to participate in the survey. Also, the Census Bureau has designed the survey questionnaires to minimize respondents' time and efforts. We think this effort will encourage providers to participate in the survey.

4. Contacts for Statistical Aspects and Data Collection

The following individuals are being consulted on statistical aspects of the survey design:

Dr. Martha Burt, The Urban Institute, 2100 M Street, NW, Washington, DC 20037, Tel: (202) 857–8551

Dr. Michael Dennis, Research Triangle Institute, Center for Social Research and Policy Analysis, PO Box 12194, Research Triangle Park, NC 27709–2194, Tel: (919) 541–6429

Dr. Charles H. Alexander, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, (301) 457–4290

The Census Bureau will collect the data for this survey. Mr. Steven Tourkin is responsible for the collection of all data and is the Census Bureau contact person for the survey.

Mr. Steven C. Tourkin, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, (301) 457–3791

List of Attachments

Attachment A NASHAPC–100A, Service provider Core Data Questionnaire

Attachment B NASHAPC–100B, Emergency Shelter Program Questionnaire

Attachment C NASHAPC–100C, Transitional Housing Program Questionnaire

Attachment D NASHAPC–100D, Voucher Program Questionnaire

Attachment E NASHAPC–100E, Permanent Housing for the Homeless Program Questionnaire

Attachment F NASHAPC–100F, Alcohol/Drug Program Questionnaire

Attachment G NASHAPC–100G, Mental health Care Program Questionnaire

Attachment H NASHAPC–100H, Physical Health Care Program Questionnaire

Attachment I NASHAPC–100I, Drop-in Center Program Questionnaire

Attachment J NASHAPC–100J, HIV/AIDS Program Questionnaire

Attachment K NASHAPC–100K, Outreach Program Questionnaire

Attachment L NASHAPC–100L, 'Other' Program Questionnaire

Attachment M NASHAPC–100M, Provider Update Form Questionnaire

BILLING CODE 4210–01–M

Attachment A

Form HPWUS-100A, Service Provider Core Data Questionnaire

-Open- *(At this point, we have a knowledgeable respondent on the phone)*

We are conducting a survey.....for the Interagency Council on the Homeless (an agency composed of Federal agencies). We have your facility as [fill provider name] located at [fill address]. Is this correct?

[ ] Yes
[ ] No

1a. Do you offer programs to serve homeless persons at THIS ADDRESS? - By homeless I mean persons without a home as defined by the Stewart B. McKinney Homeless Assistance Act of 1987. (Need to know what this definition is) By THIS ADDRESS I mean that you provide [bold] direct programs and services [n] to clients from this location.

[ ] Yes [Goto Q2a]
[ ] No [Goto List]

-List-

We will be sending you a list of service providers in your county. We ask that you help us to compile a more complete list of service care providers in your county so that we may better conduct our survey. Please give me the name, address and telephone number of the best person to send our list of service providers to.

@PROVIDER --->_____

@CONTACT --->_____

@STREET --->_____

@CITY --->_____

@ST --->_____ @ZIP --->_____

@PHONE --->_____

2a. We are collecting information about housing programs, food programs, and health care programs. I would like to ask you about specific programs you provide at this address. Do you offer an emergency shelter program? - [By emergency shelter program I mean a program which operates on a first-come first-served basis where people must leave in the morning and have no guaranteed bed for the next night OR be provided a specific bed for a specified period of time (even if they

leave the building every day). Please include facilities which provide temporary shelter during extremely cold weather (such as churches) and emergency shelters for runaway or neglected children and youth, and shelters for abused women.]

[ ] Yes
[ ] No

2b. **Do you offer a transitional housing program?** - A transitional housing program, with a maximum stay for clients of up to two years, offers augmented services to promote self-sufficiency and to gain permanent housing. By augmented services I mean.....

[ ] Yes
[ ] No

2c. **Do you offer permanent housing for homeless people?** - Permanent housing for homeless people includes support services. This housing may be section 8 vouchers, Public Housing Authority (PHA) units, Single Room Occupancies (SROs), and other long-term housing assistance. This is very important, please ONLY include permanent housing designed to serve persons who are coming from emergency shelters, transitional housing, or homeless AT THE TIME OF ENTRY INTO the permanent housing. By support services I mean (services to increase the stability and independence of individuals or families (e.g., independent living training).

PHA - Public Housing Authority
SRO - Single Room Occupancy (consists of private living/sleeping rooms and shared kitchens and bathrooms facilities. An SRO unit does not have a complete and private kitchen and bathroom facilities for each resident. One or two adults may occupy an SRO unit. Each living/sleeping room is considered one dwelling unit.

[ ] Yes
[ ] No

The next questions asks about food programs.

2d1. **Do you offer soup kitchen or meal distribution programs?** - This includes soup kitchens, food lines, and programs distributing prepared breakfasts, lunches, or dinners for homeless or needy people. These programs may be organized as food service lines, bag or box lunches, tables where people are seated, then served by program personnel. These programs may or may not have a place to sit and eat the meal. Needy people are....

[ ] Yes
[ ] No

2e. **Do you offer a food pantry program?** - By food pantry program, I mean a program which distributes uncooked food in boxes or bags.

[ ] Yes
[ ] No

2f. **Do you offer a mobile food program?** - This includes programs for homeless persons which visit designated street locations for the primary purpose of providing food.

[ ] Yes
[ ] No

2g. **Do you offer an outreach program?** - This includes programs in which homeless persons are contacted in non-traditional settings (for example, on streets, in subways, under bridges, in parks) to offer food, blankets, or other necessities; to assess needs and attempt to engage them in services; to offer medical, mental health and/or substance abuse services; and/or to offer other assistance on a regular basis for the purpose of improving their health, mental health, or social functioning, or increasing their utilization of human services and resources. By regular I mean at least once a week; and services may be during the day or at night.

[ ] Yes
[ ] No

2h. **Do you offer a physical health care program?** - This includes programs that provide health care to homeless persons, such as medical, dental, and other health care.

[ ] Yes
[ ] No

2i. **Do you offer a mental health program for homeless persons?** - This includes services provided to improve mental or psychological health or the ability to function well in social settings. Specific services include intervention or hospitalization during a moment of crisis, counseling, psychotherapy, psychiatric services, and psychiatric medication monitoring.

[ ] Yes
[ ] No

2j. **Do you offer alcohol or other drug programs for homeless persons?** - This includes services that are provided in a supervised setting to ensure that an individual safely reduces his/her level of alcohol or other drug intoxication to zero. The supervision may be provided by medically trained staff and may include the use of medication to control withdrawal.

[ ] Yes
[ ] No

2k. **Do you offer HIV/AIDS programs for homeless persons?**

[ ] Yes
[ ] No

2l. **Do you offer a drop-in center program?** - Drop-in centers provide daytime services primarily for homeless persons other than facilities serving meals, which are included in SOUP KITCHENS. When thinking about drop-in centers, do not include those centers that only serve meals. If only meals are served, please include them under soup kitchens. (help screen) - If soup kitchen go back to soup kitchen question Q2d1.

[ ] Yes
[ ] No

2m. **Do you have migrant housing that is used to house homeless people in the off season?** -

[ ] Yes
[ ] No

2n. Do you offer housing in exchange for vouchers? - Please include hotels, motels, or other facilities that are not shelters, for which vouchers are given out OR which operate under contact to provide shelter to homeless people.

[ ] Yes
[ ] No

2o. Does your office distribute vouchers for shelter? - Include offices which distribute vouchers for shelter to homeless people.

[ ] Yes
[ ] No

2p. Do you offer other programs which serve homeless clients? - Include those facilities which provide services for homeless persons, such as education, clothing distribution centers, and/or employment skills training.

[ ] Yes [ ] No

-2aspec-

Can you specify the other types of programs that you offer?

_____
_____
_____

This next set of questions are asked for any program that the facility offers. That is, nay question 2a. through 2p. marked 'Yes'. For illustrative purposes, the following questions refer to the emergency housing program.

BEGIN LOOP

I'm now going to ask you some questions about your emergency shelter program.

3a1. **Think ahead to February 1996, on what days will you operate the emergency shelter program in February 1996? When answering these questions, only consider the emergency shelter program.** - (MARK "X" EACH DAY THAT APPLIES. If open every day enter "E" for every day.)
@EVERYDAY [if @EVERYDAY EQ E THEN goto Q3WK ELSE goto 3a2.)

__Every day [goto 3WK]

___Th FEB1	___Fr FEB2	___St FEB3	___Sn FEB4
___Mn FEB5	___Tu FEB6	___Wd FEB7	___Thur FEB8
___Fr FEB9	___St FEB10	___Sn FEB11	___Mn FEB12
___Tu FEB13	___Wd FEB14	___Th FEB15	___Fr FEB16
___St FEB17	___Sn FEB18	___Mn FEB19	___Tu FEB20
___Wd FEB21	___Th FEB22	___Fr FEB23	___St FEB24
___Sn FEB25	___Mn FEB26	___Tu FEB27	___Wd FEB28
___Th FEB29			

3WK. **I would like to verify that you are open on Saturdays and/or Sunday during the weekend. Is this correct?**

[ ] Yes [Goto 3a2]
[ ] No [Go to 3a1]

3a2. On those days in February when the emergency shelter program operates, how many ADULTS, aged 18 years or older, does the program serve at this location?

_____

3a3. Of these ADULTS, approximately what percent are homeless now or were homeless prior to participating in this program?

_____%

3a4. Of the adults, approximately what percentage use the program 10 or more days a month?_____%

3a5. I'm now going to ask about the numbers of children and youth that the program serves. We consider 'youth' to be aged 12 to 17. On those days in February when the emergency shelter program operates, how many YOUTH does the program serve at this location?

_____ [If 0, goto 3a6]

3a5b. Of these YOUTH, aged 12 to 17 approximately what percent are homeless now or were homeless prior to participating in this program?

_____%

3a6. I'm now going to ask about the numbers of children that the program serves. We consider 'children' to be under the age of 12 years. On those days in February when the emergency shelter program operates, how many CHILDREN does the program serve at this location?

_____ [If 0, goto 3a7]

3a6b. Of these CHILDREN, under the age of 12, approximately what percent are homeless now or were homeless prior to participating in this program?

_____%

Now I am going to ask you some questions about the percentages of different groups of people who use your facility.

3a7. On an average day that you are open in February, do you serve -

(a) both unaccompanied single persons and couples or families?

[ ] Yes [Goto 3a8]
[ ] No [Goto 3a7b]

(b) Do you have only unaccompanied single persons or just couples and families?

[ ] Unaccompanied persons [Goto Q3a8]
[ ] Couples and families [Goto Q3a11]

Now I'm going to ask more about the unaccompanied single persons that use your program. I want to find out what percent are adults, what percent are youths, and what percent are children.

3a8a. What percentage of your unaccompanied single persons are adults, 18 years of age or older?

____% adults

3a8b. What percentage of your unaccompanied persons are youths? Youths are 12 to 17 years old.

____% youths

3a8b. What percentage of your unaccompanied persons are children? Children are under 12 years old.

____% children?

The next questions ask about unaccompanied ADULTS that use your program.

3a9. Of these unaccompanied adults what percentage are male and what percentage are female?

_____% Male

_____% Female

Now I am going to be asking about the unaccompanied youths that use your program. Youths are ages 12 to 17.

3a10a. What percentage of your unaccompanied youths are male and what percentage are female?

(a) _____% Male

(b) _____% Female

Now I am going to be asking about the unaccompanied children that use your program. Children are under the age of 12.

3a10b. What percentage of your unaccompanied children are male and what percentage are female?

(a) _____% Male

(b) _____% Female

3a11a. I'm going to ask you about the couples or families that the program serves. There are 3 groups of these - (1) single parent families with children, (2) two-parent families with children, (3) adults couples without children. Considering these groups, what percentage of the couples and families are -

(a) Single-parent families with children? _____%

(b) Two-parent families with children? _____%

(c) Adult couples without children? _____%

3a12. Is this program a -

Mark (X) only one box.

(1) [ ] **Nonprofit, religious affiliated program?**

(2) [ ] **Non-profit, non-sectarian program?**

(3) [ ] **Private, for profit agency?**

(4) [ ] **Government agency?**

3a13a. What percentage of your funding for this program comes from private funding such as donations, foundation grants, United Way, individual's contributions?

_____%

3a13b. What percentage of your funding for this program comes from Federal, State, or local Government funding?

_____%

3a13c. What percentage of your funding for this program comes from another source?

_____%

-3a13csp-

Please specify the source of this other funding.

_____

3a14a. Does this program focus on any of the following population groups

- needy or impoverished people?

[ ] Yes
[ ] No

3a14b. victims of domestic violence, abused women?

[ ] Yes
[ ] No

3a14c. runaway or homeless children or youth?

[ ] Yes
[ ] No

3a14d. people with mental health problems?

[ ] Yes
[ ] No

3a14e. people with (only) drug or alcohol problems? (no mental health problems)

[ ] Yes
[ ] No

3a14f. people with drug (including every drug except alcohol?) and mental health problems?

[ ] Yes
[ ] No

3a14g. people with HIV/AIDS?

[ ] Yes
[ ] No

3a14h. veterans?

[ ] Yes
[ ] No

3a14i. Is any one else served by this program?

[ ] Yes [Goto 3a14isp]
[ ] No [Goto 3a14j]

3a14isp. Please specify who else is served by this program.

_____

3a14j. You told me that you focus on [fill Q3a114a-Q3a14isp where entry EQ 1]. Which of these, if any, would you consider to be the PRIMARY population group that you serve?

_____

The following questions are asked if 3a14h is 'Yes'. That is, is veterans are a focus group for the program.

3a15. **You told me that one of the groups this program serves is veterans. Of all the clients that you serve in this program, what percent are veterans?**

_____

3a16. **Among these veterans, what percent are eligible for service-connected benefits?**

_____%

3a17. **Is this program sponsored by VA?**

[ ] Yes [Goto 3a17a]

[ ] No [Goto 3a18]

3a17a. **Is this a domiciliary program?**

[ ] Yes

[ ] No

3a17b. **Is this an HCMI contracted program?**

(Homeless Chronically Mentally Ill)

[ ] Yes

[ ] No

3a17a. **Is this a VA grant or per diem program?**

[ ] Yes

[ ] No

3a18. **Is this program sponsored by state or local government?**

[ ] Yes

[ ] No

3a19. **Is this program sponsored by any government agency, other than VA, state or local?**

[ ] Yes [Goto 3a19b]

[ ] No [Goto conta]

13

3a19b. What government agency is this?

_____

The following question is asked to all respondents, as part of the loop.

-conta-

We will be sending a brief questionnaire to a sample of providers which asks some more detailed questions about the programs. If you are selected, who is the best person to contact about the emergency shelter program?

@CONTACTA --->_____

@ADDRESS --->_____

@CITY --->_____

@ST --->_____ @ZIP --->_____

@PHONE --->_____

END LOOP

The following questions will be included at the beginning of the loop for soup kitchens:

2d3. Do you offer breakfast?

[ ] Yes
[ ] No

2d4. Do you offer lunch?

[ ] Yes
[ ] No

2d5. Do you offer dinner?

[ ] Yes
[ ] No

2d6. Within the past 30 days, did you receive any USDA-donated foods, that is food that was donated by the United States Department of Agriculture, for your feeding program?

[ ] Yes [Goto 2d8]
[ ] No [Goto 2d7]

2d7. Does your program ever receive USDA-donated foods?

[ ] Yes [Goto 2d8]
[ ] No [Goto 2d9]

2d8. On average, how often do you receive USDA foods? Would you say that it is -

[ ] Every month?
[ ] Every quarter?
[ ] Less often than once each quarter?

2d9. About what proportion of the total foods used in your feeding program does the USDA-donated food account for?

[ ] 5 percent or less
[ ] 5 - 10 percent
[ ] 10-25 percent
[ ] 25-50 percent
[ ] more than 50 percent

15

After all loops are completed, the following question will be asked. Please note that this is identical to the question asked if question 1 is 'No'.

-List-

We will be sending you a list of service providers in your county. We ask that you help us to compile a more complete list of service care providers in your county so that we may better conduct our survey. Please give me the name, address and telephone number of the best person to send our list of service providers to.

@PROVIDER --->_____

@CONTACT --->_____

@STREET --->_____

@CITY --->_____

@ST --->_____ @ZIP --->_____

@PHONE --->_____

HPWUS-100B
7/21/95

Attachment B

EMERGENCY SHELTER PROGRAMS

This questionnaire contains some detailed questions about your emergency shelter program. We are interested in information about:

* services that might be needed by the clients who use this program;
* the capacity and utilization of your facility, and
* where your clients go when they leave your facility.

If you operate more than one program from your location, please consider only your emergency shelter program when answering these questions.

1

1 a. Is the provision of food and/or clothing needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Food	[ ] Yes ---- [ ] No						
(2) Clothing	[ ] Yes ---- [ ] No						

2 a. Are the following 'life skills' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Money management or budgeting	[ ] Yes ---- [ ] No						
(2) Household skills – cooking, cleaning, maintenance	[ ] Yes ---- [ ] No						
(3) Personal relations counseling – conflict resolution	[ ] Yes ---- [ ] No						
(4) Parenting training	[ ] Yes ---- [ ] No						

3 a. Are the following 'case management' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Needs assessment	[ ] Yes ---- [ ] No						
(2) Development of individual goals and service plans	[ ] Yes ---- [ ] No						
(3) Referral or assistance with entitlements	[ ] Yes ---- [ ] No						
(4) Followup after client leaves	[ ] Yes ---- [ ] No						

4 a. Are the following 'housing' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Locating housing	[ ] Yes ---- [ ] No						
(2) Applying for rental assistance	[ ] Yes ---- [ ] No						
(3) Assistance with landlord/tenant relations	[ ] Yes ---- [ ] No						
(4) Financial assistance with utilities and/or rent	[ ] Yes ---- [ ] No						

2

5 a. Are the following 'education' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Help children enroll in school/ liason with school district	[ ] Yes ---- [ ] No						
(2) Head Start	[ ] Yes ---- [ ] No						
(3) Other chilhood education	[ ] Yes ---- [ ] No						
(4) Tutoring for school children	[ ] Yes ---- [ ] No						
(5) English as a Second Language courses	[ ] Yes ---- [ ] No						
(6) GED courses	[ ] Yes ---- [ ] No						
(7) Family literacy services (e.g. Even Start/Family Literacy)	[ ] Yes ---- [ ] No						
(8) Basic literacy training	[ ] Yes ---- [ ] No						
(9) Basic skills training/adult education courses	[ ] Yes ---- [ ] No						

6 a. Are the following 'employment' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Assessment of job skills	[ ] Yes ---- [ ] No						
(2) Job Finding/Retention skills (e.g. training for job interviews)	[ ] Yes ---- [ ] No						
(3) Job referral or placement	[ ] Yes ---- [ ] No						
(4) Training for specific jobs	[ ] Yes ---- [ ] No						
(5) Vocational rehabilitation	[ ] Yes ---- [ ] No						
(6) Placement in volunteer jobs	[ ] Yes ---- [ ] No						

7 a. Are the following 'general health care' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Health care assessment -- health history	[ ] Yes ---- [ ] No						
(2) Primary care -- physical exam, etc.	[ ] Yes ---- [ ] No						
(3) Emergency/acute care	[ ] Yes ---- [ ] No						
(4) Prenatal care	[ ] Yes ---- [ ] No						
(5) Immunizations	[ ] Yes ---- [ ] No						
(6) HIV/AIDS services	[ ] Yes ---- [ ] No						
(7) TB testing	[ ] Yes ---- [ ] No						
(8) TB treatment	[ ] Yes ---- [ ] No						
(9) Dental care	[ ] Yes ---- [ ] No						
(10) Hospice care	[ ] Yes ---- [ ] No						
(11) Health education/prevention	[ ] Yes ---- [ ] No						

3

8 a. Are the following 'substance abuse' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Alcohol/drug testing -- (saliva, urine or blood)	[ ] Yes ---- [ ] No						
(2) Alcohol/drug dependence assessment	[ ] Yes ---- [ ] No						
(3) Detoxification	[ ] Yes ---- [ ] No						
(4) Outpatient treatment	[ ] Yes ---- [ ] No						
(5) Inpatient treatment	[ ] Yes ---- [ ] No						
(6) Alcoholics/Cocaine/Narcotics Anonymous	[ ] Yes ---- [ ] No						

9 a. Are the following 'mental health' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Mental health assessment	[ ] Yes ---- [ ] No						
(2) Medication administration/monitoring	[ ] Yes ---- [ ] No						
(3) Crisis intervention	[ ] Yes ---- [ ] No						
(4) Outpatient therapy/counseling	[ ] Yes ---- [ ] No						
(5) Inpatient treatment	[ ] Yes ---- [ ] No						
(6) Peer group/self help -- (other than AA/NA/CA)	[ ] Yes ---- [ ] No						

10 a. Are the following other services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Outreach	[ ] Yes ---- [ ] No						
(2) Child care	[ ] Yes ---- [ ] No						
(3) Domestic violence counseling	[ ] Yes ---- [ ] No						
(4) Legal assistance	[ ] Yes ---- [ ] No						
(5) Veteran's special services	[ ] Yes ---- [ ] No						
(6) Other required services Specify: _____	[ ] Yes ---- [ ] No						

11 Is transporation or transportation assistance provided as part of this program?

[ ] Yes -- *ANSWER QUESTION 12*

[ ] No -- *SKIP TO QUESTION 14, on the next page*

12 For which of the following services is transportation provided to clients?

MARK ALL THAT APPLY

[ ] Food and/or clothing

[ ] Life skills counseling, such as money management, household skills, parental training

[ ] Case management, such as needs assesment, assistance with entitlements, followup

[ ] Housing search services

[ ] Education -- classes for adults or children

[ ] Employment services, such as vocational rehabilitation, sheltered workshop, training

[ ] Health care

[ ] Substance abuse services

[ ] Mental health services

[ ] Child care

[ ] Domestic violence counseling

[ ] Legal assistance

[ ] HIV/AIDS services

[ ] Veteran's special services

13 By which of the following methods are the transportation services provided?

MARK ALL THAT APPLY

[ ] Reimbursement of client expenses (e.g. voucher, cash, tokens)

[ ] Program vehicles

[ ] Volunteers

[ ] Local government or public transportation

[ ] Other -- What? _____

5

14 **Does this program serve unaccompanied single persons?**

1 [ ] Yes -- CONTINUE WITH QUESTION 15

2 [ ] No -- SKIP TO QUESTION 21

15 **What is the maximum number of single persons you can shelter in your facility per day or night?**

_____ Persons

16 **During each of the months below, at what PERCENT OCCUPANCY for single persons do you usually operate?**

17 **For each month that you usually operate at full capacity (100%), please indicate the NUMBER of eligible persons you had to turn away. In the first column, enter the NUMBER of persons who were turned away on any one day or night. In the second column, enter the TOTAL NUMBER usually turned away during the entire month.**

Month	Percent		Number turned away on a typical day/night	Number turned away altogether during the month
January	_____%	If 100% -----	____	____
February	_____%	If 100% -----	____	____
March	_____%	If 100% -----	____	____
April	_____%	If 100% -----	____	____
May	_____%	If 100% -----	____	____
June	_____%	If 100% -----	____	____
July	_____%	If 100% -----	____	____
August	_____%	If 100% -----	____	____
September	_____%	If 100% -----	____	____
October	_____%	If 100% -----	____	____
November	_____%	If 100% -----	____	____
December	_____%	If 100% -----	____	____

If there are NO periods when you are full -- SKIP to Question 19
If there are periods when you are full -- CONTINUE with Question 17 above

UNACCOMPANIED SINGLE PERSONS -- Continued 6

18 For the periods that you operated at FULL capacity, or had to turn persons away, what were the reasons that demand for your services or facilities increased?

Never full [ ] -- SKIP TO 19

MARK ALL THAT APPLY WHEN FULL

1 [ ] Increase in need

2 [ ] Seasonal changes

3 [ ] Change in program participation criteria

4 [ ] Facilites closed elsewhere

5 [ ] Economic/job market changes

6 [ ] Change in program funding or capacity

7 [ ] Just filled to the maximum

8 [ ] Other -- WHAT?

_____

_____

19 For the periods that you operated at LESS than full capacity, what were the reasons that demand for your services or facilities decreased?

Never less than full [ ] -- SKIP TO 20

MARK ALL THAT APPLY

1 [ ] Decline in need

2 [ ] Seasonal changes

3 [ ] Change in program participation criteria

4 [ ] New facilites added elsewhere

5 [ ] Economic/job market changes

6 [ ] Change in program funding or capacity

7 [ ] Other -- WHAT?

_____

_____

20 This question asks about where your clients go when they are no longer served by your program.

Of the persons that you served last year, please estimate what PERCENT of the single persons went to the following destinations:

	Percent
The streets or other outside locations	_____%
Other emergency shelter	_____%
Transitional housing	_____%
Family or friend's housing	_____%
Private unsubsidized housing	_____%
Government subsidized housing, e.g Section 8, Public or Rural Rental Housing	_____%
Special permanent housing for disabled homeless (mentally ill, developmentally disadvantaged, HIV)	_____%
Hospital	_____%
Jail or prison	_____%
Other -- Where? _____	_____%
Don't Know	_____%
The above should total to --------	100%

7

21 **Does this program serve couples/families -- two or more persons living as a unit?**

1 [ ] Yes -- CONTINUE WITH QUESTION 22

2 [ ] No -- INTERVIEW COMPETED *Thank you!*

22 **What is the maximum number of couples/families you can shelter in your facility per day or night?**

_____ Couples/Families

23 **During each of the months below, at what PERCENT OCCUPANCY do you usually operate for shelter space for couples/families?**

24 **For each month that you usually operate at full capacity (100%), please indicate the NUMBER of eligible couples/families you had to turn away. In the first column, enter the NUMBER of couples/families who were turned away on any one day or night. In the second column, enter the TOTAL NUMBER usually turned away during the entire month.**

Month	Percent		Number turned away on a typical day/night	Number turned away altogether during the month
January	_____%	If 100% -----	____	____
February	_____%	If 100% -----	____	____
March	_____%	If 100% -----	____	____
April	_____%	If 100% -----	____	____
May	_____%	If 100% -----	____	____
June	_____%	If 100% -----	____	____
July	_____%	If 100% -----	____	____
August	_____%	If 100% -----	____	____
September	_____%	If 100% -----	____	____
October	_____%	If 100% -----	____	____
November	_____%	If 100% -----	____	____
December	_____%	If 100% -----	____	____

If there are NO periods when you are full -- SKIP to Question 26
If there are periods when you are full -- CONTINUE with Question 24 above

FAMILIES/COUPLES -- Continued 8

25 For the periods that you operated at FULL capacity, or had to turn families/couples away, what were the reasons that demand for your services or facility increased?

Never full [ ] -- SKIP TO 26

MARK ALL THAT APPLY WHEN FULL

1 [ ] Increase in need

2 [ ] Seasonal changes

3 [ ] Change in program participation criteria

4 [ ] Facilites closed elsewhere

5 [ ] Economic/job market changes

6 [ ] Change in program funding or capacity

7 [ ] Just filled to the maximum

8 [ ] Other -- WHAT?

_____

_____

26 For the periods that you operated at LESS than full capacity for couples/families, what were the reasons that demand for your services or facility decreased?

Never less than full [ ] -- SKIP TO 27

MARK ALL THAT APPLY

1 [ ] Decline in need

2 [ ] Seasonal changes

3 [ ] Change in program participation criteria

4 [ ] New facilites added elsewhere

5 [ ] Economic/job market changes

6 [ ] Change in program funding or capacity

7 [ ] Other -- WHAT?

_____

_____

27 This question asks about where your clients go when they are no longer served by your program.

Of the families/couples that you served last year, please estimate what PERCENT went to the following destinations:

	Percent
The streets or other outside locations	_____%
Other emergency shelter	_____%
Transitional housing	_____%
Family or friend's housing	_____%
Private unsubsidized housing	_____%
Government subsidized housing, e.g Section 8, Public or Rural Rental Housing	_____%
Special permanent housing for disabled homeless (mentally ill, developmentally disadvantaged, HIV)	_____%
Hospital	_____%
Jail or prison	_____%
Other -- Where? _____	_____%
Don't Know	_____%
The above should total to -----	**100%**

HPWUS–100F
7/21/95

Attachment F

ALCOHOL/DRUG PROGRAMS

This questionnaire contains some detailed questions about your alcohol/drug program. We are interested in information about services that might be needed by the clients who use this program. If you operate more than one program from your location, please consider only your alcohol/drug program when answering these questions.

1

1 a. Is the provision of food and/or clothing needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Food	[ ] Yes ---- [ ] No						
(2) Clothing	[ ] Yes ---- [ ] No						

2 a. Are the following 'life skills' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Money management or budgeting	[ ] Yes ---- [ ] No						
(2) Household skills – cooking, cleaning, maintenance	[ ] Yes ---- [ ] No						
(3) Personal relations counseling – conflict resolution	[ ] Yes ---- [ ] No						
(4) Parenting training	[ ] Yes ---- [ ] No						

3 a. Are the following 'case management' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Needs assessment	[ ] Yes ---- [ ] No						
(2) Development of individual goals and service plans	[ ] Yes ---- [ ] No						
(3) Referral or assistance with entitlements	[ ] Yes ---- [ ] No						
(4) Followup after client leaves	[ ] Yes ---- [ ] No						

4 a. Are the following 'housing' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Locating housing	[ ] Yes ---- [ ] No						
(2) Applying for rental assistance	[ ] Yes ---- [ ] No						
(3) Assistance with landlord/tenant relations	[ ] Yes ---- [ ] No						
(4) Financial assistance with utilities and/or rent	[ ] Yes ---- [ ] No						

2

5 a. Are the following 'education' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Help children enroll in school/ liason with school district	[ ] Yes ---- [ ] No						
(2) Head Start	[ ] Yes ---- [ ] No						
(3) Other chilhood education	[ ] Yes ---- [ ] No						
(4) Tutoring for school children	[ ] Yes ---- [ ] No						
(5) English as a Second Language courses	[ ] Yes ---- [ ] No						
(6) GED courses	[ ] Yes ---- [ ] No						
(7) Family literacy services (e.g. Even Start/Family Literacy)	[ ] Yes ---- [ ] No						
(8) Basic literacy training	[ ] Yes ---- [ ] No						
(9) Basic skills training/adult education courses	[ ] Yes ---- [ ] No						

6 a. Are the following 'employment' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Assessment of job skills	[ ] Yes ---- [ ] No						
(2) Job Finding/Retention skills (e.g. training for job interviews)	[ ] Yes ---- [ ] No						
(3) Job referral or placement	[ ] Yes ---- [ ] No						
(4) Training for specific jobs	[ ] Yes ---- [ ] No						
(5) Vocational rehabilitation	[ ] Yes ---- [ ] No						
(6) Placement in volunteer jobs	[ ] Yes ---- [ ] No						

7 a. Are the following 'general health care' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Health care assessment -- health history	[ ] Yes ---- [ ] No						
(2) Primary care -- physical exam, etc.	[ ] Yes ---- [ ] No						
(3) Emergency/acute care	[ ] Yes ---- [ ] No						
(4) Prenatal care	[ ] Yes ---- [ ] No						
(5) Immunizations	[ ] Yes ---- [ ] No						
(6) HIV/AIDS services	[ ] Yes ---- [ ] No						
(7) TB testing	[ ] Yes ---- [ ] No						
(8) TB treatment	[ ] Yes ---- [ ] No						
(9) Dental care	[ ] Yes ---- [ ] No						
(10) Hospice care	[ ] Yes ---- [ ] No						
(11) Health education/prevention	[ ] Yes ---- [ ] No						

3

8 a. **Are the following 'substance abuse' services needed by the typical client in this program?** *Answer b and c for each 'Yes'*		b. **How often are your clients able to get this need met . . .** *MARK (X) ONE BOX*			c. **Where is this service available . . .** *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Alcohol/drug testing -- (saliva, urine or blood)	[ ] Yes ---- [ ] No						
(2) Alcohol/drug dependence assessment	[ ] Yes ---- [ ] No						
(3) Detoxification	[ ] Yes ---- [ ] No						
(4) Outpatient treatment	[ ] Yes ---- [ ] No						
(5) Inpatient treatment	[ ] Yes ---- [ ] No						
(6) Alcoholics/Cocaine/Narcotics Anonymous	[ ] Yes ---- [ ] No						

9 a. **Are the following 'mental health' services needed by the typical client in this program?** *Answer b and c for each 'Yes'*		b. **How often are your clients able to get this need met . . .** *MARK (X) ONE BOX*			c. **Where is this service available . . .** *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Mental health assessment	[ ] Yes ---- [ ] No						
(2) Medication administration/monitoring	[ ] Yes ---- [ ] No						
(3) Crisis intervention	[ ] Yes ---- [ ] No						
(4) Outpatient therapy/counseling	[ ] Yes ---- [ ] No						
(5) Inpatient treatment	[ ] Yes ---- [ ] No						
(6) Peer group/self help -- (other than AA/NA/CA)	[ ] Yes ---- [ ] No						

10 a. **Are the following other services needed by the typical client in this program?** *Answer b and c for each 'Yes'*		b. **How often are your clients able to get this need met . . .** *MARK (X) ONE BOX*			c. **Where is this service available . . .** *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Outreach	[ ] Yes ---- [ ] No						
(2) Child care	[ ] Yes ---- [ ] No						
(3) Domestic violence counseling	[ ] Yes ---- [ ] No						
(4) Legal assistance	[ ] Yes ---- [ ] No						
(5) Veteran's special services	[ ] Yes ---- [ ] No						
(6) Other required services Specify: _____	[ ] Yes ---- [ ] No						

4

11 Is transporation or transportation assistance provided as part of this program?

[ ] Yes -- *ANSWER QUESTION 12*

[ ] No -- *INTERVIEW COMPLETE -- Thank You!*

12 For which of the following services is transportation provided to clients?

MARK ALL THAT APPLY

[ ] Food and/or clothing

[ ] Life skills counseling, such as money management, household skills, parental training

[ ] Case management, such as needs assesment, assistance with entitlements, followup

[ ] Housing search services

[ ] Education -- classes for adults or children

[ ] Employment services, such as vocational rehabilitation, sheltered workshop, training

[ ] Health care

[ ] Substance abuse services

[ ] Mental health services

[ ] Child care

[ ] Domestic violence counseling

[ ] Legal assistance

[ ] HIV/AIDS services

[ ] Veteran's special services

13 By which of the following methods are the transportation services provided?

MARK ALL THAT APPLY

[ ] Reimbursement of client expenses (e.g. voucher, cash, tokens)

[ ] Program vehicles

[ ] Volunteers

[ ] Local government or public transportation

[ ] Other -- What? _____

HPWUS–100K
7/21/95

Attachment K

OUTREACH PROGRAMS

This questionnaire contains some detailed questions about your outreach program. We are interested in information about services that might be needed by the clients who use this program. If you operate more than one program from your location, please consider only your outreach program when answering these questions.

1

1 a. Is the provision of food and/or clothing needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Food	[ ] Yes ---- [ ] No						
(2) Clothing	[ ] Yes ---- [ ] No						

2 a. Are the following 'case management' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Needs assessment	[ ] Yes ---- [ ] No						
(2) Development of individual goals and service plans	[ ] Yes ---- [ ] No						
(3) Referral or assistance with entitlements	[ ] Yes ---- [ ] No						
(4) Followup after client leaves	[ ] Yes ---- [ ] No						

3 a. Are the following 'housing' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Locating housing	[ ] Yes ---- [ ] No						
(2) Applying for rental assistance	[ ] Yes ---- [ ] No						
(3) Assistance with landlord/tenant relations	[ ] Yes ---- [ ] No						
(4) Financial assistance with utilities and/or rent	[ ] Yes ---- [ ] No						

2

4 a. **Are the following 'employment' services needed by the typical client in this program?** *Answer b and c for each 'Yes'*		**b. How often are your clients able to get this need met . . .** *MARK (X) ONE BOX*			**c. Where is this service available . . .** *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Assessment of job skills	[ ] Yes ---- [ ] No						
(2) Job referral or placement	[ ] Yes ---- [ ] No						

5 a. **Are the following 'general health care' services needed by the typical client in this program?** *Answer b and c for each 'Yes'*		**b. How often are your clients able to get this need met . . .** *MARK (X) ONE BOX*			**c. Where is this service available . . .** *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Health care assessment -- health history	[ ] Yes ---- [ ] No						
(2) Primary care -- physical exam, etc.	[ ] Yes ---- [ ] No						
(3) Emergency/acute care	[ ] Yes ---- [ ] No						
(4) Prenatal care	[ ] Yes ---- [ ] No						
(5) Immunizations	[ ] Yes ---- [ ] No						
(6) HIV/AIDS services	[ ] Yes ---- [ ] No						
(7) TB testing	[ ] Yes ---- [ ] No						
(8) TB treatment	[ ] Yes ---- [ ] No						
(9) Dental care	[ ] Yes ---- [ ] No						
(10) Health education/prevention	[ ] Yes ---- [ ] No						

3

6 a. Are the following 'mental health' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Mental health assessment	[ ] Yes ---- [ ] No						
(2) Medication administration/monitoring	[ ] Yes ---- [ ] No						
(3) Crisis intervention	[ ] Yes ---- [ ] No						
(4) Outpatient therapy/counseling	[ ] Yes ---- [ ] No						
(5) Inpatient treatment	[ ] Yes ---- [ ] No						

7 a. Are the following other services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Domestic violence counseling	[ ] Yes ---- [ ] No						
(2) Legal assistance	[ ] Yes ---- [ ] No						
(3) Veteran's special services	[ ] Yes ---- [ ] No						
(4) Other required services Specify: _____	[ ] Yes ---- [ ] No						

8 **Is transporation or transportation assistance provided as part of this program?**

[ ] Yes -- *ANSWER QUESTION 9*

[ ] No -- *INTERVIEW COMPLETE -- Thank You!*

9 **For which of the following services is transportation provided to clients?**

MARK ALL THAT APPLY

[ ] Food and/or clothing

[ ] Life skills counseling, such as money management, household skills, parental training

[ ] Case management, such as needs assesment, assistance with entitlements, followup

[ ] Housing search services

[ ] Education -- classes for adults or children

[ ] Employment services, such as vocational rehabilitation, sheltered workshop, training

[ ] Health care

[ ] Substance abuse services

[ ] Mental health services

[ ] Child care

[ ] Domestic violence counseling

[ ] Legal assistance

[ ] HIV/AIDS services

[ ] Veteran's special services

10 **By which of the following methods are the transportation services provided?**

MARK ALL THAT APPLY

[ ] Reimbursement of client expenses (e.g. voucher, cash, tokens)

[ ] Program vehicles

[ ] Volunteers

[ ] Local government or public transportation

[ ] Other -- What? _____

ATTACHMENT M

FORM HPWUS-100M
7/20/95

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
ACTING AS COLLECTING AGENT FOR THE
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LIST UPDATE FORM

THE SURVEY OF SERVICES FOR HOMELESS PERSONS

Regional office	PSU (State/County)	Identification number

NAME AND ADDRESS OF FACILITY:

Name

Street

City | State | ZIP Code

Contact name | Telephone No. ( )

RETURN COMPLETED FORM TO:

BUREAU OF THE CENSUS
105 S 7th Street, NW
First Floor
Philadelphia, PA 19106-3395

REVIEWING THE LIST OF SERVICE PROVIDERS AND KNOWLEDGEABLE PERSONS AND ORGANIZATIONS IN YOUR COUNTY

We have developed an initial list of service providers and organizations offering services to the homeless in your county. As you review the attached list, please note that our list may not include some providers. We are especially concerned that the list may not include homeless programs for domestic violence centers, runaway and homeless youth shelters, programs issuing vouchers for homeless person, and transitional living shelters. If you know the names and addresses for providers of these services and any others not listed, please add them to the list on the back of this form. Any providers that you are affiliated with should be added to the end of the questionnaire, Form HPWUS-100B(X), included in this package. We want the survey to show all available programs and services in your county/city being provided to homeless people. Identification of all service providers is important to us. Below is a summary of the steps to follow in reviewing the list of service providers.

A. Instructions

1. Look over the attached list of service providers and knowledgeable persons or organizations. Also, review the descriptions below of various types of service providers that we may have missed on our list.
2. Add any service providers, local knowledgeable persons or organizations not included on the list to attached HPWUS-L1A form. These organizations and persons should not be affiliated with your program. (Organizations and persons affiliated with your program should be recorded on the last pages of the questionnaire, Form HPWUS-100B(X), included in your package.) We can use any information you have about services to the homeless in your area.
3. Mark the box for "No new names to add," if you have no additional persons to add to the list.
4. Write any corrected name and/or address information to the right of the old information on the list, if you know anyone on the list who has changed names and/or addresses.

B. Description of Types of Service Providers

Listed below are detailed descriptions of the types of service providers to include in your listing.

1. **Regularly Scheduled Outreach Programs** for the homeless which, on a regular schedule, visit designated street locations offering homeless people food, blankets or other necessities.
2. **Drop-In Centers** that provide daytime services primarily for the homeless (other than facilities serving meals that should be included under soup kitchens).
3. **Emergency Shelters** which operate on a first-come first-served basis where people must leave in the morning and have no guaranteed bed for the next night or where people know that they have a bed for a specified period of time (even if they leave the building every day). Shelters include facilities which provide temporary shelter during extremely cold weather (such as churches) and may provide emergency shelter for runaway or neglected children and youth, or for battered or abused women.
4. **Transitional Housing** (maximum stay up to two years) which offer augmented services to promote self-sufficiency and to gain permanent housing.
5. **Permanent Housing** for homeless people with support services may include Section 8 vouchers, FHA units, SROs, and other long-term housing assistance.
6. **Voucher Arrangements** for hotels, motels, or other facilities (other than shelters) for which vouchers are given out OR which operate under contract to provide shelter to homeless people.
7. **Soup Kitchen or Meal Distribution** include soup kitchens, food lines, and programs distributing prepared breakfasts, lunches or dinners for homeless or needy people. These programs may be organized as food service lines, bag or box lunches, tables where people are seated and then served by program personnel, etc. These programs may or may not have a place to sit and eat the meal.
8. **Food Pantry** distributes uncooked food in boxes or bags.
9. **Health Care Providers** provide health care services to homeless people. This includes medical, dental, and other health problems.
10. **Mental Health Programs** for homeless persons not mentioned previously.
11. **Alcohol or other Drug Programs** for homeless persons not mentioned previously.
12. **HIV/AIDS Programs** for homeless persons not mentioned previously.
13. **Migrant Housing** for homeless persons in the off season.
14. **Other Facilities** which provide services for the homeless, such as clothing distribution centers, education and/or employment skills training.

Public reporting burden for this collection of information is estimated to average 15 minutes per response. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden to the U.S. Department of Housing and Urban Development, 451 7th Street, S.W. Washington, DC, 20410, and to the Office of Management and Budget, Paperwork Reduction Act 2528-0187, Washington, DC 20503. Do not send this completed form to either of these address.

Please list service providers, local knowledgeable persons, or organizations providing services that are not affiliated with your organization. (Make entries for providers affiliated with your organization on the last pages of the questionnaire, Form HPWUS-100B(X), included in your package.) Make up to seven entries for providers and three entries for knowledgeable persons. If more than seven providers or three persons, send an attached handwritten or printed listing.

Thank you for your help in developing a complete list of programs and services for the homeless in your area. Our goal is to put together the most complete list of service providers possible.

☐No new names to add.

Name of Facility (Provider or organizations providing services) *(List by all names known)*	Address	Physical Location *(List cross streets, etc.)*	Telephone number
Other people knowledgeable about homeless programs	Address	Physical Location *(List cross streets, etc.)*	Telephone number
Your name		Title	

FORM HPWUS-11A (2-21-95)

[FR Doc. 95–19597 Filed 8–8–95; 8:45 am]

BILLING CODE 4210–01–C

federal register

Wednesday
August 9, 1995

Part III

Department of Education

34 CFR Part 345

State Grants Program for Technology-Related Assistance for Individuals With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 345

RIN 1820–AB28

State Grants Program for Technology-Related Assistance for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance. These regulations are needed to implement the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994. The proposed regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

DATES: Comments must be received on or before September 8, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carol G. Cohen, U.S. Department of Education, Mary E. Switzer Building, Room 3420, Washington, DC. 20202–5251. Internet address Tech—Assistance@ed.gov.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Carol G. Cohen. Telephone: (202) 205–5666. 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.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement Title I of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Act), as amended by the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994 (1994 Amendments) (Pub. L. 103–218). Title I of the Act establishes the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance.

The State Grants Program for Technology-Related Assistance for Individuals with Disabilities supports the National Education Goals. The program furthers the goal that every adult American—including individuals with disabilities—will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Summary of Major Provisions

The following is a summary of the major regulatory provisions for the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. The summary distinguishes between regulatory provisions that (1) incorporate statutory requirements and (2) other regulatory provisions. The other regulatory provisions contain interpretations of statutory text or provide standards and procedures for the program that are not stated in the statutory text. The Secretary is not authorized to change statutory requirements. Therefore, commenters are requested to direct their comments to the other regulatory provisions.

- *Statutory requirements*

These proposed regulations implement the following statutory changes enacted in the 1994 Amendments:

—*Types of grants* (§ 345.3):

Each State is eligible for one 3-year development grant, one 2-year extension grant (initial extension grant), and one 5-year extension grant (second extension grant). During the fourth year of a State's second extension grant, Federal funds will be reduced to 75% of the grant award received by the State in the third year; in the fifth year, Federal funds will be reduced to 50% of the grant award received by the State in the third year. After the fifth year, Federal funding will terminate. Each State is required, during its years of Federal funding under the Act, to seek alternative private and public funds for the future to enable the program to continue on a permanent basis after Federal funding is terminated.

—*Mandated activities* (§§ 345.30(b)(1) and 345.55):

States receiving grants under this program will be required to either perform six specific systems change and advocacy activities or perform other activities and demonstrate through progress reports that ''significant progress'' has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

—*Protection and advocacy services* (§ 345.55):

A State shall provide protection and advocacy services in one of two ways: A State may either provide funds to the designated protection and advocacy organization in that State, or a State may request that the Secretary annually reserve, from the funds made available to the State, an amount of funds to provide to a specific protection and advocacy organization in that State. However, if a State has been providing protection and advocacy services through an entity that is capable of performing the functions that would otherwise be performed under section 102(e)(20) of the Act by the system described in that section, as of June 30, 1993, the State may continue to do so.

The minimum amount that a State must expend on protection and advocacy services is determined by the Secretary, based on the size of the State's grant, the needs of individuals with disabilities within a State, the population of a State, and the geographic size of a State. In determining the minimum amount, the Secretary will primarily rely on the size of the State's grant. Annually the Department will specify the minimum amount for each State and will transmit this information to States. The minimum amount shall not be less than $40,000 and not more than $100,000. (There is no statutory limit or ceiling on the amount a State may expend on protection and advocacy services.) During the fourth and fifth years of the State's second extension grant, this minimum amount will be reduced to 75% and 50%, respectively, of the minimum amount specified for the State for the third year of the second extension grant. Federal funding terminates under this authority after the fifth year.

—*Corrective action plan* (§§ 345.60–345.62):

If a State does not make significant progress in developing its program of technology-related assistance, it becomes subject to a corrective action plan. Corrective action may include partial or complete fund termination, ineligibility to participate in the grant program for the following year, reduction in funding for the following year, or required redesignation of the lead agency. The Governor of the State must appoint a monitoring panel to oversee compliance with the corrective action plan. If the Governor fails to appoint a panel, the Secretary terminates Federal funds under this

program. Based on its findings, a monitoring panel may determine that the lead agency has not accomplished the purposes of the Act and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under Title I of the Act. The Secretary, based on the findings and recommendations of the monitoring panel, and after providing to the public notice and an opportunity for comment, makes a final determination regarding whether to order the Governor to redesignate the lead agency.

—*Redesignation of protection and advocacy services provider* (§ 345.63):

The protection and advocacy services provider in each State also is subject to redesignation if it has not met the protection and advocacy service needs of individuals with disabilities within the State. Under these circumstances, the Governor of the State would redesignate, but only after determining that good cause exists, providing public notice and opportunity for comment, and allowing the current protection and advocacy services provider the opportunity to appeal the determination to the Secretary. To redesignate, the Governor would hold an open competition within the State, consistent with section 105(d) of the Act.

—*Information and technical assistance:*

The Secretary will provide information and technical assistance to participating States, as well as to individuals with disabilities.

• *Major Regulatory Provisions*

The Secretary would implement the following regulatory provisions in these proposed regulations:

—*Control and administration of amounts received under the grant* (§§ 345.4 and 345.5(b)):

Each State is required under section 102(d) of the Act to designate a lead agency to be eligible for a grant under this program. The lead agency may be a (1) commission appointed by the Governor; (2) public-private partnership or consortium; (3) university-affiliated program; (4) public agency; (5) council established under Federal or State law; or (6) another appropriate office, agency, entity, or individual.

For purposes of the Act, obligations and responsibilities of the State are the same as those of the lead agency with two exceptions. Section 102(e)(12) requires a State to assure in its application that a public agency will be responsible for the control and administration of amounts received under the grant and that a public agency or an individual with a disability will hold title to property purchased with grant funds and administer this property. Thus, if the lead agency is an entity other than a public agency, a public agency will be responsible for controlling and administering amounts received under the grant and may be responsible for holding title to and administering property purchased with grant funds.

—*Allowable expenses* (§ 345.20(d)):

Section 101(b)(4) of the Act provides that a State may use program funds to pay for expenses, including travel expenses, and support services, including services of qualified interpreters, readers, and personal assistants services, that may be necessary to ensure access to the comprehensive statewide program of technology-related assistance by individuals with disabilities who are determined by the State to be in financial need.

The Secretary would limit these expenses to those incurred by participants in activities associated with the state technology program. Participants would include, for example, individuals with disabilities, parents, family members, advocates, authorized representatives, advisory board members, consumer consultants, and consumer attendees at State-sponsored conferences. Participants would not include, for example, consumers seeking direct services such as assessment and training and associated support such as transportation to an evaluation/demonstration site.

The Secretary would interpret allowable expenses to include, for example, travel, lodging, meals, childcare, eldercare, interpreters, and readers. In order to limit the costs allowed under the program, the Secretary believes it is necessary to pay for only those costs that would support the inclusion of eligible participants.

The Secretary solicits comments on whether any other participants or expenses should be included as examples, and whether a list should be included in the final regulations.

—*Protection and advocacy services* (§ 345.55):

Section 102(e)(20) of the Act provides that a State has the option to (1) make a grant to, or enter into a contract with, an entity to support protection and advocacy services through the systems established to provide protection and advocacy services; or (2) request that the Secretary do so on behalf of the State. If the State decides to enter into this grant or contract itself, the Secretary would require that each State that seeks a development or an extension grant must include in its application, and annually thereafter in its progress report, a copy of the protection and advocacy contract or grant agreement entered into by the State, or evidence of ongoing negotiations if it has not yet entered into a new contract or agreement. This is necessary to ensure that the State has entered into this contract or grant agreement.

If the State decides to request that the Secretary enter into this agreement with the entity established to provide protection and advocacy services, the Secretary would award a grant—not a contract—for protection and advocacy services. The Secretary would reduce the amount of the State's grant to carry out this activity. If a State makes this request, the State would be required to include the request in its application for a development grant or an extension grant and annually thereafter in its progress report. This is necessary to ensure that the Department has sufficient time to negotiate and enter into this agreement.

—*Limitation on indirect costs* (§ 345.30(b)(14):

Section 102(e)(22) of the Act provides that a State must provide an assurance in its application that the percentage of funds received under the grant that is used for indirect costs shall not exceed 10 percent. The indirect cost limitation would apply to the total amount of the State's grant.

The indirect cost limitation does not ensure a subcontractor or subgrantee an indirect cost rate. This rate must be negotiated by the State and the subcontractor or subgrantee.

—*Mandated activities and significant progress* (§ 345.30(b)(1)):

Section 102(e)(7) of the Act provides States with the option of (1) performing the six activities listed in section 102(e)(7)(B) of the Act in carrying out systems change and advocacy activities; or (2) performing other activities and demonstrating through progress reports that ''significant progress'' has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance. Section 104(a) of the Act requires that the Secretary develop guidelines to be used in assessing the extent to which a State is making ''significant progress.'' The Secretary is developing these guidelines. The Secretary would disseminate these guidelines on an annual basis to all grantees.

Each year, the Secretary will send to all States and entities either performance guidelines or a first or a second extension grant application packet that includes performance

guidelines. The package will contain directions regarding meeting the performance guidelines and copies of the performance guidelines. Each grantee would be required to meet or demonstrate significant progress toward meeting its annually derived set of priorities, goals, and objectives. If planned priorities, goals, or objectives are not met, grantees must document why, and if appropriate, provide a revised plan that includes a timetable for the particular priority, goal, and objective.

—*Compliance with section 508 of the Rehabilitation Act of 1973* (§ 345.31(d)):

Section 103(d)(6) of the Act provides that, in an application for an extension grant, a State must provide an assurance that the State ''or any recipient of funds made available to the State under (a development grant)'' will comply with guidelines developed under section 508 of the Rehabilitation Act of 1973 (section 508). Section 508 guarantees that individuals with disabilities will have access to electronic and information technology. This requirement applies to all offices, agencies, and entities in a State. The Secretary believes that section 508 also applies to all subrecipients under the Act. The Secretary particularly solicits comments on this interpretation.

—*Appeal of corrective action finding* (§ 345.60)):

Section 105(b)(1) of the Act provides that any State that fails to comply with the requirements of Title I of the Act shall be subject to a corrective action plan. The Secretary would require that a State appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding. (This timeframe is consistent with the Education Department General Administrative Regulations, at 34 CFR 81.37, which allows recipients of federal financial assistance from the Department of Education 30 days to appeal a notice of a disallowance decision requesting the return of misspent funds). The Secretary would respond to an appeal within 30 days.

—*Title to devices* (§ 345.30(b)(5)(ii)):

The Secretary would encourage the recycling of assistive technology devices that are no longer being used. Section 102(e)(12)(B) requires a public agency or an individual with a disability to hold title to property purchased with funds under the Act. Upon death or upon any event rendering an individual incapable of using, or making it unnecessary for an individual to use, an assistive technology device, the Secretary recommends that the individual, the individual's family, or the public agency recycle the device for use by other disabled individuals.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 345.1 *What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?*) (4) Is the description of the regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121, FB–10B), Washington, DC. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 345.30, 345.31, 345.42, 345.50, 345.53, and 345.55 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

States are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to be 30 hours per response for 55 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State

and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3022, ROB–3, 7th and D Streets, SW., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 345

Grant program-education, Reporting and recordkeeping requirements.

Dated: October 27, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.224—State Grants Program for Technology-Related Assistance for Individuals with Disabilities)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 345 to read as follows:

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?
345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?
345.3 What are the types of awards under this program?
345.4 Who is eligible to receive a development grant?
345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?
345.6 How does a State designate the lead agency?
345.7 Who is eligible to receive an extension grant?
345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?
345.9 What regulations apply to this program?
345.10 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support?

345.20 What types of activities are authorized under this program?

Subpart C—How Does a State Apply for a Grant?

345.30 What is the content of an application for a development grant?
345.31 What is the content of an application for an extension grant?

Subpart D—How Does the Secretary Make a Grant?

345.40 How does the Secretary evaluate an application for a development grant under this program?
345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?
345.42 What is the review process for an application for an extension grant?
345.43 What priorities does the Secretary establish?

Subpart E—What Conditions Must Be Met After an Award?

345.50 What are the reporting requirements for the recipients of development and extension grants?
345.51 When is a State making significant progress?
345.52 Who retains title to devices provided under this program?
345.53 What are the requirements for grantee participation in the Secretary's progress assessments?
345.54 How may grant funds be used under this program?
345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

Subpart F—What Compliance Procedures May the Secretary Use?

345.60 Who is subject to a corrective action plan?
345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?
345.62 How does a State redesignate the lead agency when it is subject to corrective action?
345.63 How does a State redesignate the entity responsible for providing protection and advocacy services?

Authority: 29 U.S.C. 2201–2217, unless otherwise noted.

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

§ 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance that accomplish the purposes in § 345.2.

(Authority: 29 U.S.C. 2211(a); sec. 101(a) of the Act)

§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

The purposes of this program are to provide financial assistance to States to support systems change and advocacy activities designed to assist each State in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance, for individuals with disabilities of all ages, that is designed to—

(a) Increase the availability of, funding for, access to, and provision of, assistive technology devices and assistive technology services;

(b) Increase the active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, in the planning, development, implementation, and evaluation of the program;

(c) Increase the involvement of individuals with disabilities and, if appropriate, their family members, guardians, advocates, or authorized representatives, in decisions related to the provision of assistive technology devices and assistive technology services;

(d) Increase the provision of outreach to underrepresented populations and rural populations, to enable the two populations to enjoy the benefits of programs carried out to accomplish the purposes described in this section to the same extent as other populations;

(e) Increase and promote coordination among State agencies, and between State agencies and private entities, that are involved in carrying out activities under this part, particularly providing assistive technology devices and assistive technology services, that accomplish a purpose described in another paragraph of this section;

(f)(1) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and

(2) Facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that impede the availability or provision of assistive technology devices and assistive technology services;

(g) Increase the probability that individuals with disabilities of all ages will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as these individuals make the transition between services offered by human service agencies or between settings of daily living;

(h) Enhance the skills and competencies of individuals involved in providing assistive technology devices and assistive technology services;

(i) Increase awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among—

(1) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(2) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(3) Educators and related services personnel;

(4) Technology experts (including engineers);

(5) Employers; and

(6) Other appropriate individuals;

(j) Increase the capacity of public agencies and private entities to provide and pay for assistive technology devices and assistive technology services on a statewide basis for individuals with disabilities of all ages; and

(k) Increase the awareness of the needs of individuals with disabilities for assistive technology devices and for assistive technology services.

(Authority: 29 U.S.C. 2201(b); sec. 2(b) of the Act)

§ 345.3 What are the types of awards under this program?

(a) Under this program, the Secretary—

(1) Awards three-year development grants to assist States in developing and implementing consumer-responsive comprehensive statewide programs that accomplish the purposes in § 345.2;

(2) May award an initial two-year extension grant to any State that meets the standards in § 345.42(a); and

(3) May award a second extension grant, for a period of not more than 5 years, to any State that meets the standards in § 345.42(b).

(b) The Secretary calculates the amount of the development grants in paragraph (a)(1) of this section on the basis of—

(1) Amounts available for making grants under this part;

(2) The population of the State or territory concerned; and

(3) The types of activities proposed by the State relating to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(c) The Secretary calculates the amount of the extension grants in paragraph (a)(2) of this section on the basis of—

(1) Amounts available for making grants;

(2) The population of the State;

(3) The types of assistance proposed by the State in its application; and

(4) A description in its application of the amount of resources committed by the State and available to the State from other sources to sustain the program after federal funding ends.

(d)(1) In providing any increases in initial extension grants in paragraph (a)(2) of this section above the amounts provided to States for Fiscal Year 1993, the Secretary may give priority to States (other than the territories) that—

(i) Have the largest populations, based on the most recent census data; and

(ii) Are sparsely populated.

(2) To be eligible for the priority in paragraph (d)(1) of this section, the circumstances in paragraphs (d)(1)(i) or (ii) must have impeded the development of a consumer-responsive, comprehensive statewide program of technology-related assistance in a State.

(e) During the fourth and fifth years of a State's second extension grant, the amount received by a State will be reduced to 75% and 50%, respectively, of the amount paid to the State for the third year of the grant.

(Authority: 29 U.S.C. 2212(b), 2213(a), 2213(c)(1)(B) and (2), and 2213(c)(1)(D); secs. 102(b), 103(a), 103(c)(1)(B) and (2), 103(c)(1)(D) of the Act)

§ 345.4 Who is eligible to receive a development grant?

A State is eligible to receive a development grant under this program, provided that the Governor has designated a lead agency to carry out the responsibilities contained in § 345.5.

(Authority: 29 U.S.C. 2212(a)(1) and 2212 (d)(1); sec. 102(a) and 102(d)(1) of the Act)

§ 345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?

(a) The lead agency is responsible for the following:

(1) Submitting the application containing the information and assurances contained in § 345.30.

(2) Administering and supervising the use of amounts made available under the grant.

(3)(i) Coordinating efforts related to, and supervising the preparation of, the application;

(ii) Coordinating the planning, development, implementation, and evaluation of the consumer-responsive comprehensive statewide program of technology-related assistance among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

(iii) Coordinating efforts related to, and supervising, the active, timely, and meaningful participation by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals, with respect to activities carried out under the grant.

(4) The delegation, in whole or in part, of any responsibilities described in paragraphs (a) (1) through (3) of this section to one or more appropriate offices, agencies, entities, or individuals.

(b) If the lead agency is not a public agency, a public agency shall have the responsibility of controlling and administering amounts received under the grant.

(Authority: 29 U.S.C. 2212(d)(1) and 2212(e)(12)(A); sec. 102(d)(1) and 102(e)(12)(A) of the Act)

§ 345.6 How does a State designate the lead agency?

(a) The Governor may designate—

(1) A commission appointed by the Governor;

(2) A public-private partnership or consortium;

(3) A university-affiliated program;

(4) A public agency;

(5) A council established under Federal or State law; or

(6) Another appropriate office, agency, entity, or individual.

(b) The State shall provide evidence that the lead agency has the ability—

(1) To respond to assistive technology needs across disabilities and ages;

(2) To promote the availability throughout the State of assistive technology devices and assistive technology services;

(3) To promote and implement systems change and advocacy activities;

(4) To promote and develop public-private partnerships;

(5) To exercise leadership in identifying and responding to the technology needs of individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(6) To promote consumer confidence, responsiveness, and advocacy; and

(7) To exercise leadership in implementing effective strategies for capacity building, staff and consumer training, and enhancement of access to funding for assistive technology devices and assistive technology services across agencies.

(Authority: 29 U.S.C. 2212(d) (2) and (3); secs. 102(d) (2) and (3) of the Act)

§ 345.7 Who is eligible to receive an extension grant?

A State is eligible to receive an extension grant under this program.

§ 345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?

(a) To be eligible to receive an initial extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in § 345.31; and

(2) Hold a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) To be eligible to receive a second extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in § 345.31; and

(2) Hold a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(Authority: 29 U.S.C. 2213 (d) and (e); sec. 103 (d) and (e) of the Act)

§ 345.9 What regulations apply to this program?

The following regulations apply to the State Grants Program for Technology-Related Assistance for Individuals with Disabilities:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) 34 CFR part 75 (Direct Grant Programs), except § 75.618;

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations);

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except §§ 80.32(a) and 80.33(a);

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement);

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(Authority: 29 U.S.C. 2201–2217; sec. 101–107 of the Act)

§ 345.10 What definitions apply to this program?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.*

(1) The following terms used in this part are defined in section 3 of the Act:

Advocacy services
Assistive technology device
Assistive technology service
Comprehensive statewide program of technology-related assistance
Consumer-responsive
Disability
Individual with a disability; individuals with disabilities
Institution of higher education
Protection and advocacy services
Secretary
State
Systems change and related activities
Technology-related assistance
Underrepresented population

(2) The following term used in this part is defined in section 102(b)(5) of the Act:

Territory

(d) *Other definitions.* The following definitions also apply to this part:

Initial extension grant means the two-year extension grant following a three-year development grant under this program.

Second extension grant means the extension grant following the initial extension grant under this program. The period of this grant is for a period of not more than 5 years.

(Authority: 29 U.S.C. 2201–2217; secs. 101–107 of the Act)

Subpart B—What Kinds of Activities Does the Department Support

§ 345.20 What type of activities are authorized under this program?

Any State that receives a development or extension grant shall use the funds made available through the grant to accomplish the purposes described in § 345.2 and, in accomplishing such purposes, may carry out any of the following systems change and advocacy activities:

(a) Support activities to increase access to, and funding for, assistive technology, including—

(1) The development, and evaluation of the efficacy, of model delivery systems that provide assistive technology devices and assistive technology services to individuals with disabilities, that pay for devices and services, and that, if successful, could be replicated or generally applied, such as—

(i) The development of systems for the purchase, lease, other acquisition, or payment for the provision, of assistive technology devices and assistive technology services; or

(ii) The establishment of alternative State or privately financed systems of subsidies for the provision of assistive technology devices and assistive technology services, such as—

(A) A loan system for assistive technology devices;

(B) An income-contingent loan fund;

(C) A low interest loan fund;

(D) A revolving loan fund;

(E) A loan insurance program; or

(F) A partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and the provision of assistive technology services;

(2) The demonstration of assistive technology devices, including—

(i) The provision of a location or locations within the State where the following individuals can see and touch assistive technology devices, and learn about the devices from personnel who are familiar with such devices and their applications:

(A) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(B) Education, rehabilitation, health care, and other service providers;

(C) Individuals who work for Federal, State, or local government entities; and

(D) Employers.

(ii) The provision of counseling and assistance to individuals with disabilities and their family members, guardians, advocates, and authorized representatives to determine individual needs for assistive technology devices and assistive technology services; and

(iii) The demonstration or short-term loan of assistive technology devices to individuals, employers, public agencies, or public accommodations seeking strategies to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) The establishment of information systems about, and recycling centers for, the redistribution of assistive technology devices and equipment that may include device and equipment loans, rentals, or gifts.

(b) Support activities to—

(1) Identify and coordinate Federal and State policies, resources, and services, relating to the provision of assistive technology devices and assistive technology services, including entering into interagency agreements;

(2) Convene interagency work groups to enhance public funding options and coordinate access to funding for assistive technology devices and assistive technology services for individuals with disabilities of all ages, with special attention to the issues of transition (such as transition from school to work, and transition from participation in programs under part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), to participation in programs under part B of such Act (20 U.S.C. 1411 et seq.)) home use, and individual involvement in the identification, planning, use, delivery, and evaluation of such devices and services; or

(3) Document and disseminate information about interagency activities that promote coordination with respect to assistive technology devices and assistive technology services, including evidence of increased participation of State and local special education, vocational rehabilitation, and State medical assistance agencies and departments.

(c) Carry out activities to encourage the creation or maintenance of, support, or provide assistance to, statewide and community-based organizations, or systems, that provide assistive technology devices and assistive technology services to individuals with disabilities or that assist individuals with disabilities in using assistive technology devices or assistive technology services. The activities may include outreach to consumer organizations and groups in the State to coordinate the activities of the organizations and groups with efforts (including self-help, support groups, and peer mentoring) to assist individuals with disabilities and their family members, guardians, advocates, or authorized representatives, to obtain funding for, and access to, assistive technology devices and assistive technology services.

(d) Pay for expenses, including travel expenses, and services, including services of qualified interpreters, readers, and personal assistants services that may be necessary to ensure access to the comprehensive statewide program of technology-related assistance by individuals with disabilities who are determined by the State to be in financial need. The expenses must be incurred by participants in activities associated with the State technology program.

(e) Conduct a statewide needs assessment that may be based on data in existence on the date on which the assessment is initiated and may include—

(1) Estimates of the numbers of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) In the case of an assessment carried out under a development grant, a description of efforts, during the fiscal year preceding the first fiscal year for which the State received a grant, to provide assistive technology devices and assistive technology services to individuals with disabilities within the State, including—

(i) The number of individuals with disabilities who received appropriate assistive technology devices and assistive technology services; and

(ii) A description of the devices and services provided;

(3) Information on the number of individuals with disabilities who are in need of assistive technology devices and assistive technology services, and a description of the devices and services needed;

(4) Information on the cost of providing assistive technology devices and assistive technology services to all individuals with disabilities within the State who need such devices and services;

(5) A description of State and local public resources and private resources (including insurance) that are available to establish a consumer-responsive comprehensive statewide program of technology-related assistance;

(6) Information identifying Federal and State laws, regulations, policies, practices, procedures, and organizational structures, that facilitate or interfere with the operation of a consumer-responsive comprehensive statewide program of technology-related assistance;

(7) A description of the procurement policies of the State and the extent to which such policies will ensure, to the extent practicable, that assistive technology devices purchased, leased, or otherwise acquired with assistance made available through a development or extension grant under this part are compatible with other technology devices, including technology devices designed primarily for use by—

(i) Individuals who are not individuals with disabilities;

(ii) Individuals who are elderly; or

(iii) Individuals with particular disabilities; and

(8) Information resulting from an inquiry about whether a State agency or task force (composed of individuals representing the State and individuals representing the private sector) should study the practices of private insurance companies holding licenses within the State that offer health or disability insurance policies under which an individual may obtain reimbursement for—

(i) The purchase, lease, or other acquisition of assistive technology devices; or

(ii) The use of assistive technology services.

(f) Support—

(1)(i) A public awareness program designed to provide information relating to the availability and efficacy of assistive technology devices and assistive technology services for—

(A) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(B) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(C) Educators and related services personnel;

(D) Technology experts (including engineers);

(E) Employers; and

(F) Other appropriate individuals and entities; or

(ii) Establish and support the program if no such program exists.

(2) A public awareness program that may include the—

(i) Development and dissemination of information relating to the—

(A) Nature of assistive technology devices and assistive technology services;

(B) Appropriateness, cost, and availability of, and access to, assistive technology devices and assistive technology services; and

(C) Efficacy of assistive technology devices and assistive technology services with respect to enhancing the capacity of individuals with disabilities;

(ii) Development of procedures for providing direct communication among public providers of assistive technology devices and assistive technology services and between public providers and private providers of devices and services (including employers); and

(iii) Development and dissemination of information relating to the use of the program by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, professionals who work in a field related to an activity described in this section, and other appropriate individuals.

(g) Carry out directly, or may provide support to a public or private entity to carry out, training and technical assistance activities that—

(1)(i) Are provided for individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals; and

(ii) May include—

(A) Training in the use of assistive technology devices and assistive technology services;

(B) The development of written materials, training, and technical assistance describing the means by which agencies consider the needs of an individual with a disability for assistive technology devices and assistive technology services in developing, for the individual, any individualized education program described in section 614(a)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(a)(5)), any individualized written rehabilitation program described in section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722), any individualized family service plan described in section 677 of the Individuals with Disabilities Education Act (20 U.S.C. 1477), and any other individualized plans or programs;

(C) Training regarding the rights of the persons described in paragraph (f)(1)(i) of this section to assistive technology devices and assistive technology services under any law other than this Act, to promote fuller independence, productivity, and inclusion in and integration into society of such persons; and

(D) Training to increase consumer participation in the identification, planning, use, delivery, and evaluation of assistive technology devices and assistive technology services; and

(2)(i) Enhance the assistive technology skills and competencies of—

(A) Individuals who work for public agencies or for private entities (including insurers) that have contact with individuals with disabilities;

(B) Educators and related services personnel;

(C) Technology experts (including engineers);

(D) Employers; and

(E) Other appropriate personnel; and

(ii) Include taking actions to facilitate the development of standards, or, when appropriate, the application of standards, to ensure the availability of qualified personnel.

(h) Support the compilation and evaluation of appropriate data related to a program described in § 345.1.

(i)(1) Develop, operate, or expand a system for public access to information concerning an activity carried out under another paragraph of this section, including information about assistive technology devices and assistive technology services, funding sources and costs of assistance, and individuals, organizations, and agencies capable of carrying out such an activity for individuals with disabilities.

(2) Access to the system may be provided through community-based entities, including public libraries, centers for independent living (as defined in section 702(1) of the Rehabilitation Act of 1973 (29 U.S.C. 796a(1)), and community rehabilitation programs, as defined in section 7(25) of such Act (29 U.S.C. 706(25)).

(3) In developing, operating, or expanding a system described in paragraph (h)(1) of this section, the State may—

(i) Develop, compile, and categorize print, large print, braille, audio, and video materials, computer disks, compact discs (including compact discs formatted with read-only memory), information that can be used in telephone-based information systems, and other media as technological innovation may make appropriate;

(ii) Identify and classify existing funding sources, and the conditions of and criteria for access to such sources, including any funding mechanisms or strategies developed by the State;

(iii) Identify existing support groups and systems designed to help individuals with disabilities make effective use of an activity carried out under another paragraph of this section; and

(iv) Maintain a record of the extent to which citizens of the State use or make inquiries of the system established in paragraph (h)(1) of this section, and of the nature of inquiries.

(4) The information system may be organized on an interstate basis or as part of a regional consortium of States in order to facilitate the establishment of compatible, linked information systems.

(i)(1) The State may enter into cooperative agreements with other States to expand the capacity of the States involved to assist individuals with disabilities of all ages to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that individuals need at home, at school, at work, or in other environments that are part of daily living.

(2) The State may operate or participate in a computer system through which the State may electronically communicate with other States to gain technical assistance in a timely fashion and to avoid the duplication of efforts already undertaken in other States.

(j) Support the establishment or continuation of partnerships and cooperative initiatives between the public sector and the private sector to promote the greater participation by business and industry in the—

(1) Development, demonstration, and dissemination of assistive technology devices; and

(2) Ongoing provision of information about new products to assist individuals with disabilities.

(k) Provide advocacy services.

(l) Utilize amounts made available through development and extension grants for any systems change and advocacy activities, other than the activities described in another paragraph of this section, that are necessary for developing, implementing, or evaluating the consumer-responsive comprehensive statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2211(b); sec. 101(b) of the Act)

Subpart C—How Does a State Apply for a Grant?

§ 345.30 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the

following information in their applications:

(1) Information identifying the lead agency designated by the Governor under § 345.4 and the evidence described in § 345.6(b).

(2) A description of the nature and extent of involvement of various State agencies, including the State insurance department, in the preparation of the application and the continuing role of each agency in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance, including the identification of the available resources and financial responsibility of each agency for paying for assistive technology devices and assistive technology services.

(3)(i) A description of procedures that provide for—

(A)(*1*) The active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals, in the development, implementation, and evaluation of the program; and

(*2*) To the maximum extent appropriate, the active involvement of individuals with disabilities who use assistive technology devices or assistive technology services, in decisions relating to such devices and services; and

(B) Mechanisms for determining consumer satisfaction and participation of individuals with disabilities who represent a variety of ages and types of disabilities, in the consumer-responsive comprehensive statewide program of technology-related assistance.

(ii) A description of the nature and extent of the—

(A) Involvement, in the designation of the lead agency under § 345.4, and in the development of the application, of—

(*1*) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(*2*) Other appropriate individuals who are not employed by a State agency; and

(*3*) Organizations, providers, and interested parties, in the private sector; and

(B) Continuing role of the individuals and entities described in paragraph (a)(3)(ii)(A) of this section in the program.

(4) A tentative assessment of the extent of the need of individuals with disabilities in the State, including individuals from underrepresented populations or rural populations for a statewide program of technology-related assistance and a description of previous efforts and efforts continuing on the date of the application to develop a consumer-responsive comprehensive statewide program of technology-related assistance.

(5) A description of State resources and other resources (to the extent this information is available) that are available to commit to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6) Information on the program with respect to the—

(i) Goals and objectives of the State for the program;

(ii) Systems change and advocacy activities that the State plans to carry out under the program; and

(iii) Expected outcomes of the State for the program, consistent with the purposes described in § 345.2.

(7)(i) A description of the data collection system used for compiling information on the program, consistent with requirements established by the Secretary for systems, and, when a national classification system is developed pursuant to section 201 of the Act, consistent with the classification system; and

(ii) Procedures that will be used to conduct evaluations of the program.

(8) A description of the policies and procedures governing contracts, grants, and other arrangements with public agencies, private nonprofit organizations, and other entities or individuals for the purpose of providing assistive technology devices and assistive technology services consistent with this part.

(b) Applicants for development grants shall include the following assurances in their applications:

(1)(i) An assurance that the State will use funds from a development or extension grant to accomplish the purposes described in § 345.2 and the goals, objectives, and outcomes described in paragraph (a)(6) of this section, and to carry out the systems change and advocacy activities described in paragraph (a)(6)(ii) of this section, in a manner that is consumer-responsive.

(ii) An assurance that the State, in carrying out systems change and advocacy activities, shall carry out the following activities, unless the State demonstrates through the progress reports required under § 345.50 that significant progress has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, and that other systems change and advocacy activities will increase the likelihood that the program will accomplish the purposes described in § 345.2:

(A) The development, implementation, and monitoring of State, regional, and local laws, regulations, policies, practices, procedures, and organizational structures, that will improve access to, provision of, funding for, and timely acquisition and delivery of, assistive technology devices and assistive technology services;

(B) The development and implementation of strategies to overcome barriers regarding access to, provision of, and funding for, such devices and services, with priority for identification of barriers to funding through State education (including special education) services, vocational rehabilitation services, and medical assistance services or, as appropriate, other health and human services, and with particular emphasis on overcoming barriers for underrepresented populations and rural populations;

(C) Coordination of activities among State agencies, in order to facilitate access to, provision of, and funding for, assistive technology devices and assistive technology services;

(D) The development and implementation of strategies to empower individuals with disabilities and their family members, guardians, advocates, and authorized representatives, to successfully advocate for increased access to, funding for, and provision of, assistive technology devices and assistive technology services, and to increase the participation, choice, and control of individuals with disabilities and their family members, guardians, advocates, and authorized representatives in the selection and procurement of assistive technology devices and assistive technology services;

(E) The provision of outreach to underrepresented populations and rural populations, including identifying and assessing the needs of such populations, providing activities to increase the accessibility of services to such populations, training representatives of such populations to become service providers, and training staff of the consumer-responsive comprehensive statewide program of technology-related assistance to work with such populations; and

(F) The development and implementation of strategies to ensure timely acquisition and delivery of assistive technology devices and assistive technology services, particularly for children.

(2) An assurance that the State will conduct an annual assessment of the

consumer-responsive comprehensive statewide program of technology-related assistance, in order to determine—

(i) The extent to which the State's goals and objectives for systems change and advocacy activities, as identified in the State plan under paragraph (a)(6) of this section, have been achieved; and

(ii) The areas of need that require attention in the next year.

(3) An assurance that amounts received under the grant will be expended in accordance with the provisions of this part;

(4) An assurance that amounts received under the grant—

(i) Will be used to supplement amounts available from other sources that are expended for technology-related assistance, including the provision of assistive technology devices and assistive technology services; and

(ii) Will not be used to pay a financial obligation for technology-related assistance (including the provision of assistive technology devices or assistive technology services) that would have been paid with amounts available from other sources if amounts under the grant had not been available, unless—

(A) The payment is made only to prevent a delay in the receipt of appropriate technology-related assistance (including the provision of assistive technology devices or assistive technology services) by an individual with a disability; and

(B) The entity or agency responsible subsequently reimburses the appropriate account with respect to programs and activities under the grant in an amount equal to the amount of the payment;

(5) An assurance that—

(i) A public agency shall control and administer amounts received under the grant; and

(ii) A public agency or an individual with a disability shall—

(A) Hold title to property purchased with such amounts; and

(B) Administer such property.

(6) An assurance that the State will—

(i) Prepare reports to the Secretary in the form and containing information required by the Secretary to carry out the Secretary's functions under this part; and

(ii) Keep records and allow access to records as the Secretary may require to ensure the correctness and verification of information provided to the Secretary under this paragraph of this section.

(7) An assurance that amounts received under the grant will not be commingled with State or other funds;

(8) An assurance that the State will adopt fiscal control and accounting procedures as may be necessary to ensure proper disbursement of an accounting for amounts received under the grant;

(9) An assurance that the State will—

(i) Make available to individuals with disabilities and their family members, guardians, advocates, or authorized representatives information concerning technology-related assistance in a form that will allow individuals to effectively use the information; and

(ii) In preparing information for dissemination, consider the media-related needs of individuals with disabilities who have sensory and cognitive limitations and consider the use of auditory materials, including audio cassettes, visual materials, including video cassettes and video discs, and braille materials.

(10) An assurance that, to the extent practicable, technology-related assistance made available with amounts received under the grant will be equitably distributed among all geographical areas of the State;

(11) An assurance that the lead agency will have the authority to use funds made available through a development or extension grant to comply with the requirements of this part, including the ability to hire qualified staff necessary to carry out activities under the program;

(12)(i) An assurance that the State will annually provide, from the funds made available to the State through a development or extension grant under this part, an amount calculated in accordance with section 102(f)(4) of the Act in order to make a grant to, or enter into a contract with, an entity to support protection and advocacy services through the systems established to provide protection and advocacy under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), and section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e).

(ii) The State need not provide the assurance in paragraph (b)(12)(i) of this section, if the State requests in its annual progress report or first or second extension application, as applicable, that the Secretary annually reserve, from the funds made available for a development or extension grant, an amount calculated in accordance with section 102(f)(4) of the Act, in order for the Secretary to make a grant to or enter into a contract with a system to support protection and advocacy services.

(13) An assurance that the State—

(i) Will develop and implement strategies for including personnel training regarding assistive technology within existing Federal- and State-funded training initiatives, in order to enhance assistive technology skills and competencies; and

(ii) Will document the training;

(14) An assurance that the percentage of the funds received under the grant that is used for indirect costs (as defined in OMB Circular A–87 incorporated by reference in 34 CFR 80.22(b)) shall not exceed 10 percent of the total amount of the grant; and

(15) An assurance that the lead agency will coordinate the activities funded through a development or extension grant under this part with the activities carried out by councils within the State, including—

(i) Any council or commission specified in the assurance provided by the State in accordance with section 101(a)(36) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(36));

(ii) The Statewide Independent Living Council established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d));

(iii) The advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12));

(iv) The State Interagency Coordinating Council established under section 682 of the Individuals with Disabilities Education Act (20 U.S.C. 1482));

(v) The State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (20 U.S.C. 6024);

(vi) The State mental health planning council established under section 1914 of the Public Health Service Act (42 U.S.C. 300x-3);

(vii) Any council established under section 204, 206(g)(2)(A), or 712(a)(3)(H) of the Older Americans Act of 1965 (42 U.S.C. 3015, 3017(g)(2)(A), or 3058g(a)(3)(H)).

(16) An assurance that there will be coordination between the activities funded through the grant and other related systems change and advocacy activities funded by either Federal or State sources.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

(Authority: 29 U.S.C. 2212(e); sec. 102(e) of the Act)

§ 345.31 What is the content of an application for an extension grant?

A State that seeks an extension grant shall include the following in an application:

(a) The information and assurances described in § 345.30, except the

preliminary needs assessment described in § 345.30(a)(4).

(b) A description of the following:

(1) The needs relating to technology-related assistance of individuals with disabilities (including individuals from underrepresented populations or rural populations) and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals within the State.

(2) Any problems or gaps that remain with the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance in the State.

(3) The strategies that the State will pursue during the grant period to remedy the problems or gaps with the development and implementation of a program.

(4) Outreach activities to be conducted by the State, including dissemination of information to eligible populations, with special attention to underrepresented populations and rural populations.

(5)(i) The specific systems change and advocacy activities described in § 345.20 (including the activities described in § 345.30(b)(1)) carried out under the development grant received by the State, or, in the case of an application for a second extension grant, under an initial extension grant received by the State under this section, including—

(A) A description of systems change and advocacy activities that were undertaken to produce change on a permanent basis for individuals with disabilities of all ages;

(B) A description of activities undertaken to improve the involvement of individuals with disabilities in the program, including training and technical assistance efforts to improve individual access to assistive technology devices and assistive technology services as mandated under other laws and regulations in effect on the date of the application, and including actions undertaken to improve the participation of underrepresented populations and rural populations, such as outreach efforts; and

(C) An evaluation of the impact and results of the activities described in paragraph (b)(5)(i) (A) and (B) of this section.

(ii) The relationship of systems change and advocacy activities to the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(iii) The progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6)(i) In the case of an application for an initial extension grant, a report on the hearing described in § 345.8(a)(2) or, in the case of an application for a second extension grant, a report on the hearing described in § 345.8(b)(2).

(ii) A description of State actions, other than a hearing, designed to determine the degree of satisfaction of individuals with disabilities, and their family members, guardians, advocates, or authorized representatives, public service providers and private service providers, educators and related service providers, technology experts (including engineers), employers, and other appropriate individuals and entities with—

(A) The degree of their ongoing involvement in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance;

(B) The specific systems change and advocacy activities described in § 345.20 (including the activities described in § 345.30(b)(1)) carried out by the State under the development grant or the initial extension grant;

(C) Progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance; and

(D) The ability of the lead agency to carry out the activities described in § 345.6(b).

(c) A summary of any comments received concerning the issues described in paragraph (b)(6) of this section and response of the State to such comments, solicited through a public hearing or through other means, from individuals affected by the consumer-responsive comprehensive statewide program of technology-related assistance, including—

(1) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(2) Public service providers and private service providers;

(3) Educators and related services personnel;

(4) Technology experts (including engineers);

(5) Employers; and

(6) Other appropriate individuals and entities.

(d) An assurance that the State and any recipient of funds made available to the State under the Act will comply with guidelines established under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e)(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to § 345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2213 (d) and (e); secs. 103 (d) and (e) of the Act)

Subpart D—How Does the Secretary Make a Grant?

§ 345.40 How does the Secretary evaluate an application for a development grant under this program?

The Secretary evaluates each application using the selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 2212(a); sec. 102(a) of the Act)

§ 345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—

(a) Achieving a balance among States that have differing levels of development of consumer-responsive comprehensive statewide programs of technology-related assistance; and

(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(c); sec. 102(c) of the Act)

§ 345.42 What is the review process for an application for an extension grant?

(a) The Secretary may award an initial extension grant to any State that—

(1) Provides the evidence described in § 345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Demonstrates that the State has made significant progress, and has carried out systems change and advocacy activities that have resulted in significant progress, toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, consistent with this part; and

(3) Holds a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) The Secretary may award a second extension grant to any State that—

(1) Provides the evidence described in § 345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Describes the steps the State has taken or will take to continue on a permanent basis the consumer-responsive comprehensive statewide program of technology-related assistance with the ability to maintain, at a minimum, the outcomes achieved by the systems change and advocacy activities;

(3) Identifies future funding options and commitments for the program from the public and private sector and the key individuals, agencies, and organizations to be involved in, and to direct future efforts of, the program; and

(4) Holds a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(c) In making any award to a State for a second extension grant, the Secretary makes an award contingent on a determination, based on the onsite visit in § 345.53, that the State is making significant progress toward development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, except where the Secretary determines that the onsite visit is unnecessary. If the Secretary determines that the State is not making significant progress, the Secretary may take an action described in § 345.61.

(Authority: 29 U.S.C. 2213 (b) and (e) and 2215(a)(2); secs. 103 (b) and (e) and 105(a)(2) of the Act)

§ 345.43 What priorities does the Secretary establish?

(a) The Secretary gives, in each of the 2 fiscal years succeeding the fiscal year in which amounts are first appropriated for carrying out development grants, priority for funding to States that received development grants under this part during the fiscal year preceding the fiscal year concerned.

(b) For States that are applying for initial extension grants, the Secretary gives, in any fiscal year, priority to States that received initial extension grants during the fiscal year preceding the fiscal year concerned.

(c) The Secretary may establish other appropriate priorities under the Act.

(Authority: 29 U.S.C. 2212(b)(4) and 2213(c); secs. 102(b)(4) and 103(c) of the Act)

Subpart E—What Conditions Must Be Met After an Award?

§ 345.50 What are the reporting requirements for the recipients of development and extension grants?

(a) States receiving development and extension grants shall submit annually to the Secretary a report that documents significant progress in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance documenting the following:

(1) The progress the State has made, as determined in the State's annual assessment (consistent with the guidelines established by the Secretary under § 345.51) in achieving the State's goals, objectives, and outcomes as identified in the State's application, and areas of need that require attention in the next year, including unanticipated problems with the achievement of the goals, objectives, and outcomes described in the application, and the activities the State has undertaken to rectify these problems.

(2) The systems change and advocacy activities carried out by the State including—

(i) An analysis of the laws, regulations, policies, practices, procedures, and organizational structure that the State has changed, has attempted to change, or will attempt to change during the next year, to facilitate and increase timely access to, provision of, or funding for, assistive technology devices and assistive technology services; and

(ii) A description of any written policies and procedures that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services, particularly policies and procedures regarding access to, provision of, and funding for, such devices and services under education (including special education), vocational rehabilitation, and medical assistance programs.

(3) The degree of involvement of various State agencies, including the State insurance department, in the development, implementation, and evaluation of the program, including any interagency agreements that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services such as agreements that identify available resources for, assistive technology devices and assistive technology services and the responsibility of each agency for paying for such devices and services.

(4) The activities undertaken to collect and disseminate information about the documents or activities analyzed or described in paragraphs (a)(1) through (3) of this section, including outreach activities to underrepresented populations and rural populations and efforts to disseminate information by means of electronic communication.

(5) The involvement of individuals with disabilities who represent a variety of ages and types of disabilities in the planning, development, implementation, and assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, including activities undertaken to improve such involvement, such as consumer training and outreach activities to underrepresented populations and rural populations.

(6) The degree of consumer satisfaction with the program, including satisfaction by underrepresented populations and rural populations.

(7) Efforts to train personnel as well as consumers.

(8) Efforts to reduce the service delivery time for receiving assistive technology devices and assistive technology services.

(9) Significant progress in the provision of protection and advocacy services, in each of the areas described in § 345.55(c)(1)(ii).

(b) The State shall make these reports readily available to the public at no extra cost.

(c) The State shall submit on an annual basis—

(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to § 345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2212(e)(16)(A) and 2214(b); secs. 102(e)(16)(A) and 104(b) of the Act)

§ 345.51 When is a State making significant progress?

A State is making significant progress when it carries out—

(a) The systems change and advocacy activities listed in § 345.30(b)(1)(ii)(A) through (F); or

(b) Other systems change and advocacy activities, if the State demonstrates through the progress reports developed by the Secretary and required to be submitted by a State in § 345.50 that it has accomplished the

purposes of the program listed in § 345.2.

(Authority: 29 U.S.C. 2212(e)(7) and 2214(a); secs. 102(e)(7) and 104(a) of the Act)

§ 345.52 Who retains title to devices provided under this program?

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with a disability who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12)(B); sec. 102(e)(12)(B) of the Act)

§ 345.53 What are the requirements for grantee participation in the Secretary's progress assessments?

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the onsite monitoring visits that will be made to each grantee during the final year of the development grant;

(b) Participating in an onsite monitoring visit, that is in addition to the visit in paragraph (a), if the State applies for a second extension grant and whose initial onsite visit occurred prior to the date of the enactment of the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994, unless the Secretary determines that the visit is not necessary.

(c) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a); sec. 105(a) of the Act)

§ 345.54 How may grant funds be used under this program?

(a) States receiving funds under this part shall comply with the assurances provided under §§ 345.30 and 345.31.

(b) A State receiving a grant may make contracts or subgrants to the eligible entities in § 345.6, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, recordkeeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2212(e), 2213(d), and 2215(a)(5); secs. 102(e), 103(d), and 105(a)(5) of the Act; sec. 437 of the General Education Provisions Act; 20 U.S.C. 1232f)

§ 345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

(a)(1) A State is eligible to receive funding to provide protection and advocacy services if—

(i) The State, as of June 30, 1993, has provided for protection and advocacy services through an entity that is capable of performing the functions that would otherwise be performed under § 345.30(b)(12) by the system described in that section; and

(ii) The entity referred to in § 345.30(b)(12)(i) is not a system described in that section.

(b) A State that meets both of the descriptions in paragraph (a)(1) of this section also shall comply with the same requirements of this part as a system that receives funding under § 345.30(b)(12).

(c)(1) A system that receives funds under § 345.20(b)(12)(i) to carry out the protection and advocacy services described in § 345.20(b)(12)(i) in a State, or an entity described in paragraph (a)(1) of this section, shall prepare reports that contain the information required by the Secretary, including the following:

(i) A description of the activities carried out by the system or entity with the funds;

(ii) Documentation of significant progress, in providing protection and advocacy services, in each of the following areas:

(A) Conducting activities that are consumer-responsive, including activities that will lead to increased access to funding for assistive technology devices and assistive technology services.

(B) Executing legal, administrative, and other appropriate means of representation to implement systems change and advocacy activities.

(C) Developing and implementing strategies designed to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to successfully advocate for assistive technology devices and assistive technology services to which the individuals with disabilities are entitled under law other than this Act.

(D) Coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the systems change and advocacy activities carried out by the State lead agency.

(2) The system or entity shall submit the reports to the lead agency in the State not less often than every 6 months.

(3) The system or entity shall provide monthly updates to the lead agency concerning the activities and information described in paragraph (c) of this section.

(d) Before making a grant or entering into a contract under § 345.30(b)(12)(ii) to support the protection and advocacy services described in § 345.30(b)(12)(ii) in a State, the Secretary shall solicit and consider the opinions of the lead agency in the State with respect to the terms of the grant or contract.

(e)(1) In each fiscal year, the Secretary specifies for each State receiving a development or an extension grant the minimum amount that the State shall use to provide protection and advocacy services.

(2)(i) Except as provided for in paragraphs (e) (3) and (4), the Secretary calculates this minimum amount based on the size of the grant, the needs of individuals with disabilities within the State, the population of the State, and the geographic size of the State.

(ii) The minimum amount, however, is not less than $40,000 and not more than $100,000.

(3) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fourth year (if any) of the grant period that equals 75 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(4) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fifth year (if any) of the grant period that equals 50 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(5) After the fifth year (if any) of the grant period, no Federal funds may be made available under this title by the State to a system described in § 345.30(b)(12) or an entity described in paragraph (a) of this section.

(Authority: 29 U.S.C. 2212(f); sec. 102(f) of the Act)

Subpart F—What Compliance Procedures May the Secretary Use?

§ 345.60 Who is subject to a corrective action plan?

(a) Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(b) A State may appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding.

(Authority: 29 U.S.C. 2215(b)(1); sec. 105(b)(1) of the Act)

§ 345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?

A State that fails to comply with the requirements of this part may be subject to corrective actions such as—

(a) Partial or complete termination of funds;

(b) Ineligibility to participate in the grant program in the following year;

(c) Reduction in funding for the following year; or

(d) Required redesignation of the lead agency.

(Authority: 29 U.S.C. 2215(b)(2); sec. 105(b)(2) of the Act)

§ 345.62 How does a State redesignate the lead agency when it is subject to corrective action?

(a) Once a State becomes subject to a corrective action plan under § 345.60, the Governor of the State, subject to approval by the Secretary, shall appoint, within 30 days after the submission of the plan to the Secretary, a monitoring panel consisting of the following representatives:

(1) The head of the lead agency designated by the Governor;

(2) Two representatives from different public or private nonprofit organizations that represent the interests of individuals with disabilities;

(3) Two consumers who are users of assistive technology devices and assistive technology services and who are not—

(i) Members of the advisory council, if any, of the consumer-responsive comprehensive statewide program of technology-related assistance; or

(ii) Employees of the State lead agency; and

(4) Two service providers with knowledge and expertise in assistive technology devices and assistive technology services.

(b) The monitoring panel must be ethnically diverse. The panel shall select a chairperson from among the members of the panel.

(c) The panel shall receive periodic reports from the State regarding progress in implementing the corrective action plan and shall have the authority to request additional information necessary to determine compliance.

(d) The meetings of the panel to determine compliance shall be open to the public (subject to confidentiality concerns) and held at locations that are accessible to individuals with disabilities.

(e) The panel shall carry out the duties of the panel for the entire period of the corrective action plan, as determined by the Secretary.

(f) A failure by a Governor of a State to comply with the requirements of paragraphs (a) through (e) of this section results in the termination of funding for the State under this part.

(g) Based on its findings, a monitoring panel may determine that a lead agency designated by a Governor has not accomplished the purposes described in § 345.2 and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under this part.

(h) For the purposes of this section, ''good cause'' includes the following:

(1) Lack of progress with employment of qualified staff;

(2) Lack of consumer-responsive activities;

(3) Lack of resource allocation to systems change and advocacy activities;

(4) Lack of progress with meeting the assurances in § 345.30(b); or

(5) Inadequate fiscal management.

(i) If a monitoring panel determines that the lead agency should be redesignated, the panel shall recommend to the Secretary that further remedial action be taken or that the Secretary order the Governor to redesignate the lead agency within 90 days or lose funds under this part. The Secretary, based on the findings and recommendations of the monitoring panel, and after providing to the public notice and opportunity for comment, shall make a final determination regarding whether to order the Governor to redesignate the lead agency. The Governor shall make any redesignation in accordance with the requirements that apply to designations under § 345.6.

(Authority: 29 U.S.C. 2215(c); sec. 105(c) of the Act)

§ 345.63 How does a State redesignate the entity responsible for providing protection and advocacy services?

(a) The Governor of a State, based on input from individuals with disabilities and their family members, guardians, advocates, or authorized representatives, may determine that the entity providing protection and advocacy services has not met the protection and advocacy service needs of the individuals with disabilities and their family members, guardians, advocates, or authorized representatives, for securing funding for and access to assistive technology devices and assistive technology services, and that there is good cause to provide the protection and advocacy services for the State through a contract with a second entity.

(b) On making the determination in paragraph (a) of this section, the Governor may not enter into a contract with a second entity to provide the protection and advocacy services unless good cause exists and unless—

(1) The Governor has given the first entity 30 days notice of the intention to enter into the contract, including specification of good cause, and an opportunity to respond to the assertion that good cause has been shown;

(2) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives, have timely notice of the determination and opportunity for public comment; and

(3) The first entity has the opportunity to appeal the determination to the Secretary within 30 days of the determination on the basis that there is not good cause to enter into the contract.

(c)(1) When the Governor of a State determines that there is good cause to enter into a contract with a second entity to provide the protection and advocacy services, the Governor shall hold an open competition within the State and issue a request for proposals by entities desiring to provide the services.

(2) The Governor shall not issue a request for proposals by entities desiring to provide protection and advocacy services until the first entity has been given notice and an opportunity to respond. If the first entity appeals the determination to the Secretary, the Governor shall issue such request only if the Secretary decides not to overturn the determination of the Governor. The Governor shall issue such request within 30 days after the end of the period during which the first entity has the opportunity to respond, or after the decision of the Secretary, as appropriate.

(3) The competition shall be open to entities with the same expertise and ability to provide legal services as a system in § 345.30(b)(12). The competition shall ensure public involvement, including a public hearing and adequate opportunity for public comment.

(Authority: 29 U.S.C. 2215(d); sec. 105(d) of the Act)

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federal register

Wednesday
August 9, 1995

Part IV

Federal Trade Commission

16 CFR Parts 800 and 803

Notification and Report Form for Certain Mergers and Acquisitions Under the Antitrust Improvements Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 800 and 803

Notification and Report Form for Certain Mergers and Acquisitions Under the Antitrust Improvements Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This final rule revises 16 CFR part 803 Appendix, the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the ''Form''). The Form must be completed and submitted by persons required to report mergers or acquisitions pursuant to Section 7A of the Clayton Act as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act''). The revised Form will require that 1992 revenue data, identified by 1987 Bureau of the Census Standard Industrial Classification (SIC) Codes, be provided in response to certain items on the Form that previously called for 1987 data. This final rule also removes 16 CFR part 800, the Transitional Rule addressing the treatment of acquisitions consummated before, and notifications filed on or before, September 5, 1978, the effective date of the Form and the rules implementing the HSR Act (''the Rules'').

EFFECTIVE DATE: August 9, 1995.

ADDRESSES: All completed Forms, including any documents required to be submitted in response to any item on the Form, must be delivered to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, and Director of Operations, Antitrust Division, Room 3218, Department of Justice, Washington, DC 20530, as specified by 16 CFR 803.10(c).

FOR FURTHER INFORMATION CONTACT: William I. Schechter, Attorney, or Melea R. Epps, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This change to the Form has been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the existing OMB clearance, Control No. 3084–0005.

Regulatory Flexibility Act

The Federal Trade Commission (''the Commission'') has previously certified that the Permerger Notification Rules and Report Form do not significantly affect small businesses. The revision to the Form made by this notice will not change the premerger notification rules in any way that would affect that determination. Therefore, pursuant to 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354 (September 19, 1980), the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 604 of the Administrative Procedure Act, 5 U.S.C. 604, requiring a final regulatory flexibility analysis of this revision is therefore inapplicable.

Background Information

The HSR Act requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'') and to wait a designated period of time before consummating such proposed transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require ''that the notification * * * be in such form and contain such documentary material and information * * * as is necessary and appropriate'' to enable the agencies ''to determine whether such acquisitions may, if consummated, violate the antitrust laws.'' (15 U.S.C. 18a(d)(1988)).

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions. The Form is designed to provide the Commission and the Assistant Attorney General (collectively referred to as ''the enforcement agencies'') with the information and documentary material necessary and appropriate for an initial evaluation of the potential anticompetitive effects of significant mergers, acquisitions and certain similar transactions. The Form is not intended to elicit all potentially relevant information relating to an acquisition. Completion of the Form by all parties required to file ordinarily will permit both enforcement agencies to determine whether the waiting period should be allowed to expire or be terminated upon request, or whether a request for additional information should be made under section 7A(e) of the Act and 16 CFR 803.20.

All acquiring and acquired persons required by the HSR Act to file notification must complete the Form, or a photostatic or other equivalent reproduction, in accordance with the Rules, 16 CFR 801–803, and the instructions attached to the Form.

Statement of Basis and Purpose for the Commission's Revision of the Form and Removal of the Transitional Rule

Form Revision

To aid the enforcement agencies in determining the competitive significance of a proposed transaction, the Form requires parties to the transaction to provide information concerning their revenues for a given base year and for the most recent year for which revenue information is available. When the Form was first promulgated on July 31, 1978, 43 FR 33450, and became effective on September 5, 1978, it required data for 1972 as the base year.

The Form was revised in 1980 to require data for 1977 as the base year (45 FR 14205 (March 5, 1980)). In 1986, the Form was revised to require data for 1982 as the base year (51 FR 10368 (March 26, 1986)). Thereafter, a revision to the Form in 1990 changed the base year to 1987 (55 FR 31371 (August 2, 1990)). This notice changes the base year from 1987 to 1992 and requires revisions to the Form relating to the revenue information required by item 5 of the Form and the reference materials to be used in completing item 5, as discussed more fully below.

Item 5 of the Form is designed, in part, to elicit economic data classified by Standard Industrial Classification (''SIC'') codes with respect to business activities within the U.S. in which the reporting person derived any dollar revenues in the base year and in the most recent year for which data are available. (Rule 803.2 (b) and (c), 16 CFR 803.2 (b) and (c), provide for certain limitations on item 5 and other data to be supplied by the reporting person). Such revenue data are required by industry (4-digit SIC code), by product class (5-digit SIC based code), and by product (7-digit SIC based code).

More specifically, item 5(a) currently requires that the reporting person provide 1987 revenue data for each 4-digit industry in which that filing person was engaged. Item 5(b)(i) currently requires that the reporting person engaged in manufacturing provide 1987 revenue data for each 7-digit product code from which it derived any revenues. Item 5(b)(ii) currently requires the reporting person to identify each manufactured product that it has added or deleted since 1987. For those products added, the reporting

person must provide the total revenue attributable to the added product for the most recent year. (The reporting person may identify the product by a 7-digit product code or in the manner it ordinarily uses.) Item 5(b)(iii) currently requires that the reporting person engaged in manufacturing provided revenue data for the most recent year for each 5-digit product class from which it derived revenues. Item 5(c) currently requires that the reporting person engaged in non-manufacturing industries provide 4-digit revenue data for the most recent year. (Pursuant to Rule 803.2(b), acquired persons are required to limit their responses to item 5 to revenues derived from the assets being acquired and/or the issuer(s) whose voting securities are being acquired).

When originally promulgated, the Form required revenue data for two time periods, *i.e.*, for 1972 and for the most recent year for which the requested information was available. The use of the 1972 ''base year'' was designed to coincide with the then most recent quinquennial economic census and the Annual Survey of Manufacturers. These Bureau of Census publications (as updated) serve as the most readily available and reliable statistical sources of industry data and universe product revenue data to which individual company product revenue data can be compared. When the original Form was promulgated, the Commission and the Assistant Attorney General stated their intention to revise Item 5 to require submission of 1977 revenue data as soon as the Bureau of the Census published the 1977 Census of Manufacturers (43 FR 33526 (July 31, 1978)). Accordingly, the Commission amended the Form in 1980, in 1986 when the 1982 Census of Manufacturers was published, and again in 1990 when the 1987 Census of Manufacturers was published.

The Bureau of the Census is currently in the process of publishing its Final Reports for the 1992 Census of Manufacturers, and it projects that it will complete the publication of all Final Reports by September 1, 1995. Since most companies within the United States submit data to the Bureau of the Census for economic censuses, many potential reporting persons have gathered, compiled and assembled 1992 revenue data in accordance with the SIC code format for the 1992 Census of Manufacturers. In addition, the Bureau of the Census has completed its Numerical List of Manufactured and Mineral Products, 1992 Census of Manufacturers and Census of Mineral Industries (MC92–R–1) (''1992 Numerical List''). This publication contains 5-digit product class and 7-digit product codes for 1992 and is currently available from the Government Printing Office. Its present availability and the imminent availability of the 1992 product revenue universe data, contained in the Bureau of the Census Reports, to the enforcement agencies, permit the revision of item 5 to require 1992 data instead of 1987 data.

The previous change to the base year in 1990 was effective in 60 days from the date of publication of the Final Rule in the **Federal Register**. A transitional period during which filers could submit either 1982 or 1987 data was not provided because of significant changes in the 4-digit, 5-digit and 7-digit SIC codes. In contrast, the previous changes to the base year in 1980 and 1986 were effective immediately but provided for a 60-day transitional period during which filers were permitted to submit either the old or the new revenue data.

Because there have not been significant changes in the SIC codes from 1987 to 1992, the Commission has determined that the current changes to the Form will be effective immediately, subject to a transitional period until October 1, 1995, (as was permitted in the changeovers to the 1977 and 1982 base years). During such time, reporting persons may use as the base year either 1987 or 1992 when providing revenue and SIC code data in response to items 5(a), 5(b)(i), 5(b)(ii), 5(b)(iii) and 5(c) of the Form. Thereafter, the Commission and the Assistant Attorney General will accept only 1992 revenue and SIC code data. Forms submitted on or after October 1, 1995, that do not provide 1992 base year revenue data will be treated as deficient under § 803.10(c)(2) of the Rules. (16 CFR 803.10(c)(2)).

The Commission has decided to provide for a transitional period during which base year revenue data may be submitted for either 1987 or 1992 and the corresponding 1987 or 1992 SIC codes can be used in responding to item 5 in order to minimize the reporting burden on filing persons. The transitional period allows for the submission of new base year revenue data by first-time filers, who may otherwise be required to compile old base year revenue data solely for the purpose of completing the Form. It also permits reporting persons who routinely file notifications with the enforcement agencies to use existing old base year revenue data to complete the Form while finishing their collection and organization of new base year revenue data. Although this approach may temporarily complicate the substantive antitrust reviews conducted by the enforcement agencies, the difficulties should not be significant because there have not been substantial changes in the SIC codes for 1992. Moreover, the enforcement agencies' antitrust analysis clearly will benefit from the receipt of more up-to-date information.

In 1990, when the Form was amended to require submission of 1987 base year revenue data, the Commission and the Assistant Attorney General determined that reporting persons would be required to submit revenue data using the codes published by the Bureau of Census rather then the codes used by Census to collect the information. This requirement is no longer necessary since the Bureau of the Census used the same codes for data collection and for publication of the 1992 Census of Manufacturers. Accordingly, reporting persons will no longer be required to convert revenue data from collected codes to the codes published by the Bureau of Census when completing the Form.

The Commission believes that the notice and comment period ordinarily required by the Administrative Procedure Act (''the APA''), 5 U.S.C. 553(b) is unnecessary here. Section 553(b)(B) exempts from the APA's notice and comment requirements the promulgation of a rule where the agency, for good cause, finds that the standard procedure would be ''impracticable, unnecessary, or contrary to the public interest.'' Promulgation of the proposed revision falls within this exemption for several reasons.

First, the public was afforded the opportunity to comment on the original Rules and Form in two notice and comment periods provided pursuant to the rulemaking requirements of the APA. The rulemaking culminated in the promulgation and publication of the Rules and the Form, and was accompanied by a Statement of Basis and Purpose (43 FR 33450 (July 31, 1978)). Since the present amendment does not depart from or alter the substance of the prior rulemakings (*i.e.*, it does not change the type or amount of information required by the Form), further opportunity for comment is unnecessary. See generally, *Texaco, Inc.* v. *Federal Energy Administration*, 531 F.2d 1071 (Emer. Ct. App.). *cert. denied*, 426 U.S. 941 (1976); *Durkin* v. *Edward S. Wagner Co.*, 115 F. Supp. 118 (D.N.Y. 1953), *aff'd* 217 F.2d 303 (2d Cir.), *cert. denied*, 348 U.S. 964 (1954).

Second, the Commission and the Assistant Attorney General gave notice of their intention to revise item 5 in the original promulgation of the Rules and the Form in response to numerous

comments received during the two comment periods of the original rulemaking. Several comments then opposed the requirement that 1972 data based on the SIC Codes be supplied on the grounds that the compilation of the 1972 data would be unduly cumbersome, burdensome and expensive. These positions were rejected by the Commission on the basis that revenue information ''reported by SIC-based categories currently provides the only feasible basis for the effective preliminary review of reported acquisitions within the time limits imposed by the act.'' (43 FR at 33527, (July 31, 1978)).

Now, for the fourth time, the Commission is changing the requirements of item 5 consistent with its earlier notices. The change will lessen the compliance burden by requiring more recent revenue data, which are generally more easily retrievable by and readily available to reporting persons than 1987 data. The Commission finds that a separate notice and comment period at this time would be unnecessary and not in the public interest and, therefore, it is not required by the APA.

Section 553(d) (5 U.S.C. 553(d)(3)) of the APA requires that 30 days notice be provided to the public before a rule becomes effective, but provides an exception from this requirement where good cause is found. (5 U.S.C. 553(d)(3)). Rather than delay the effective date of the new requirements by 30 days, the Commission has determined in the public interest to accommodate all reporting persons by making the rule effective immediately but providing for a transitional period as described above. The transitional period in effect provides more than 30 days notice to reporting persons before they must complete the Form using 1992 base year revenue and SIC code data as required by this rule.

The Commission, with the concurrence of the Assistant Attorney General, hereby revises the Appendix to 16 CFR part 803.

The Transitional Rule

Section 7A of the Clayton Act became effective on February 27, 1977, 150 days after enactment. However, implementing rules could not be promulgated prior to the effective date. Therefore, on January 27, 1977, the Commission, with the concurrence of the Assistant Attorney General, promulgated a final rule designated the Transitional Rule (42 FR 6365 (February 2, 1977)). The Transitional Rule, 16 CFR part 800, created an exemption for all transactions consummated prior to the effective date of the Rules and specified the manner in which the Rules would be implemented during the first 30 days following the effective date. The Rules have now been in effect since September 5, 1978, and there are no longer any transactions that are subject to the Transitional Rule. Thus, the deletion of the Transitional Rule is appropriate at this time.

The Commission believes that the notice and comment period ordinarily required by the APA, 5 U.S.C. 553(b), is also unnecessary for the removal of the Transitional Rule, which falls within the exemption provided by Section 553(b)(B) of the APA. Because the Transitional Rule governs no current or future transactions, no members of the public will be affected by the deletion of the rule. Therefore, to make the removal of the Transitional Rule subject to the notice and comment requirements of the APA would be ''impractical, unnecessary, or contrary to the public interest.'' (5 U.S.C. 553(b)(B)(1988)).

The Commission, with the concurrence of the Assistant Attorney General, hereby removes 16 CFR part 800.

List of Subjects in 16 CFR Parts 800 and 803

Antitrust.

Final Rule

Accordingly, under the authority at 15 U.S.C. 45(a) and 46(g) the Federal Trade Commission amends title 16 chapter I of the Code of Federal Regulations as follows:

PART 800—TRANSITIONAL RULE

1. Part 800 is removed.

PART 803—TRANSMITTAL RULES

2. The authority citation for part 803 continues to read as follows:

Authority: Section 7A(d), Clayton Act, 15 U.S.C. 18a(d) as added by section 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.

3. The Appendix is amended by revising pages I and IV of the Instructions to the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions, and pages 6 and 7 of the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions to read as follows:

* * * * *

Appendix [Amended]

BILLING CODE 6750–01–M

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These Instructions specify the information which must be provided in response to the items on the Answer Sheets. *Only* the completed Answer Sheets, together with all documentary attachments are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with **each** copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 2(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 6th St. & Pa. Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) and 48 FR 34427 (July 29, 1983).

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a).)

Responses-*Each answer* should identify the **Item** to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be so identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

SIC Data-This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) *All persons* must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufactured operations* (SIC major groups 20-39), data must also be submitted at the *5-digit product class* and *7-digit product levels* (SIC based codes).
The term "dollar revenues" is defined in § 803.2(d).

References- In reporting information by "4-digit (SIC code) industry" refer to the 1987 edition of the *Standard Industrial Classification Manual* published by the Executive Office of the President, Office of Management and Budget.

In reporting information by "5-digit product class" and "7-digit product" refer to the following reference publication published by the U.S. Bureau of the Census:
Numerical List of Manufactured and Mineral Products, 1992 *Census of Manufactures and Census of Mineral Industries* (MC92-R-1). Make sure that the Numerical List you use has MC92-R-1 printed on the cover.

Furthermore, when the Numerical List cites footnote 3, which refers to Appendices A and C for detail collected in a specified Current Industrial Report, you must provide revenue information using the 7-digit product codes listed in Appendix A.

Privacy Act Statement - Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws. Furnishing the information on this Form is voluntary.

Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $10,000 per day.

the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 on page 5 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

* * * * *

ITEMS 5 through 9 and the Appendix

NOTE: *For Items 5 through 9 and the Appendix limited or separate responses may be required of the person filing notification. (See § 803.2(b) and (c).)*

ITEM 5(a) - 5(c): These Items request information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufacturing operations* (SIC major groups 20-39), data must also be submitted at the 5-digit product class and 7-digit product levels (SIC based codes).

NOTE: See the "References" listed in the General Instructions to the Form. Refer to the 1987 edition of the *Standard Industrial Classification Manual* for the 4-digit (SIC code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, 1992 *Census of Manufactures and Census of Mineral Industries* (MC92-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code."

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit major group 63. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; holding and other investment offices, and real estate companies (2-digit SIC major groups 61, 62, 67 and 65) should identify or explain the revenues reported (e.g., dollar sales, receipts).

Persons filing notification should include the total dollar revenues for 1992 derived by all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 1992). For example, if the person filing notification acquired an entity in 1994, it must include that entity's 1992 revenues in Items 5(a) and 5(b)(i).

Item 5(a)-*Dollar revenues by industry.* Provide aggregate 4-digit (SIC code) industry data for 1992.

Item 5(b)(i)-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 1992 for each 7-digit product of the person in 2-digit SIC major groups 20-39 (manufacturing industries)

NOTE: When the Numerical List refers to footnote 3, which cites Appendices A and C for detail collected in a specified Current Industrial Report, you must provide revenue information using 7-digit product codes listed in Appendix A.

Item 5(b)(ii)-*Products added or deleted.* Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1992, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 7-digit product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1992 by reason of mergers or acquisition occurring since 1992. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1992 by the person filing notification(and now included within the person) itself has added any products since 1992, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets or voting securities since 1992 should also be listed here.

Item 5(b)(iii)-*Dollar revenues by manufactured product class.* Provide the following information about the aggregate operations of the person filing notification for the most recent year for each 5-digit product class of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)-*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See the "References" listed in the General Instructions to the Form. Refer to the 1987 editon of the *Standard Industiral Classification Manual* for the 4-digit (SIC Code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1992 Census of Manufactures and Census of Mineral Industries* (MC92-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code.")

5(a) DOLLAR REVENUES BY INDUSTRY

4-DIGIT INDUSTRY CODE *Product code published*	DESCRIPTION	1992 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7-DIGIT PRODUCT CODE *Product code published*	DESCRIPTION	1992 TOTAL DOLLAR REVENUES

FTC Form C 4 (rev. 07/95) 7

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–19546 Filed 8–8–95; 8:45 am]

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federal register

Wednesday
August 9, 1995

Part V

Federal Communications Commission

47 CFR Parts 1 and 26

General Wireless Communications Service; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 26

[ET Docket No. 94–32, FCC 95–319]

Wireless Service; General Wireless Communications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Report and Order* creates the General Wireless Communications Service and adopts rules for licensing of this service in the 4660–4685 MHz band. These rules will be found in newly adopted 47 CFR Part 26. The creation of the General Wireless Service comes in response to the Omnibus Budget Reconciliation Act of 1993 (Reconciliation Act), and is intended to benefit the public by permitting and encouraging the introduction of new services and the enhancement of existing services. These new and enhanced services and uses will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

EFFECTIVE DATE: August 9, 1995. Section 26.104 which contains information collection requirements will not become effective until approved by the Office of Management and Budget. Notice of such approval and the effective date will be provided in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Rackley, 202–418–0620, or Dan Grosh 202–418–1534.

SUPPLEMENTARY INFORMATION:

Type of Review: New collection requirement
Title: In the Matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use
OMB Number: None.
Form Number:
Affected Public: Business or other-for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.
Number of Respondents: 875
Estimated time per response: Approximately 4 hours
Total burden: Approximately 3500 hours five and ten years after initial license grant
Needs and Uses: These requirements comply with Congressional directive that the Commission adopt performance requirements to ensure prompt service to rural areas, prevent stockpiling or warehousing of spectrum and encourage investment in and development of new technologies

This is a synopsis of the *Second Report and Order* is avaialble for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Second Report and Order

1. By this action, the Commission creates the General Wireless Communications Service (GWCS), and adopts rules for licensing of this service in the 4660–4685 MHz band. The 25 megahertz of spectrum in the 4660–4685 MHz band was transferred from Federal Government to private sector use and was allocated to the Fixed and Mobile services in the *First Report and Order and Second Notice of Proposal Rule Making* (*First R&O/Second NPRM*) in this proceeding. (The *Notice of Inquiry* in this proceeding was published at 59 FR 255589, May 17, 1994; the *Notice of Proposed Rule Making* at 59 FR 19393, May 17, 1994; the *Notice of Proposed Rule Making* at 59 FR 19393, November 17, 1994; and the *First Report and Order* at 60 FR 13102, March 10, 1995.)

2. The *First R&O* allocated the 2390–2400 MHz band for use by unlicensed Personal Communicationa Services (PCS) devices, provided for continued use of the 2402–2417 MHz band by devices operating in accordance with Part 15 of our rules, supgraded the allocation of these bands for use by the Amateur service on a primary basis, and allocation the 5440–4685 MHz band for use by Fixed and Mobile Service. The *Second NPRM* proposed rules for use of the 4660=NPRM proposed rule for use of the 4660–4685 MHz band.

Service Rules

3. The *Second NPRM* proposed to create a new service, the General Wireless Communications Service (GWCS), for licensing of the 4660–4685 MHz band. This new service would allow a licensee to provide a wide range of Fixed or Mobile services. As stated in the Second NPRM, CWCS would provide licensees an opportunity to use the spectrum flexibility in order to meet the needs of consumers. Services that would not be within the proposed GWCS category included Broadcast services, Radio location services, and Satellite services.

4. The Commission proposed to establish the flexible GWCS service classification in order to enhance the ability of service providers to meet a variety of user needs. The Commission also acknowledged the possibility that these needs might better be accommodated by rules that prescribe the use of the 4660–4685 MHz frequency band only by specific services. Interested parties who opposed the proposed establishment of a GWCS category were asked to suggest ways in which use of the 4660–4685 MHz band could be limited to specific services. For example, the Commission sought comment on (1) what services should be treated as eligible; (2) whether we should divide channels in the band in a matter which assigns Fixed services exclusively to certain channels and Mobile services exclusively to other channels in the band; (3) whether we should establish priorities for Fixed service or Mobile service use of some or all of the channels established in the band; and (4) whether we should assign some or all channels established in the band for exclusive use by private Fixed or Mobile Services. Proponents of this alternative approach for designating services in the 4660–4685 MHz frequency band were asked to provide facts and arguments supporting their view that such an approach would better serve the Commission's objectives and the public interest than would the establishment of GWCS, which would permit use of the spectrum for these as well as other applications.

5. The Commission adopts the proposed General Wireless Communications Service for the 4660–4685 MHz block, largely as proposed in the *Second NPRM*. This flexible, broadly defined service should accommodate a wide variety of potential Fixed and Mobile service uses, including all of those identified by the commenters. The flexibility of GWCS should also help make frequencies available for new technologies and services, including those that have been mentioned in the current comments and those that may be developed in the years ahead. In addition, as a service category that is not limited to specific past and current uses, but is available for the implementation of future technologies, GWCS should encourage research and investment to invent, develop, and market new technologies, and spur their deployment to serve consumers.

6. Under the Reconciliation Act, the spectrum reallocated from Federal Government use is to be allocated and assigned to public use under a plan that makes frequencies available for new technologies and services, and stimulates the development of such technologies. The Commission believes that the General Wireless

Communications Service will foster the accomplishment of these goals. Additionally, GWCS should stimulate efficient use of the spectrum by encouraging licensees to find ways to use the spectrum for the variety of services allowed under the license. Of equal importance, GWCS will accommodate and spur the development of new technologies and services.

7. Commenters have not persuaded the Commission that limiting assignments to any of their specific proposed uses of the spectrum would better meet the goals of the Reconciliation Act, the Communications Act, and the public interest. Restricting the 4660–4685 MHz spectrum to defined uses or services, such as the specific uses proposed by various commenters, would tend to reduce the attractiveness of this spectrum for new technologies and services. Moreover, as discussed above, GWCS is flexible enough to permit the specific uses suggested by such commenters, as well as the other uses identified in the comments. If GWCS spectrum assignment applications submitted by qualified parties now seeking service-specific allocations are not mutually exclusive, those parties will be granted licenses to provide the specific services they wish to provide, as well as other permissible GWCS services. In the event the spectrum is assigned by auction because of mutual exclusivity, they will also be able to participate and seek to obtain licenses.

8. The Commission also believes that any interference issues that may arise among GWCS licensees can be satisfactorily resolved by general non-interference standards and technical rules. Many potential sources of unacceptable interference have been eliminated by barring use of GWCS for Broadcast services, Radiolocation services, and Satellite services. Further, the grant of each GWCS license will be made subject to the condition that the licensee not cause unacceptable interference with any other licensee or service. Failure to abide by this condition will render the licensee subject to fines, damages, or forfeiture of the license. The Commission is adopting technical rules similar to those in place for PCS. To the extent it proves necessary, the Commission can consider whether revisions to those rules are warranted after GWCS licenses are assigned.

9. The Commission finds no merit in arguments that the Fixed and Mobile allocation of this spectrum, and use of the flexible GWCS designation for assigning this spectrum, are unlawful. As discussed in the *First Report and Order* the provisions of the Communications Act and Commission precedent support the legality of allocating frequencies to more than one radiocommunication service, and of assigning licenses for use by a broadly defined service. The Commission is required by the National Telecommunications and Information Administration Organization Act (NTIAO Act) to issue regulations to allocate the 50 megahertz of spectrum that the Secretary of Commerce identified and recommended for immediate reallocation from Federal Government use no later than 18 months from enactment of the Reconciliation Act.[1] For purposes of this portion of the NTIAO Act, the term ''allocation'' is defined as ''an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.'' [2] The Table of Frequency Allocations often contains allocations to more than one type of service [3] and such allocations are specifically authorized in this instance by the NTIAO Act. Therefore, allocation of the 4660–4685 MHz band to Fixed and Mobile Services is permissible and consistent with established practice.

10. The Commission also believes that such an allocation is consistent with the Commission's obligations under the Communications Act. The Commission has broad authority under the Communications Act to allocate spectrum. This authority derives from Section 303 of the Communications Act. Nothing in the language of Section 303 establishes or suggests any limitation or restriction on the Commission's discretion to prescribe the nature of the service to be rendered over radio frequencies or authority to assign (or allocate) frequencies to the various classes of stations. Moreover, nothing in the language of Section 303 or its legislative history suggests that the Commission is prohibited from assigning spectrum to stations for more than one permissible use, or otherwise limits the Commission's discretion in making spectrum allocations that it deems to serve the public interest. With respect to allocation decisions, courts have accorded ''substantial deference'' to Commission determinations.[4] Finally, Commission precedent supports the permissibility of allocating spectrum in a manner that allows for its use by a broadly defined service.

11. The Commission, in the *Second NPRM,* noted that, in addition to the Fixed and Mobile service allocation adopted in the *First R&O,* 4660–4685 MHz is allocated on a co-primary basis for non-government fixed-satellite service (FSS) space-to-Earth links, with use limited to international inter-continental systems and subject to a case-by-case electromagnetic analysis in accordance with US footnote 245 of the Table of Frequency Allocations. The *NOI* in this proceeding requested comment on the necessity of maintaining the US245 restrictions on FSS use of this band, considering that it would no longer be available for Federal Government use. To facilitate the shared used of this band, the *Second NPRM* proposed to maintain the restrictions set forth in US footnote 245 on use of 4660–4685 MHz and requested comments on this proposal. The Commission adopts the proposal as contained in the *Second NPRM* and retains the restriction in this footnote.

12. The Commission next considers public safety issues. Under the NTIAO Act, the Commission's plan for allocating and assigning former Federal Government spectrum must contain appropriate provisions to ensure not only the availability of frequencies for new services, but also ''the safety of life and property in accordance with the policies of Section 1 of the [Communication Act]'' [5] In the current record, the Association of Public-Safety Communications Officials-International, Inc. (APCO) proposes designating at least a portion of the 4660–4685 MHz band for public safety mobile and aeronautical video operations. The current record does not, however, provide a sound basis for concluding that any or all of the 4660–4685 MHz band should be assigned as APCO suggests.

13. The Commission is firmly committed to ensuring that wireless and wired communications resources are deployed to promote the safety of life and property, as well as to carry out the other public interest goals of the Communications Act. The FCC and NTIA recently formed a Public Safety Wireless Advisory Committee to prepare a report on operational, technical and spectrum requirements of Federal, state and local public safety entities through

[1] Section 115(a) of the National Telecommunications and Information Administration Organization Act, 47 U.S.C. § 925(a) (NTIAO Act).

[2] Section 111(1) of the NTIAO Act, 47 U.S.C. § 921(1).

[3] *See* 47 C.F.R. § 2.106.

[4] *See* National Ass'n of Regulatory Util. Comm'ners v. FCC, 525 F.2d 630, 636 (D.C. Cir.), *cert. denied,* 425 U.S. 992 (1976); *see also* Telocator Network of America v. FCC, 691 F.2d 525, 549 (D.C.Cir. 1982).

[5] Section 115(b)(2)(C) of the NTIAO Act, codified at 47 U.S.C. § 925(b)(2)(C).

the year 2010. This Committee is expected to begin its work in the very near future. The plan the Commission is developing for the 200 MHz of Federal Government spectrum scheduled to be reallocated to non-Government use over the next 10 years will contain provisions to address how the reallocated Federal Government spectrum can best be used to satisfy unmet national safety needs. The Commission is directed by statute to submit and implement this plan by February 1996.[6]

14. It is the Commission's hope and intent that the gaps identified in the current record regarding the scope of public safety needs for additional wireless spectrum, and how those needs might best and most efficiently be met, will spur public safety organizations and other interested parties to work together to help us develop an effective plan for using wireless communications to meet any unmet and future public safety needs. The FCC–NTIA Public Safety Wireless Advisory Committee will offer one useful forum for such efforts. One of the tasks undertaken by the advisory committee will be to identify spectrum for federal, state, and local public safety use. As part of that process, the Commission suggests that the advisory committee explore potential public safety uses of the 4635–4660 MHz band. The Commission expects to begin proceedings in the near future to allocate and establish rules for assigning this band, which consists of reallocated Federal Government spectrum which is scheduled to become available in January 1997. This band is directly adjacent to the 4660–4685 MHz band we are designating to GWCS in this Order and thus has essentially the same technical characteristics and potential uses. Public safety organizations may develop proposals to ensure that the Commission has a complete, well-developed record to consider whether and how this band might be allocated and assigned to meet public safety needs.

Use of Spectrum

15. The Commission expects that the General Wireless Communications Service will benefit the public by providing licensees the opportunity to use the spectrum in a variety of ways they find appropriate. The *Second NPRM* tentatively concluded that it is likely that these uses will principally involve the provision of subscriber-based services. Based on this conclusion, the Commission proposed to use competitive bidding as the assignment method for this spectrum if mutually exclusive applications are filed. Section 309(j)(2)(A) of the Communications Act provides that competitive bidding may be used by the Commission to assign spectrum if the ''principal use'' of the spectrum involves, or is reasonably likely to involve, the transmission or reception of communications signals to subscribers for compensation.

16. Based on the record, the *Second NPRM* tentatively concluded that the principal use of this spectrum under the Commission's proposed General Wireless Communications Service would involve, or was reasonably likely to involve, the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. The Commission requested further comment on this tentative conclusion. Based on the record in response to the *Second NPRM*, the Commission finds it likely that the principal use of this band will be for subscription services.

Assignment Method

17. Sections 309(j)(1) and 309(j)(2) of the Communications Act[7] permit auctions where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. As explained above, The Commission believes that the principal use of this spectrum will meet these requirements. In addition, Section 309(j)(2)(B) requires the Commission, before it may adopt the use of auctions to award licenses, to determine that use of competitive bidding will promote the objectives described in Sections 1 and 309(j)(3) of the Communications Act. The *Second NPRM* tentatively concluded that the use of competitive bidding to assign licenses in the 4660–4685 MHz band would promote these objectives. The *Second NPRM* also requested comments on other possible assignment methods.

18. The Commission concludes that, in cases of mutually-exclusive applications, GWCS spectrum should be assigned by auction, as we tentatively concluded in the *Second NPRM*. Based on our experience with comparative hearings, lotteries, and auctions, the Commission believes that auctions will in this case achieve the statutory objectives of Section 309(j)(3) of the Communications Act.

19. One important aspect of any assignment method is determining whether applications are mutually exclusive. In the *Second NPRM*, the Commission proposed to use a 30-day filing window or other application cut-off method to allow for competing applications. The *Second NPRM* also sought comment on whether some other type of filing group would be more appropriate for determining whether initial applications are mutually exclusive. None of the commenters addressed this issue or suggested alternatives to the proposed 30-day filing window. Therefore, the Commission adopts the 30-day filing window as proposed for GWCS applications.

Channelization; Aggregation

20. The *Second NPRM* next proposed that the 4660–4685 MHz band be licensed in five blocks, each of which would be 5 megahertz wide. The *Second NPRM* proposed to limit a single entity from obtaining more than three of these blocks in a single geographic licensing area. The *Second NPRM* further proposed that, regardless of the specific service to be provided, this spectrum will not count against the 45 megahertz spectrum cap that applies to certain commercial mobile radio service (CMRS) licensees.

21. The Commission adopts the proposed channelization plan consisting of five 5 megahertz blocks. The Commission also adopts the proposed aggregation limit of 15 megahertz of spectrum that may be obtained by a single entity. Lastly, the Commission adopts its tentative conclusion not to count this spectrum against the 45 megahertz spectrum cap that applies to certain CMRS licenses.

License Areas

22. The Commission will issue GWCS licenses based on EA-like geographic areas. The complete list of EA and EA-like areas is shown in Appendix C of the full text of this *Second Report and Order*. The five 5 MHz blocks will be designated as Blocks A through E: Block A (4660–4665 MHz), Block B (4665–4670 MHz), Block C (4670–4675 MHz), Block D (4675–4680 MHz) and Block E (4680–4685 MHz).

Eligibility

23. The *Second NPRM* proposed, in the event the Commission determined it reasonably likely that GWCS services would be commercial services, that there be no restrictions on eligibility to apply for licenses in this band other

[6] *See* Section 115(b) of the NTIAO Act, codified at 47 U.S.C. § 925(b).

[7] 47 U.S.C. §§ 309(j)(1), 309(j)(2).

than those foreign ownership restrictions that apply to CMRS and common carrier fixed system licensees, and the restriction on foreign governments or their representatives related to the holding of private mobile radio service licenses. Although rural telephone companies would be eligible, the Commission did not propose to treat them differently than other applicants. The Commission now adopts these proposed broad eligibility standards for GWCS applications.

Competitive Bidding Issues

24. In the *Second NPRM,* the Commission proposed to use auctions to issue licenses for GWCS services in the 4660–4685 MHz band that meet the statutory auction criteria and sought comment on a wide range of issues related to competitive bidding. For example, regarding competitive bidding methodology for licenses in the 4660–4685 MHz band, the *Second NPRM* proposed to use simultaneous multiple round bidding for licensing of the proposed 5 MHz-wide MTA spectrum blocks. The Commission also tentatively proposed to auction all licenses simultaneously, because of the relatively high value and significant interdependence of the licenses. Commenters were asked to address these tentative conclusions and whether any other competitive bidding designs might be more appropriate for the licensing of this spectrum. The Commission adopts the tentative conclusion in the *Second NPRM* and will auction this spectrum by simultaneous multiple round bidding. However, the Commission reserves the discretion to hold one or more auctions.

25. The *Second NPRM* also sought comment on whether to allow combinatorial bidding for GWCS services, because it may be necessary or at least highly desirable that spectrum used for some services (*e.g.,* air-ground service) be licensed to the same entity nationwide. Combinatorial bidding is an auction method which allows applicants to bid for multiple licenses as all or nothing packages, *e.g.,* all licenses nationwide on a particular spectrum block, with the licenses awarded as a package if the combinatorial bid is greater than the sum of the high bids on the individual licenses in the package. The Commission declines to adopt combinatorial bidding in this decision, but will establish reduced bid withdrawal penalties for entities seeking nationwide licenses that should achieve results similar to combinatorial bidding, with far less uncertainty and complexity.

26. The *Second NPRM* invited comment on bidding procedures to be used in the 4660–4685 MHz auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. Assuming that the Commission would use simultaneous multiple round auctions, the *Second NPRM* generally proposed to use the same or similar bidding procedures to those used in simultaneous multiple round bidding for MTA-based PCS licenses. The Commission sought comment on whether any variations on these procedures should be adopted for licenses in the 4660–4685 MHz band. Based upon our successful experience in auctioning PCS spectrum and the absence of any dispute concerning the efficacy of the bidding procedures used there, the Commission adopts essentially the same procedures for GWCS licenses. Additional, more detailed information on bidding procedures and other auction information will be made public prior to the auction.

27. This *Second Report and Order* next considers procedural, payment, and penalty issues. As discussed below, the Commission will generally follow the procedural, payment, and penalty rules established in Subpart Q of Part 1 of the Commission's Rules.[8] First, regarding upfront payments, as in the case of other auctionable services, the Commission will require participants in the 4660–4685 MHz auction to tender to the Commission, in advance of the auction, a substantial upfront payment as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty in the event of bid withdrawal or default. For GWCS, the Commission adopts the standard upfront payment formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding.

28. Second, the Commission adopts a requirement for 4660–4685 MHz GWCS licensees that successful bidders tender a 20 percent down payment on their bids to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs. Third, the Commission adopts the bid withdrawal, default, and disqualification rules for 4660–4685 MHz licensing based on the procedures established in our general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. One exception is that the Commission will limit the bid withdrawal penalties for nationwide bidders to 5 percent of the withdrawn bids. A defaulting auction winner will be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less, up to 5 percent of the withdrawn bids. In the event that an auction winner defaults or is otherwise disqualified, the Commission will re-auction the license either to existing or new applicants. The Commission will retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding.

29. The Commission next considers regulatory safeguards. First, the Commission establishes unjust enrichment regulations as directed by the Reconciliation Act. Specifically, the Commission adopts the transfer disclosure requirements contained in Section 1.2111(a) of our rules for all 4660–4685 MHz licenses obtained through the competitive bidding process. In addition, the Commission adopts the specific rules governing unjust enrichment by designated entities as proposed in the *Second NPRM.* Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

30. Second, the Commission contemplates performance standards, as instructed by the Reconciliation Act and finds that no additional performance requirements are needed beyond the specific performance standards already provided for in the 4660–4685 MHz service rules.

31. Third, the Commission considers rules prohibiting collusion and adopts rules for the 4660–4685 service which are identical to those found at 47 CFR § 1.2105(c). Under these procedures, bidders will be required to identify on their applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or

[8] 47 C.F.R. Part 1, Subpart Q.

understandings that relate to the competitive bidding process. Bidders will also be required to certify that they have not entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

32. The *Second Report and Order* deals with several issues regarding eligibility criteria and general rules governing the award of licensing preferences to certain designated entities, i.e. minority groups and women. In keeping with the general parameters set forth in PR Docket 93–253, the *Second NPRM* in the current docket proposed specific measures and eligibility criteria for designated entities in the 4660–4685 MHz service, designed to ensure that such designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of service in the 4660–4685 MHz band. The Commission sought comment on these proposals, and specifically on identifying special provisions tailored to the unique characteristics of the service or services that might be offered in the 4660–4865 MHz band, in order to create meaningful incentives and opportunities in the service for small businesses and businesses owned by minorities and/or women.

33. In the *Second NPRM*, the Commission discussed and sought comment on these special provisions for designated entities:

(1) for businesses owned by women and minorities the Commission proposed that installment payments be available on all licenses and that a bidding credit of 25 percent be available on one of the five proposed spectrum blocks;

(2) for small business the Commission sought comment on allowing a reduced down payment requirement coupled with installment payments;

(3) the Commission did not believe that special preferences are needed to ensure adequate participation of rural telephone companies;

(4) the Commission sought comments on reducing upfront payments to encourage participation in the auction, particularly by all eligible designated entities; and

(5) the Commission sought comment on whether and how to designate one 5 MHz spectrum block as an ''entrepreneurs' block.''

34. The Commission also discussed and solicited comments on issues of the eligibility criteria for designated entities and provisions to prevent unjust enrichment by trafficking in licenses acquired through the use of bidding credits or installment payments.

35. The Commission concludes that its plan to award licenses for the 4660–4685 MHz band based on EA regions, will substantially enhance the opportunities for designated entities to participate in the GWCS license auction. Partitioning of licenses will further increase the opportunities for designated entities. Based on our experience in the other auctions held to date, the Commission is also adopting bidding and payment provisions that will help ensure that the auction assigns licenses to the bidders who value them most highly, while encouraging the participation of designated entities. Specifically, the Commission will permit small business licensees to make their payments in installments computed at a reasonable rate of interest (the rate for ten year U.S. Treasury obligations plus 2.5 percent). Small businesses will in addition be permitted to make reduced down payments and interest-only payments in the first two years of the license term, and will be allowed a 10 percent bidding credit on all blocks of spectrum. The Commission also adopt rules to prevent unjust enrichment from bidding preferences. The Commission does not adopt an entrepreneurial set aside, but will apply the designated entity bidding preferences to all five spectrum blocks.

36. The Commission limit eligibility for bidding credits, installment payments and reduced down payments to small businesses, including those owned by members of minority groups and women. The Commission lacks the information necessary to set different eligibility criteria for minority and women-owned entities that do not meet our small business size standards in order to achieve the goals of Section 309(j) in the GWCS services. By providing credits on all blocks, licensing the blocks based on EA geographic areas, and permitting disaggregation and partitioning, the Commission will create substantial opportunities for all small businesses, including those owned by minorities and women.

37. The *Second NPRM* requested comment on whether the Commission should utilize the Small Business Association net worth/net income definition of a small business (a net worth not in excess of $6 million with average net income after Federal income taxes for the preceding years not in excess of $2 million) we adopted in the *Competitive Bidding Second Report and Order* or, in the alternative, a gross revenue standard like that used in the broadband PCS context (average gross revenues for the three preceding years not in excess of $40 million). The Commission also proposed to apply the same affiliation and attribution rules for calculating revenues that we have previously adopted in the PCS context.

38. The Commission finds that the GWCS overall may be similar to broadband PCS in its requirements for capital and adopts the small business definition adopted there, namely any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of $40 million. The Commission also applies to 4660–4685 MHz applicants the same affiliation and attribution rules for calculating revenues previously adopted in the PCS context.

39. On the issues of installment payments and down payments, the Commission believes that ensuring the opportunity for small businesses to participate in providing service in the 4660–4685 MHz band is important for the telecommunications industry. The record in PR Docket 93–253 indicates that small businesses have not become major participants in telecommunications. The record in that docket also shows that small businesses have particular difficulties obtaining capital. As discussed in the *Second NPRM*, it appears that installment payments may have been more effective than bidding credits in attracting capital in the regional narrowband PCS auction, possibly because installment payments shift some of the financial risk of future failure to the Government. Therefore, the Commission adopts installment payments for any GWCS licensee meeting the definition of a small business.

40. Under this approach, small business licensees may elect to pay their winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments would be due quarterly on the anniversary of the day the license was granted. Timely payment of all installments would be a condition of the license grant and failure to make such timely payments would be grounds for revocation of the license.

41. The Commission also adopts additional payment preferences to further reduce the capital needs of small businesses. Small business licensees will be permitted to make interest-only installment payments during the first two years of the license. The

Commission also reduces down payments for small businesses to 5 percent of the winning bid due five days after the auction closes and the remaining 5 percent down payment due five days after Public Notice that the license is ready for grant.

42. The *Second NPRM* next proposed a 25 percent bidding credit on one of the five proposed spectrum blocks for small businesses owned by women and minorities. These bidding credits would be available exclusively to minority and women-owned businesses. The Commission also proposed installment payments for these entities and sought comment on whether installment payments should also be available for small businesses. The Commission did not believe that special preferences were needed to ensure adequate participation of rural telephone companies in the provision of services in this spectrum, in view of the uncertainty concerning what specific uses may emerge in this band, the potential prices that licenses may bring, the effects of provisions for partitioning or leasing spectrum, and the advantages of incumbency and economies of scale that may already benefit rural telephone companies. The *Second NPRM* sought comment on this analysis.

43. The Commission adopts a 10 percent bidding credit for small businesses. As discussed above, the Commission is adopting installment payments for small business bidders and the small EA geographic licensing areas. In the Commission's judgment, these and other provisions of the licensing and auction rules should ensure that small businesses, including small businesses owned by women and minorities, will be able to participate effectively in obtaining GWCS licenses, whether or not those licenses are auctioned.

44. The Commission next considers transfer restrictions and unjust enrichment provisions. Restrictions on the transfer or assignment of licenses acquired by designated entities are intended to promote the Congressional intent that designated entities be permitted to participate in the provision of spectrum-based services, not simply to profit from trafficking in licenses acquired with the help of bidding preferences. The Commission adopts the proposal contained in the *Second NPRM.* Specifically, the Commission adopts a payment requirement on transfers of such licenses to entities that are not small businesses. Small businesses seeking to transfer a license to an entity that is not owned by women or minorities would be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer would be permitted. The amount of the penalty would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the penalty would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment.

45. On the issue of rural telephone company partitions, the Commission, in the *Second NPRM,* proposed to permit partitioning of MTA-based licenses, to permit licensees to lease the rights to operate a GWCS system within portions of their geographic service area or transfer their license to partition their service areas geographically, allowing another party to be licensed in the partitioned area, subject to Commission approval. The Commission elects to adopt partitioning procedures similar to those used for cellular licenses and adopted for broadband PCS licenses.

46. The *Second NPRM* next sought comment on whether to designate one 5 MHz spectrum block as an ''entrepreneurs'' block. The Commission also invited comment on how eligibility for such a block should be defined. The Commission declines to adopt an entrepreneur's block for this band, based on our belief that bidding credits, installment payment options, and the other approaches also adopted will generate sufficient incentives to encourage participation in GWCS licensing. Unlike a set-aside, they also should not generate the risk of inefficient use of the 4660–4685 MHz spectrum and of dampening incentives for innovation.

Technical Rules

47. The *Second NPRM* proposed general and minimal technical restrictions that are based on the PCS rules. Specifically, the Commission proposed to limit the field strength at licensees' service area boundaries to 55 dBu unless licensees operating in adjacent areas agree to higher field strengths along their mutual border.[9] The Commission stated that licensees would be expected to coordinate their operations at the service area boundaries. The *Second NPRM* further stated that the Commission would encourage licensees to resolve adjacent channel interference problems. The Commission did, however, propose to require licensees to attenuate the power below the transmitter power (P) by at least 43 plus $10\log_{10}(P)$ or 80 decibels, whichever is less, for any emission at the edges of the 4660–4685 MHz band. Comments were requested on these proposals and any other technical rules that commenters believed appropriate.

48. Based on the record, the Commission adopts the technical rules as proposed in the *Second NPRM.* The PCS-based technical rules appear to be the best available rules to govern the flexible GWCS designation. However, the Commission recognizes that the technical rules may need to be adjusted to suit the needs of the eventual licensees. The rules also anticipate that licensees will in the first instance seek to resolve interference problems among themselves.

License Term

49. The *Second NPRM* noted that the Communications Act allows the Commission to establish a license term of up to 10 years, except for television or radio broadcasting stations, which may have a license term of up to 5 and 7 years, respectively. For services in the 4660–4685 MHz band, the *Second NPRM* proposed to establish a license term of 10 years, with a renewal expectancy similar to that of PCS and cellular telephone licensees. The *Second NPRM* indicated that this relatively long license term, combined with a high renewal expectancy, should help provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this new frequency band. The Commission noted, however, that commenters had proposed using this band for auxiliary broadcast service and the statute requires that the term of any license for the operation of any auxiliary broadcast station or equipment must be concurrent with the term of the license for such primary television station. Therefore, the *Second NPRM* asked that commenters address whether the Commission should allow differing license terms in this band. The Commission finds that the statutory provision that requires a shorter license term will generally not apply, expect in the case of an applicant seeking to use GWCS for auxiliary broadcast use by a single station, within the meaning of Section 307(c).

Construction Requirements

50. The Commission, in the *Second NPRM,* acknowledged that the very wide array of potential services that

[9] The minimum field strength required for a good quality service for mobile reception in an urban environment is 35 dBu (CCIR Report 358–5) and the proposed 55 dBu field strength limit allows 20 dB additional for location variability.

could be offered in this band makes it difficult to develop construction requirements that can be applied fairly and equitably, without skewing the workings of the market. The Commission also recognized our responsibility to ensure that the spectrum we assign is used effectively. Therefore, the *Second NPRM* proposed, and the Commission now adopts, rules that would require build-out rules modeled on those adopted for broadband PCS. Specifically, these rules will require that within five years licensees in this band offer service to one-third of the population in the area in which they are licensed, and to serve two-thirds within ten years of being licensed. The Commission will also consider waivers or modification of these rules based on demonstrations that the spectrum is being used efficiently, not warehoused or stockpiled.

Regulatory Status

51. The Communications Act and Commission rules often apply differing requirements based on the type of service and the regulatory status of licensees. The new GWCS category for the 4660–4685 band would allow licensees to provide a variety or combination of Fixed and Mobile services. Under this service, both Fixed and Mobile applications would be permitted and an individual licensee could provide a number of Fixed and Mobile services. In the *Second NPRM*, the Commission observed that it may be difficult to determine the regulatory status of GWCS licensees. The Commission proposed to rely on applicants to identify specifically the type of service or services they intend to provide, and require them to include sufficient detail to enable the Commission to determine if the service will be Fixed or Mobile, and whether it will be offered as a commercial mobile radio service, a private mobile radio service, a common carrier Fixed service, or a private Fixed service. Comment was requested on the most efficient manner in which to administer the requirements of the Communications Act and the Commission's Rules, and grant licensees as much operational flexibility as possible. The Commission also solicited comments on whether to develop a new application long form for this general allocation or require an applicant to be responsible for filing the appropriate license application based upon the nature of the service designated by the applicant. Commenters were asked to address whether it is necessary for the Commission to require licensees to notify the Commission if they change the type of service offered using some or all of their licensed spectrum even though the new use would be permissible under the Commission's rules.

52. The Commission adopts the proposed approach of relying on applicants to identify the type of GWCS service or services each will provide, with sufficient detail to enable the Commission to determine the applicant's regulatory status. The proposed added step would usually be unnecessary and would tend to delay the offering of new services. The Commission believes that it would be in the public interest to develop an application form for the new service. To clarify and simplify the regulatory status of licensees, the Commission also adopts a presumption that GWCS licenses are providing fixed common carrier services, which appears from the record to be the most likely and common use of this spectrum. This presumption may be rebutted by an appropriate showing. The Commission delegates to the Wireless Telecommunications Bureau authority to develop forms appropriate to collect this data, and to monitor changes in licensee status.

Licensing Issues

53. The *Second NPRM* requested comment on whether the Commission is required or should find that it is in the public interest to adopt additional licensing rules in order to comply with the statutory requirement that we adopt assignment rules before August 10, 1995. The Commission finds it unnecessary at present to adopt additional license rules for GWCS. The Commission will follow the statutory provisions of Section 309(d) for public notice and other requirements. With respect to other licensing issues, the Commission will consider whether any additional rules are necessary, and what form those rules should take, after we have proceeded with the application and licensing process. The Commission should at that time have a more detailed understanding of the services licensees intend to provide and their regulatory status.

Final Regulatory Flexibility Analysis

54. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small entities interested in operating on the 4660–4685 MHz band. As detailed in the full text of the *Second Report and Order,* the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent possible, minimize the burdens on such small businesses while providing maximum flexibility. The full text of the Commission's final regulatory flexibility analysis may be found in paragraph ____ of the full text of this decision.

Ordering Clauses

55. Accordingly, IT IS ORDERED that Part 26 of the Commission's Rules is added as set forth below. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

56. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE at the time of their publication in the **Federal Register**.[10]

List of Subjects

47 CFR Part 1

Telecommunications.

47 CFR Part 26

General wireless communications service.

Federal Communications Commission.

William F. Canton,

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 for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. New paragraph (a)(8) is added to Section 1.2102 to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(8) General Wireless Communications Service (GWCS) (see Part 26 of this chapter).

* * * * *

Part 26 of Chapter I of Title 47 of the Code of Federal Regulations is added to read as follows:

[10] This Order is adopted pursuant to a statutory requirement that the Commission, by August 9, 1995, allocate and establish licensing rules for 50 megahertz of spectrum that was transferred from Federal Government to private sector use, as required by the Budget Act. Thus, there is good cause to order the rule changes publication. See 5 U.S.C. § 553(d)(3).

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

Subpart A—General Information

Sec.
26.1 Basis and purpose.
26.2 Other applicable rule parts.
26.3 Permissible communications.
26.4 Terms and definitions.

Subpart B—Applications and Licenses

26.11 Initial authorization.
26.12 Eligibility.
26.13 License period.
26.14 Criteria for comparative renewal proceedings.

Subpart C—Technical Standards

26.51 Equipment authorization.
26.52 RF hazards.
26.53 Emission limits.
26.54 Frequency stability.
26.55 Field strength limits.

Subpart D—Miscellaneous

26.101 Multiple ownership restrictions.
26.102 Service areas.
26.103 Frequencies.
26.104 Construction requirements.

Subpart E—Competitive Bidding Procedures for GWCS

26.201 GWCS subject to competitive bidding.
26.202 Competitive bidding design for GWCS licensing.
26.203 Competitive bidding mechanisms.
26.204 Withdrawal, default and disqualification penalties.
26.205 Bidding application (FCC Form 175 and 175–S Short-Form.
26.206 Submission of upfront payments and down payments.
26.207 Long form applications.
26.208 License grant, denial, default, and disqualification.
26.209 Eligibility for partitioned licenses.
26.210 Provisions for small businesses.

Subpart F—Application, Licensing, and Processing Rules for GWCS

26.301 Authorization required.
26.302 Eligibility.
26.303 Formal and informal applications.
26.304 Filing of GWCS applications, fees, and numbers of copies.
26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.
26.306 Miscellaneous forms.
26.307 General application requirements.
26.308 Technical content of applications; maintenance of list of station locations.
26.309 Station antenna structures.
26.310 Waiver of rules.
26.311 Defective applications.
26.312 Inconsistent or conflicting applications.
26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.
26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).
26.315 Application for temporary authorizations.
26.316 Receipt of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS.
26.317 Public notice period.
26.318 Dismissal and return of applications.
26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.
26.320 Opposition to applications.
26.321 Mutually exclusive applications.
26.322 Consideration of applications.
26.323 Post-auction divestitures.
26.324 Transfer of control or assignment of station authorization.
26.325 Extension of time to complete construction.
26.326 Termination of authorization.

Authority: 47 U.S.C. Sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

Subpart A—General Information

§ 26.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) Basis. The rules for the general wireless communications service (GWCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for stations.

(b) Purpose. This part states the conditions under which portions of the radio spectrum are made available and licensed for GWCS.

(c) Scope. The rules in this part apply only to stations authorized under this part.

§ 26.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the general wireless communications service include the following:

(a) Part 0. This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) Part 1. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) Part 2. This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) Part 5. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) Part 17. This part contains requirements for construction, marking and lighting of antenna towers.

(f) Part 68. This part contains technical standards for connection of terminal equipment to the telephone network.

§ 26.3 Permissible communications.

GWCS licensees may provide any fixed or mobile communications service on their assigned spectrum. Broadcasting services, Radiolocation services and satellite services as defined in § 2.1 of this chapter are prohibited.

§ 26.4 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Effective radiated power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent isotropically radiated power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed service. A radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Gross revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g. cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall

be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Mobile service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Rural telephone company. A rural telephone company is a local exchange carrier having 100,000 or fewer access lines, including all affiliates.

Small business: consortium of small businesses.

(1) A small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than $40 million for the preceding three years.

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

Total assets. *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

Subpart B—Applications and Licenses

§ 26.11 Initial authorization.

(a) An applicant must file an application for an initial authorization in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.

§ 26.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

§ 26.13 License period.

Licenses for service areas will be granted for ten year terms from the date of original issuance or renewal.

§ 26.14 Criteria for comparative renewal proceedings.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

(a) Has provided ''substantial'' service during its past license term. ''Substantial'' service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and

(b) Has substantially complied with applicable Commission rules, policies and the Communications Act.

Subpart C—Technical Standards

§ 26.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled ''Radio Equipment List, Equipment Accepted for Licensing.'' Copies of this list are available for public reference at the Commission's offices in Washington, D.C., at each of its field offices, and may be ordered from its copy contractor.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in Subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1–1991, (ANSI/IEEE C95.1–1991), ''IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz'' as measured using methods specified in IEEE C95.3–1991, (ANSI/IEEE C95.3–1991), ''Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave.'' The applicant for type acceptance is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C.95.1–1991. (See § 26.52 for availability of IEEE standards.)

§ 26.52 RF hazards.

(a) Licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1–1991. Measurement methods are specified in IEEE C95.3–1991. Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331. Telephone: 1–800–678–4333. The limits for both ''controlled'' and ''uncontrolled'' environments, as defined by IEEE C95.1–1991, will apply to all GWCS base and mobile stations, as appropriate. The application for equipment authorization must contain a statement confirming compliance with IEEE C95.1–1991. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(b) GWCS hand-held devices whose maximum radiated power is 100 milliwatts or less are not required to be evaluated for compliance with ANSI/IEEE SAR (specific absorption rate) requirements, as long as 2.5 cm separation distance is maintained between the radiating structure and the body of the user. (The ANSI/IEEE standard uses the term ''radiated power,'' meaning input power to the antenna.)

(c) For further information on the Commission's environmental rules see §§ 1.1301 through 1.1319 of this chapter.

§ 26.53 Emission limits.

(a) The power of any emission at the edges of the 4660–4685 MHz band shall be attenuated below the transmitter power (P) by at least 43 + 10 $\log_{10}$(P) or 80 decibels, whichever is less.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emission are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the license's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided that they are expressed in the same parameters as the transmission power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 26.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 26.55 Field strength limits.

The predicted or measured median field strength at any location on the border of the GWCS service area shall not exceed 55 dBu unless licensees operating in adjacent areas agree to higher field strength along their mutual borders.

Subpart D—Miscellaneous

§ 26.101 Multiple ownership restrictions.

(a) GWCS licensees shall not have an ownership interest in more than three of the five, 5 megahertz wide channels available in any geographic area. For purposes of this restriction, a GWCS licensee is:

(1) Any institutional investor, as defined in § 26.4, with an ownership interest of ten or more percent in a GWCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a GWCS license.

(b) In cases where a party had indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the GWCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the GWCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example. Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the GWCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section.

(1) A limited partnership interest held by an institutional investor (as defined § 26.4) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the GWCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require:

(i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

(ii) Barring the limited partners from serving as independent contractors;

(iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;

(iv) Empowering the general partner to veto admissions of new general partners;

(v) Restricting the circumstances in which the limited partners can remove the general partner;

(vi) Prohibiting the limited partners from providing services to the partnership relating to the GWCS holdings of the licensee; and

(vii) Stating that the limited partners may not become involved in the management or operation of the licensee.

§ 26.102 Service areas.

GWCS service areas are based on Economic Areas developed by the Bureau of Economic Analysis, Department of Commerce, referred to as ''EAs'' and three additional EA-like service areas: Guam and the Northern Mariana Islands (combined as one service area), Puerto Rico and the United States Virgin Islands (combined as one service area), and American Samoa.

(a) *Economic Areas.* Codes from 001 to 172 are assigned to the EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names.

Code and Name

001 Bangor, ME
002 Portland, ME
003 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH
004 Burlington, VT
005 Albany-Schenectady-Troy, NY
006 Syracuse, NY
007 Rochester, NY
008 Buffalo-Niagara Falls, NY
009 State College, PA
010 New York-No. New Jersey-Long Island, NY–NJ–CT–PA
011 Harrisburg-Lebanon-Carlisle, PA
012 Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD
013 Washington-Baltimore, DC–MD–VA–WV
014 Salisbury, MD
015 Richmond-Petersburg, VA
016 Staunton, VA
017 Roanoke, VA
018 Greensboro-Winston-Salem-High Point, NC
019 Raleigh-Durham-Chapel Hill, NC
020 Norfolk-Virginia Beach-Newport News, VA–NC
021 Greensville, NC
022 Fayettesville, NC
023 Charlotte-Gastonia-Rock Hill, NC–SC
024 Columbia, SC
025 Wilmington, NC
026 Charleston-North Charleston, SC
027 Augusta-Aiken, GA–SC
028 Savannah, GA
029 Jacksonville, FL

030 Orlando, FL
031 Miami-Fort Lauderdale, FL
032 Fort Myers-Cape Coral, FL
033 Sarasota-Bradenton, FL
034 Tampa-St. Petersburg-Clearwater, FL
035 Tallahassee, FA
036 Dothan, AL
037 Albany, GA
038 Macon, GA
039 Columbus, GA–AL
040 Atlanta, GA
041 Greenville-Spartanburg-Anderson, SC
042 Asheville, NC
043 Chattanooga, TN–GA
044 Knoxville, TN
045 Johnson City-Kingsport-Bristol, TN–VA
046 Hickory-Morganton, NC
047 Lexington, KY
048 Charleston, WV
049 Cincinnati-Hamilton, OH–KY–IN
050 Dayton-Springfield, OH
051 Columbus, OH
052 Wheeling, WV–OH
053 Pittsburgh, PA
054 Erie, PA
055 Cleveland-Akron, OH
056 Toledo, OH
057 Detroit-Ann Arbor-Flint, MI
058 Northern Michigan, MI
059 Green Bay, WI
060 Appleton-Oshkosh-Neenah, WI
061 Traverse City, MI
062 Grand Rapids-Muskegon-Holland, MI
063 Milwaukee-Racine, WI
064 Chicago-Gary-Kenosha, IL–IN–WI
065 Elkhart-Goshen, IN
066 Fort Wayne, IN
067 Indianapolis, IN
068 Champaign-Urbana, IL
069 Evansville-Henderson, IN–KY
070 Louisville, KY–IN
071 Nashville, TN
072 Paducah, KY
073 Memphis, TN–AR–MS
074 Huntsville, AL
075 Tupelo, MS
076 Greenville, MS
077 Jackson, MS
078 Birmingham, AL
079 Montgomery, AL
080 Mobile, AL
081 Pensacola, FL
082 Biloxi-Gulfport-Pascagoula, MS
083 New Orleans, LA
084 Baton Rouge, LA
085 Lafayette, LA
086 Lake Charles, LA
087 Beaumont-Port Arthur, TX
088 Shreveport-Bossier City, LA
089 Monroe, LA
090 Little Rock-North Little Rock, AR
091 Fort Smith, AR–OK
092 Fayetteville-Springdale-Rogers, AR
093 Joplin, MO
094 Springfield, MO
095 Jonesboro, AR
096 St. Louis, MO–IL
097 Springfield, IL
098 Columbia, MO
099 Kansas City, MO–KS
100 Des Moines, IA
101 Peoria-Pekin, IL
102 Davenport-Moline-Rock Island, IA–IL
103 Cedar Rapids, IA
104 Madison, WI
105 La Crosse, WI–MN
106 Rochester, MN
107 Minneapolis-St. Paul, MN–WI
108 Wausau, WI
109 Duluth-Superior, MN–WI
110 Grand Forks, ND–MN
111 Minot, ND
112 Bismarck, ND
113 Fargo-Moorhead, ND–MN
114 Aberdeen, SD
115 Rapid City, SD
116 Sioux Falls, SD
117 Sioux City, IA–NE
118 Omaha, NE–IA
119 Lincoln, NE
120 Grand Island, NE
121 North Platte, NE
122 Wichita, KS
123 Topeka, KS
124 Tulsa, OK
125 Oklahoma City, OK
126 Western Oklahoma, OK
127 Dallas-Fort Worth, TX
128 Abilene, TX
129 San Angelo, TX
130 Austin-San Marcos, TX
131 Houston-Galveston-Brazoria, TX
132 Corpus Christi, TX
133 McAllen-Edinburg-Mission, TX
134 San Antonio, TX
135 Odessa-Midland, TX
136 Hobbs, NM
137 Lubbock, TX
138 Amarillo, TX
139 Santa Fe, NM
140 Pueblo, CO
141 Denver-Boulder-Greeley, CO
142 Scottsbluff, NE
143 Casper, WY
144 Billings, MT
145 Great Fallas, MT
146 Missoula, MT
147 Spokane, WA
148 Idaho Falls, ID
149 Twin Falls, ID
150 Boise City, ID
151 Reno, NV
152 Salt Lake City-Ogden, UT
153 Las Vegas, NV–AZ
154 Flagstaff, AZ
155 Farmington, NM
156 Albuquerque, NM
157 El Paso, TX
158 Phoenix-Mesa, AZ
159 Tucson, AZ
160 Los Angeles-Riverside-Orange County, CA
161 San Diego, CA
162 Fresno, CA
163 San Francisco-Oakland-San Jose, CA
164 Sacramento-Yolo, CA
165 Redding, CA
166 Eugene-Springfield, OR
167 Portland-Salem, OR–WA
168 Pendleton, OR
169 Richland-Kennewick-Pasco, WA
170 Seattle-Tacoma-Bremerton, WA
171 Anchorage, AK
172 Honolulu, HI

(b) Other eligible areas not included in the Bureau of Economic Analysis's list of EAs include: Guam and the Northern Mariana Islands, Puerto Rico and United States Virgin Islands, and American Samoa.

§ 26.103 Frequencies.

The following frequencies are available for GWCS in the Economic Areas and other areas described in § 26.102 as shown below.

Channel Block and Frequency Band

Block A: 4660–4665 MHz
Block B: 4665–4670 MHz
Block C: 4670–4675 MHz
Block D: 4675–4680 MHz
Block E: 4680–4685 MHz

§ 26.104 Construction requirements.

(a) GWCS licensees shall within five years of initial license grant date offer service to one-third of the population in the area in which they are licensed. Licensees shall serve two-thirds of the population in the area in which they are licensed within ten years of initial license grant date.

(b) In demonstrating compliance with the above construction requirements, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(c) Upon meeting the five and ten year benchmarks in paragraph (a) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. Licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

(d) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(e) Failure by a licensee to meet the above construction requirements may result in forfeiture of the license and ineligibility to regain it.

Note to § 26.104: Population-based construction requirements contained in this section shall be based on the 1990 census.

Subpart E—Competitive Bidding Procedures for GWCS

§ 26.201 GWCS subject to competitive bidding.

Mutually exclusive initial applications to provide GWCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q, will apply unless otherwise provided in this part.

§ 26.202 Competitive bidding design for GWCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide GWCS service:

(1) Simultaneous multiple round actions

(2) Sequential oral auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 26.203 Competitive bidding mechanisms.

(a) Sequencing. The Commission will establish and may vary the sequence in which GWCS licenses will be auctioned.

(b) Reservation price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(c) Minimum bid increments. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.

(d) Stopping rules. The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) Activity rules. The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(f) Bidder identification during auctions. The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

(g) Nationwide bidders. Bidders seeking to aggregate EA-based GWCS licenses into nationwide licenses are required to declare the number of nationwide aggregations for which they will bid and to be active in every round of bidding on sufficient licenses to create the number of declared aggregations.

§ 26.204 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 26.202(a)(1), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. The withdrawal penalty for a nationwide bidder for each aggregation is limited to 5 percent of the aggregate withdrawn bids. The withdrawal penalty for a nationwide bidder is calculated between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(c) In the case of single round bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission releases the initial Public Notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission releases the initial Public Notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial Public Notice announcing the winning bidders.

(d) In the case of oral sequential bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) of this chapter and paragraphs (a)(1) and (a)(2) of this section will apply.

§ 26.205 Bidding application (FCC) Form 175 and 175–S Short-Form).

All applicants for initial provision of GWCS service must submit applications on FCC Forms 175 and 175–S pursuant to the procedures set forth in § 1.2105 of this chapter. The Commission will issue a Public Notice announcing the date of a GWCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming GWCS auction must file their applications in order to be eligible for that auction. The

Public Notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

§ 26.206 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in § 1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in § 1.2107 (a) and (b) of this chapter.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible small businesses may submit a down payment of 5 percent of the winning bid five days after the auction closes and 5 percent five days after public notice that the license is ready for grant.

§ 26.207 Long form applications.

Winning bidders will be required to submit long form applications on FCC form XXX, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form XXX shall be submitted pursuant to the procedures set forth in subpart G of this part and § 1.2107 (c) and (d) of this chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form XXX for initial GWCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form XXX.

§ 26.208 License grant, denial, default, and disqualification.

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in § 1.2109 of this Chapter.

(c) An eligible small business may elect to pay its winning bid, less up-front payments, over the terms of the license. Interest charges are fixed at the time of licensing at the rate equal to U.S. Treasury obligation plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license was granted, except that interest-only installment payments are permitted during the first two years of the license.

§ 26.209 Eligibility for partitioned licenses.

(a) Notwithstanding § 26.102, an applicant that is a rural telephone company, as defined in § 26.4, may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive biding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and Part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (*see* § 1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 26.324.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d)(3): A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (*see* § 26.104).

§ 26.210 Provisions for small businesses.

(a) Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) Installment payments. A winning bidder that qualifies as a small business may pay its winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license is granted. Failure to make timely installment payments may result in revocation of the license. Small businesses are permitted to make interest-only installment payments during the first two years of the license.

(c) Down payments. A winning bidder that qualifies as a small business is permitted to make a down payment equal to 5 percent of the winning bid due five days after the auction closes with the remaining 5 percent down payment dues five days after Public Notice that the license is ready for grant.

(d) Unjust enrichment. If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded as a condition of the approval of such assignment, transfer or other ownership change. The amount of the payment would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the payment would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment. Transfer of control or assignment of station license is also subject to provisions of § 1.2111 of this chapter.

Subpart F—Application, Licensing, and Processing Rules for GWCS

§ 26.301 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 26.302 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including §§ 26.101 and 26.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A GWCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) A GWCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 26.303 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) ''Formal applications'' where the Commission has prescribed in this Part a standard form; or

(2) ''Informal applications'' (normally in letter form) where the Commission has not prescribed a standard form.

(c) An information application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 26.304 Filing of GWCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 26.304 and 26.307, standard formal application forms applicable to the GWCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) By calling the Commission's Forms Distribution Center, (202) 418–3676.

(b) Applications for the initial provision of GWCS service must be filed on FCC Form 175 in accordance with the rules in § 26.305 and Part 1, Subpart Q of this chapter. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form XXX for initial GWCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. GWCS applicants filing Form XXX need not complete Schedule B.

(c) All applications for GWCS radio station authorizations (other than applications for initial provision of GWCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: GWCS Processing Section. Applications requiring fees as set forth at Part 1, Subpart G, of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Wireless Telecommunications Bureau, Washington, DC 20554, GWCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with thee microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 of this chapter. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped ''original''. In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this chapter shall also submit 2 paper copies as provided in § 1.51 of this chapter.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm 0A 105mm negative (clear transparent characters appearing on an opaque background) at 240A to 270A reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125mm 0A 176 mm) or 5 0A 7.5 inch envelope. All applicants must leave Row ''A'' (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g. nationwide, or EA);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

§ 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.

(a) Applications for the initial provision of GWCS service must be filed on FCC Forms 175 and 175–S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for GWCS radio station(s) under Part 26. FCC Form XXX (''Application for New or Modified General Wireless Communications Service Under Part 26'') shall be submitted by each auction winner for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form XXX. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11. GWCS applicants filing Form XXX need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 26.104, a timely application for extension of time (FCC Form 489) must be filed.

§ 26.306 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 (''Common Carrier and Satellite Radio Licensee Qualifications Report'') shall be filed by General Wireless Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 (''Application for Renewal of Station License'') must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 26.307 General application requirements.

(a) Each application (including applications filed on forms 175 and XXX) for a radio station authorization or for consent to assignment or transfer of control in the GWCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(2) A list of its affiliates, if any. Affiliates means any business which holds a five per cent or more interest in the applicant, or any business in which a five per cent or more interest is held by another company which holds a five per cent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(3) A list of the names, addresses, citizenship and principal business of any person holding five per cent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application. This information must be included in Exhibit V of the application.

(b) Each application for a radio station authorization in the GWCS must:

(1) Submit the information required by the Commission's rules, requests, and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and

(3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm×29.7 cm) or 8.5×11 inch (21.6 cm×27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a ''yes'' or ''no'' or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of Subpart F of this part and § 1.2105 of this chapter, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of this chapter. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All GWCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a

significant environmental impact prior to undertaking such construction and to otherwise comply with §§ 1.1301 through 1.1319 of this chapter. See § 1.1312 of this chapter.

§ 26.308 Technical content of applications; maintenance of list of station locations.

All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a GWCS license must also comply with all technical requirements of the rules governing the GWCS (see Subparts C and D as appropriate).

§ 26.309 Station antenna structures.

(a) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A GWCS station antenna structure no higher than 6.1 m (10 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting are contained in Part 17 of this chapter, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460–1 and the FCC on FCC Form 854.

§ 26.310 Waiver of rules.

(a) Request for waivers. (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) Denial of waiver, alternate showing required. If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 26.311 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, executive, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 1.2105 of this chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(3) The application is filed prior to the Public Notice issued under § 26.317 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice;

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 26.312 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also § 1.2105 of this chapter.

(b) For GWCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175, to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

§ 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for General Wireless Communications Service other than applications filed on FCC Form 175.

(a) Amendments as of right. A pending application may be amended as a matter or right if the application has not been designated for hearing.

(1) Amendments shall comply with § 26.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 26.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 26.317 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its EA or other applicable market area as defined in § 26.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(3) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 26.315 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 26.303 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 26.317 when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 26.316 Recept of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS Service.

All applications for the initial provision of GWCS service must be submitted on FCC Forms 175 and 175–S. Mutually exclusive initial applications in the General Wireless Communications Services are subject to competitive bidding. FCC Form XXX (''Application for New or Modified General Wireless Communications Service Radio Station Under Part 26'') must be submitted by each winning bidder for each GWCS license applied

for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form 401. The aforementioned Forms 175, 175–S, and XXX are subject to the provisions of Part 1, Subpart Q of this chapter (''Competitive Bidding Proceedings'') and subpart E of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

§ 26.317 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto:

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person.

(4) Special environmental considerations as required by part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form XXX filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of this chapter.

(c) As an exception to paragraphs (a)(1), (a)(2) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 26.314) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 26.104;

(4) For temporary authorization pursuant to § 25.315;

(5) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(6) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(7) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 26.318 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175–S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to § 1.2104 of this chapter.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of this Section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of this chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which § 26.323 and 26.324 would apply, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) Parties that have filed an application in the GWCS that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the FCC. Parties that have filed a petition to deny, informal objection or other pleading against a pending application, and then seek to withdraw or request dismissal of the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC.

(1) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection or other pleading must submit to the FCC a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(i) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other

pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to *bona fide* merger agreements;

(ii) The exact nature and amount of any consideration received or promised;

(iii) An itemized accounting of the expenses for which it seeks reimbursement; and

(iv) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(2) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(ii) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(3) For the purposes of this section:

(i) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(ii) Applications, petitions to deny, informal objections and other pleadings are deemed to be pending before the FCC from the time the application or petition to deny is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application, petition to deny, informal objection or other pleading is no longer subject to reconsideration by the FCC or to review by any court.

(iii) ''Legitimate and prudent expenses'' are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(iv) ''Other consideration'' consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(v) Reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the FCC.

§ 26.320 Opposition to applications.

(a) Petitions to deny (including petitions for other forms or relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 1.2108 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

§ 26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume ''harmful electrical interference'' to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are subject to competitive bidding in accordance with the procedures in Subpart F of this part and in Part 1, Subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 26.322 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 26.321 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 26.320, the Commission will deny the petition by the issuance of a Memorandum Opinion

and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularly the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 26.321) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or Part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with Part 1, Subpart A of this chapter.

§ 26.323 Post-action divestitures.

Any parties sharing a common non-controlling ownership interests who aggregate more GWCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The GWCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it deems appropriate. Divestiture may be an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

§ 26.324 Transfer of control or assignment of station authorization.

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the General Wireless Communications Service is also subject to § 1.2111 of this chapter (Assignment or transfer of control: unjust enrichment).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required:

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) Form 430. Whenever an application must be filed under paragraphs (a)(1) or (a)(2) of this section, the assignee or transferee shall file FCC Form 430 (''Common Carrier Radio License Qualification Report'') unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 26.104.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

§ 26.325 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 26.104, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See paragraph (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. An application for modification of an authorization (under construction) does not extend the initial

construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

§ 26.326 Termination of authorization.

(a) (1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 26.14 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

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Wednesday
August 9, 1995

Part VI

The President

Proclamation 6815—Minority Enterprise Development Week, 1995

Federal Register
Vol. 60, No. 153
Wednesday, August 9, 1995

Presidential Documents

Title 3—

The President

Proclamation 6815 of August 7, 1995

Minority Enterprise Development Week, 1995

By the President of the United States of America

A Proclamation

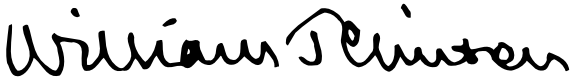
For citizens throughout the Nation, entrepreneurship is a proven gateway to economic empowerment. At its best, our free enterprise system works to ensure that all of our citizens have the opportunity to contribute fully to America's economic growth and to benefit fully from our economy's success. However, the road to entrepreneurial achievement is seldom easy. Those who undertake the journey must be talented, determined, and brave. But America has a history of rewarding risk-takers, and there is much to be gained in the attempt.

If this country is to continue to prosper in the years ahead, we must hold fast to the promise of minority enterprise development. Business growth in our minority communities creates wealth, encourages self-sufficiency, and generates jobs where they are needed. My Administration is working hard to strengthen all of our Nation's businesses, opening new domestic and international markets, stimulating the efficient use of developed but underutilized land in older cities and towns, and reducing the cost of borrowing for business start-ups and expansions. These innovative efforts are making an impact, and people throughout America are stepping forward to take advantage of the possibilities of investment.

This week plays an important part in our work to promote the growth of the minority business community. As we recognize America's outstanding minority business men and women, we honor their accomplishments and help spur them on to greater heights. Highlighting their success, this occasion touches even those who have not yet dreamed of starting their own businesses. We are all inspired by the example our entrepreneurs have set.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 24 through September 30, 1995, as ''Minority Enterprise Development Week.'' I call on all Americans to commemorate this event with appropriate ceremonies and activities, joining together to recognize the contributions that minority entrepreneurs make every day to our national economic security.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of August, 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.



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Federal Register

Vol. 60, No. 153

Wednesday, August 9, 1995

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FEDERAL REGISTER PAGES AND DATES, AUGUST

39101–39240 1
39241–39624 2
39625–39834 3
39835–40052 4
40053–40258 7
40259–40452 8
40453–40736 9

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12967 39623
12968 40245

Presidential Determinations:
No. 95–32 of July 28, 1995 40255
No. 95–33 of July 31, 1995 40257

Proclamations:
6814 40451
6815 40736

5 CFR

316 39101

Proposed Rules:
2421 39878
2422 39878

7 CFR

51 39241
301 ..... 39101, 39835, 40053
319 39101
400 ..... 40054, 40055
401 40055
402 40055
404 40055
800 39242
905 40056
922 39104
923 39104
924 39104
931 40058
948 ..... 39105, 40259
981 40059
982 40061
984 40063
989 39837
993 39107
1126 40260

Proposed Rules:
58 40115
273 40311
319 ..... 39888, 39889
987 40116
1280 40313

8 CFR

103 40064
212 40064
217 40064
235 40064
264 40064
286 40064

9 CFR

160 39840
161 39840

Proposed Rules:
94 39890

10 CFR

Proposed Rules:
20 40117
30 40117
40 40117
50 40117
51 40117
70 40117
72 40117
490 40539
600 40323

12 CFR

3 ..... 39226, 39490
6 39226
208 ..... 39226, 39490
225 39226
325 ..... 39226, 39490
565 39226
567 39226

Proposed Rules:
3 39495
208 39495
325 39495
701 39273
741 39274

14 CFR

25 39625
39 ..... 39243, 39245, 39627, 39628, 39631, 39633, 39635, 39637, 39842
71 ..... 39247, 39638, 39639, 40069
97 ..... 40070, 40071
189 39614

Proposed Rules:
39 40118
71 ..... 39280, 39893, 39894, 40020, 40227

15 CFR

902 39248
905 39249

Proposed Rules:
801 40336
806 39128
944 40540
990 39804

16 CFR

3 39640
234 40262
237 40263
242 40265
248 40267
252 40453
800 40704
803 40704

17 CFR

200 39643

Proposed Rules:
270.....39574, 39592
274.....39574

18 CFR

35.....39251
284.....39252
Proposed Rules:
284.....39895

19 CFR

132.....39108

20 CFR

335.....40073
Proposed Rules:
416.....40542

21 CFR

175.....39645
176.....39645
177.....39647, 40073
178.....39648
510 .....39846, 40454, 40455
520.....39846, 40454
522.....39846
529.....40455
524.....39846
558.....39846, 39847

22 CFR

213.....40456

24 CFR

25.....39236
26.....39236
202.....39236

26 CFR

1.....39649, 40075
31.....39109
40.....40079
48.....40079
301.....39652, 40086
602.....40079
Proposed Rules:
1.....39896, 39902
301.....39903

28 CFR

2 .....40092, 40094, 40270

29 CFR

1910.....40457
1926.....39254
2606.....39848
2609.....39848
Proposed Rules:
2510.....39208
1910.....39281

30 CFR

946.....40271
Proposed Rules:
206.....40120, 40127

31 CFR

515.....39255
Proposed Rules:
103.....39665

32 CFR

92.....40277
Proposed Rules:
220.....39285

33 CFR

100.....40096
117.....40097
126.....39788
127.....39788
137.....39849
165.....40458
Proposed Rules:
1.....39130
117.....39287, 40138
165.....40543
183.....40545

34 CFR

366.....39216
Proposed Rules:
345.....40688

36 CFR

7.....39257
242.....40569, 40461
1253.....40416
Proposed Rules:
1415.....39905

39 CFR

111.....39111

40 CFR

9.....40474
51.....40098, 40465
52 .....39115, 39258, 39851, 39855, 39857, 40101, 40285, 40286, 40291, 40292, 40465
61.....39263
70.....39862, 40101
75.....40295
80.....40006
81 .....39115, 39258, 39857, 40297
82.....40420
86.....39264, 40474
93.....40098
122.....40230
124.....40230
136.....39586
180 .....40498, 40500, 40503
185.....40503
258.....40104
712.....39654
Proposed Rules:
Ch. I.....39668
51.....39297
52 .....39298, 39907, 39910, 39911, 40139, 40338
61.....39299
70.....39911, 40140
80.....40009
81 .....39298, 39911, 40338
180 .....39299, 39302, 40545
185.....39302
194.....39131
302.....40042
355.....40042
372.....39132
433.....40145
438.....40145
464.....40145

41 CFR

Ch. 114.....39864

42 CFR

409.....39122
484.....39122
Proposed Rules:
412.....39304
413.....39304
424.....39304
485.....39304
489.....39304

43 CFR

Public Land Orders:
7149.....39655
7150.....39655

44 CFR

64.....39123
65.....39865, 39867
67.....39868
Proposed Rules:
10.....39694
67.....39912

45 CFR

11.....40505
1355.....40505

46 CFR

30.....39267, 40227
67.....40238
150.....39267, 40227
160.....39268
Proposed Rules:
5.....39306
10.....39306
12.....39306, 40145
15.....39306
16.....40145

47 CFR

1 .....39268, 39656, 40712
2.....39657
26.....40712
73 .....39127, 39659, 40105, 40301
87.....40227
90.....39660
Proposed Rules:
1.....39134
61.....39136
64.....39136
69.....39136
73 .....39141, 39142, 39143, 39308, 40146

48 CFR

Ch. II.....40105
206.....40106
207.....40106
215.....40106
219.....40106
235.....40107
252.....40106
501.....40107
519.....39660
552.....39660
601.....39661
602.....39661
605.....39661
606.....39661
609.....39661
610.....39661
613.....39661
616.....39661
619.....39661
625.....39661
636.....39661
637.....39661
653.....39661
939.....39871
1801.....40508
1803.....40508
1804.....40508
1805.....40508
1808.....40508
1809.....40508
1810.....40508
1812.....40508
1814.....40508
1815.....40508
1819.....40508
1822.....40508
1825.....40508
1827.....40508
1829.....40508
1831.....40508
1833.....40508
1835.....40508
1837.....40508
1839.....40508
1846.....40508
1849.....40508
1850.....40508
1852.....40508
1853.....40508
1870.....40508
2801.....40108
2802.....40108
2804.....40108
2805.....40108
2807.....40108
2808.....40108
2809.....40108
2810.....40108
2812.....40108
2813.....40108
2814.....40108
2815.....40108
2816.....40108
2817.....40108
2828.....40108
2829.....40108
2830.....40108
2832.....40108
2833.....40108
2835.....40108
2845.....40108
2852.....40108
2870.....40108
Proposed Rules:
209.....40146
216.....40146
217.....40146
246.....40146
252.....40146

49 CFR

171.....39608, 40030
172 .....39608, 39991, 40030
173.....40030
178.....40030
575.....39269
653.....39618
654.....39618
800.....40111
830.....40111
831.....40111
1023.....39874
Proposed Rules:
5.....39919
571.....39308
1051.....40548
1220.....40548
1312.....39143

50 CFR

2.....40301
100.....40459, 40461
204.....39248
210.....39271
216.....39271
250.....39271
270.....39271
301.....39663, 40227
604.....39271
625.....40113
661.....39991, 40302
662.....40303
663.....39875
672.....40304
675.....39877, 40304
676.....40304

Proposed Rules:

17 .....39309, 39314, 39326, 39337, 40149, 40339, 40549
23.....39347
402.....39921
Ch. VI.....40340
638.....40150
642.....39698
649.....40341
650.....40341
651.....40341
663.....39144
697.....39700

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 8, 1995